

# Briefing Note on Grenfell Phase 2 Report

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## EXEC SUMMARY

- This briefing note serves to highlight areas where the findings of the **Grenfell Tower Inquiry Phase 2 Report** (the "Report") and the **Social Housing (Regulation) Act 2023** (the "2023 Act") might prompt discussions on the regulation of social landlords in Scotland and impact the Scottish Housing Regulator ("SHR").
- The Report does not propose new recommendations for social housing providers, given the reforms introduced in England and Wales by the 2023 Act. However, the Report considers key themes for improvement across various sectors, which may also resonate with the SHR.
- The 2023 Act introduces reforms for England and Wales that include obligations for landlords to address health-impacting defects promptly, set conduct and competence standards for housing personnel, and improve transparency in tenant communication. An analysis of Scottish legislation shows some equivalence through the Housing (Scotland) Act 2010, and SHR's regulatory framework.

## ADVICE NOTE ON GRENFELL PHASE 2 REPORT

### 1 PURPOSE OF THE BRIEFING

- 1.1 This paper highlights areas where the findings of the Grenfell Tower Inquiry Phase 2 Report (the "Report") and the Social Housing (Regulation) Act 2023 (the "2023 Act") may inform discussions on social housing regulation in Scotland. It outlines key themes from the Report relevant to the Scottish Housing Regulator ("SHR") and potential considerations for policy discussions with the Scottish Government and the Ministerial Working Group on Building and Fire Safety.
- 2 Following a review of the Report, the 2023 Act, and the Scottish legislation, the SHR found similarities between the new regulatory powers introduced in England and Wales under the 2023 Act and those in the Housing (Scotland) Act 2010 and SHR's framework.

### 3 BACKGROUND

- 3.1 The Report, published on 4 September 2024, examines the events leading to and following the Grenfell Tower fire on 14 June 2017. The fire resulted in 72 deaths and significant failures by various parties, including housing managers, local authorities, and contractors.
- 3.2 The report instructed councils and housing associations to “give careful consideration” to its criticism of the tenant management organisation (TMO) responsible for the tower at the time of the 2017 fire.
- 3.3 The Report made 59 recommendations, many of which focused on the construction industry, which if enacted would bring sweeping change to the built environment and will impact social landlords, particularly those who build or manage high-rise buildings. Regarding social housing, the Report criticises the Kensington and Chelsea TMO for inadequate complaint handling, failure to address fire risk assessment defects, and poor fire safety systems maintenance. However, the Report concluded that it was not necessary to provide any additional recommendations for social housing providers in the wake of the 2023 Act.

### 4 KEY THEMES FROM THE REPORT

- 4.1 The Report does not propose specific new recommendations for social housing providers or regulators. That said, recurring themes from the Report may inform discussions with the Scottish Government and relevant stakeholders as it relates to the regulation of social housing providers in Scotland.
- 4.2 The Report identifies recurring themes that may be useful to consider in Scotland:
  - 4.2.1 Ensuring personnel responsible for fire and building safety have appropriate qualifications and experience.
  - 4.2.2 Strengthening accountability for fire safety and health-related risks.
  - 4.2.3 Updating and enforcing fire safety guidance.
  - 4.2.4 Requiring comprehensive disaster preparedness plans for social landlords.
  - 4.2.5 Improving tenant communication regarding safety and construction-related matters.
  - 4.2.6 Establishing systems to identify and support vulnerable tenants during emergencies.
  - 4.2.7 Enhancing complaint handling and ensuring tenant concerns are addressed effectively.

## 5 ANALYSIS OF THE 2023 ACT AND SCOTTISH LEGISLATION

### Overview of the 2023 Act

- 5.1 The Housing and Regeneration Act 2008 ("the 2008 Act") sets out the fundamental objectives for the Regulator of Social Housing ("the RSH"), requiring that the RSH must perform its functions with a view to achieving (1) the economic regulation objective; and (2) the consumer regulation objective. The 2023 Act amends these fundamental objectives, by amending the detail within the consumer regulation objective. The consumer regulation objective now includes a specific reference to supporting the provision of social housing that is "safe" and "energy efficient" and to ensuring that registered provider's act in a transparent manner in relation to their tenants of social housing.
- 5.2 The 2023 Act intends to:
- 5.2.1 facilitate a new, proactive consumer regulation regime,
  - 5.2.2 refine the existing economic regulatory regime, and
  - 5.2.3 strengthen the RSH powers to enforce the consumer and economic regimes
- 5.3 The 2023 Act facilitates a new proactive consumer regulatory regime. To achieve this, the RSH's statutory objectives includes safety and transparency with powers to support this. Significantly, the 'serious detriment' test will be removed paving the way for action to be taken by the RSH in a greater number of cases of breaches of the consumer standards.
- 5.4 Whilst the emphasis is on improving consumer regulation, it is clear that this is not to be at the detriment of the economic standards. The 2023 Act also seeks to maintain and refine the RSH's current economic regulatory role. Ensuring that providers are well governed and financially viable remains a core priority for the RSH.
- 5.5 The 2023 Act strengthens the existing powers of the RSH by giving it new enforcement powers, seeking to ensure it can effectively intervene when required. This is particularly the case in relation to the consumer standards in order to underpin the importance of these. The new powers allow the RSH to carry out regular inspections of social housing providers under sections 29 and 30 of the 2023 Act and issue unlimited fines if they find breaches of standards under Schedule 3, paragraph 6 of the 2023 Act.

