

DRAFT PRESSURED AREA GUIDANCE

Introduction

1. This guidance provides local authorities with advice to help them make decisions on pressured areas designations following the changes made by the Housing (Scotland) Act 2010. The pressured area provisions in the 2010 Act will commence on 30 June 2011.

2. Section 61C(4) of the Housing (Scotland) Act 1987 (as inserted by the 2010 Act) states that “A local authority proposing to make, amend, or revoke a designation under section 61B(1) must, before doing so, have regard to any guidance issued by Scottish Ministers about -

- (a) how and when they should do so;
- (b) the information which they should take into account before doing so, and
- (c) the terms of such designations“.

3. This guidance should be read in conjunction with the Scottish Government *Right to Buy Guidance Circular – a guide for social landlords* (HAR 1/2011), specifically paragraphs 49 to 58.

4. Section 142 of the 2010 Act makes significant amendments to section 61B of the 1987 Act as follows:

- Scottish Ministers’ role in designating pressured areas has been removed and local authorities have been given the power to make, amend and revoke pressured area designations. The power may be exercised if the authority considers that each of two conditions is met. The first is that, in the relevant part of the authority’s area, the need for housing provided by the authority or by Registered Social Landlords (RSLs) substantially exceeds (or is likely to exceed substantially) the amount of housing which is (or is likely to be) available. The second condition is that the exercise of the right to buy (RTB) by tenants in the area is likely to worsen the situation.
- New section 61B(1A) allows designations to be made generally in relation to all houses in the area, or in relation to particular house types only. So, any particular housing type may be designated as pressured if substantially more social rented housing of that type is (or is likely to be) needed than is available and if the RTB would worsen the situation. Houses of any other type in that area would remain available under RTB. “House type” is not defined in the 1987 or 2010 Acts, therefore, it could be defined in a number of ways. For example, by the number of bedrooms or whether the house is a flat, detached, semi-detached, or terraced.
- New section 61B(1C) increases the maximum period for which a pressured area can be designated from five years to ten years. This has the effect of suspending for a maximum period of ten years the modernised RTB entitlements of tenants who live in a designated area

or in a particular type of house in that area. Those tenants with preserved RTB entitlements remain unaffected.

Transition and Renewals

5. Ministers will not be able to extend, amend or revoke existing Ministerial pressured area designations which have already been granted for periods of up to 5 years under the previous legislation. However, existing designations will continue for the applicable period, unless the local authority decides to amend or revoke them. Local authorities can consider whether grounds exist for them to designate the same area as pressured for a new period of up to 10 years, on the same or different terms. Section 61B(9) allows a further designation to be made where a designation is already in force, or has been in force. That would allow a new designation to be made prior to the expiry of a previous one.

6. As currently, a designation has no effect in relation to any notice to purchase served prior to the designation taking effect.

Background

7. The effect of a pressured area designation is to suspend the RTB for the following tenants living in the area, or those living there in house types designated as pressured:

- those who took out a new tenancy in the area on or after the introduction of the Scottish secure tenancy (SST) (30 September 2002);
- those with tenancies created before the introduction of the SST who did not before that date have a RTB entitlement - these will be principally tenants of RSLs with assured tenancies (except for those with a preserved RTB);
- all those who have succeeded, on or after the introduction of the SST, to tenancies created before its introduction irrespective of the terms on which they would be able to exercise their RTB entitlement in the absence of the pressured area designation.

8. Tenants in tenancies created before the introduction of the SST and which were converted to SSTs will not be affected by a suspension provided that:

- before the introduction of the SST they had a RTB entitlement (whether or not this was with the same landlord, and ignoring the occupancy period required to exercise the right), as a result of having a secure tenancy or an assured tenancy with a preserved RTB;
- they have not succeeded to their tenancy on or after the introduction of the SST.

9. Tenants who have taken out a new tenancy in the area (and will, therefore, be covered by the designation) will include those who occupy their

house as a result of an exchange with a tenant occupying a house owned by the same or another landlord, providing this exchange has taken place after the introduction of the SST.