### Analysis of Corresponding Scottish Provisions

- 5.6 The Housing (Scotland) Act 2010 ("the 2010 Act") governs the regulation of social landlords in Scotland, and the Scottish Housing Regulator ("the SHR") is responsible for monitoring, assessing, and reporting on social landlords' performance and ensuring compliance with statutory duties, the

Scottish Housing Quality Standard (SHQS), and the Scottish Social Housing Charter (“the Charter”). For the most part, key powers under the 2010 Act allow the SHR to assess social landlords’ performance in similar ways to the 2023 Act.

5.7 There are areas where the Scottish regulatory framework may not align fully with the provisions of the 2023 Act, including the following enforcement mechanisms:

- 5.7.1 **Health-Driven Repairs:** While Scots law requires landlords to ensure properties are suitable for habitation, there is no specific obligation to investigate and address hazards within a prescribed timeframe as per section 42 of the 2023 Act.
- 5.7.2 **Competence Standards:** The SHR’s regulatory framework sets expectations for landlords’ governance and financial management, but there is no direct power to set individual competence standards for housing staff as per section 21 of the 2023 Act.
- 5.7.3 **Tenant Information and Transparency:** Scottish social landlords are required to provide some information to tenants, but there are no statutory duties equivalent to those in the 2023 Act regarding mandatory safety disclosures as per section 22 of the 2023 Act.
- 5.7.4 **Unlimited Fines:** The SHR has powers to monitor social landlords’ compliance with housing quality standards and regulatory frameworks, but it does not have powers to impose fines as detailed within Schedule 3, paragraph 6 the 2023 Act.

## 6 THEMES OF REPORT AND 2023 ACT

6.1 The following are key themes from the Report and provisions in the 2023 Act and the following areas may warrant attention from the Ministerial Working Group.

### 6.2 Competence Standards for Housing Personnel

- 6.2.1 The Grenfell disaster highlighted the need for housing professionals to have the necessary qualifications and expertise in fire safety and health-related roles.
- 6.2.2 Scottish legislation currently regulates landlords rather than individual personnel. Consideration could be given to whether the competence of individuals performing fire safety or health-critical roles should be monitored and if so, how this is measured.

### 6.3 Transparency and Information Sharing

- 6.3.1 The 2023 Act requires landlords in England and Wales to provide specific safety information to tenants.

- 6.3.2 Consideration could be given to whether there should be proposals to enhance transparency between social landlords and tenant, particularly regarding fire safety and emergency planning.

## **6.4 Tenant Engagement and Complaint Handling**

- 6.4.1 The Report criticises the failures of tenant management organisations to address tenant concerns effectively.
- 6.4.2 Consideration could be given to whether the current communication and complaint handling requirements in Scotland need to be strengthened to ensure tenants are adequately heard and supported.

## **6.5 Health-Driven Repairs and Fire Safety**

- 6.5.1 The 2023 Act imposes enforceable deadlines for addressing health-related defects.
- 6.5.2 Current Scottish legislation focuses on general housing standards and nuisances to health but does not have enforceable investigation timelines.

## **6.6 Support for Vulnerable Tenants**

- 6.6.1 The Report found deficiencies in tracking and supporting vulnerable tenants during emergencies.
- 6.6.2 This highlights the importance for disaster planning by social landlords. This may include a requirement for social landlords to maintain up-to-date registers of vulnerable and disabled tenants, ensuring such individuals are accounted for in disaster planning and emergency responses.

## **6.7 Disaster Preparedness**

- 6.7.1 The Report highlights the importance of comprehensive disaster planning by housing providers. Following failings found in the Report, housing providers may be required to develop comprehensive disaster preparedness plans.

# **7 CONCLUSION**

- 7.1 The findings of the Report and the provisions of the 2023 Act may prompt discussions about strengthening Scotland's social housing regulation.

- 7.2 The SHR's regulatory framework already addresses many of the principles highlighted in the Grenfell Tower Inquiry. That said the SHR continues to monitor developments following the Report and is committed to providing input as necessary to ensure its regulatory functions remain aligned with best practices and evolving legislative standards.

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