10. The suspension will be for a period of up to 10 years. Although 10 years is the maximum period allowed for each designation, local authorities can make a further designation for the same part of their area. Local authorities can also make multiple designations covering different parts of their area, whether or not limited to particular types of houses in those parts.

Advice and guidance

11. In February 2011, the Scottish Government published comprehensive guidance on the RTB application process (and other changes to the Right to Buy provisions arising from the Housing (Scotland) Act 2010), in the new *Right to Buy guidance circular – a guide for social landlords* (HAR Circular 1/2011).

12. It is important that pressured area decisions are made on the basis of accurate and up-to-date data. Advice regarding the use of local administrative data, which local authorities may wish to consider, is available as part of the housing need and demand assessment guidance. In particular, page 14-17 and Annex B may be helpful.

www.scotland.gov.uk/Topics/Built-Environment/Housing/supply-demand/guidance/guidance-info

13. The local Scottish Government offices (contact details provided below) will be able to offer advice and support to local authorities. Local authorities may find it helpful to contact them at an early stage in considering a possible pressured area designation.

Informing the Scottish Government

14. It would be helpful if local authorities could inform the Scottish Government as soon as practicable of a decision to designate an area as pressured. The Scottish Government would find it helpful to know the following:

- Areas and/or house types to be designated as pressured;
- A summary of the reasons for the designation;
- Details of any adverse feedback during the consultation process.

Contact details

15. If you require further information regarding either this or the Right to Buy Guidance Circular (HAR 1/2011), please get in touch with one of the contacts below.

[Scottish Government local teams](#)

Joanne McDowell: joanne.mcdowell@scotland.gsi.gov.uk or 0141 271 3825

Ross Wilson: ross.wilson@scotland.gsi.gov.uk or 0141 271 3825

Making a Pressured Area Designation

16. The two subsections below provide a useful framework for local authorities considering a pressured area designation, although other approaches are possible.

17. Section A identifies factual information which should be available and taken into account in all cases. It gives guidance on the type of evidence required to support the legislative requirement to undertake consultation. It sets out the core evidence which should be of central importance in considering whether or not to make a pressured area designation.

18. Section B describes types of evidence which are more likely to be significant in the assessment of those applications where the case for designation, as illustrated by the core evidence, does not appear clear cut. In those circumstances, local authorities will wish to devote more attention to evidence of this type in order to assist them in determining whether or not it is appropriate to designate an area.

SECTION A – Key factual and core evidence

Key Facts

19. There are some key pieces of factual information which help build up a picture of both the area being considered and the wider local authority area, and to understand the context of the evidence.

20. For each area, and if appropriate housing types within an area, being considered for designation, this information will include:

- the number of social rented units; and
- the total number of tenancies that would be immediately affected, split into:
 - (a) local authority tenancies; and
 - (b) RSL tenancies.

21. At the local authority level, this information will include:

- the total number of social rented units;
- where applicable, the total number of the particular house type (being considered as pressured) in the whole local authority area;
- the estimated affordable housing (including low-cost home ownership as well as social housing) net need per annum, disaggregated at an appropriate sub-area level where possible, obtained from the most recent housing needs assessment;
- a statement of the overall expected number of new affordable units for social rent and/or low-cost home ownership for the next three years. It may be helpful to consider both planned and confirmed new units;
- the number of RTB sales for each of the previous three years, working backwards from statistics in the latest quarter available. This should be available for the house type under consideration, as appropriate.

Core Evidence

22. The ratio of the number of applicants on all relevant waiting lists to the number of lets (the waiting list-to-let ratio) is a fundamental consideration in the assessment of needs for housing accommodation and whether they exceed substantially (or are likely to exceed substantially) available social housing. The power to make, amend and revoke pressured area designations may be exercised only if the local authority considers that each of two conditions is met. The first is that, in the relevant part of the authority's area, the need for housing provided by the authority or by RSLs substantially exceeds (or is likely to exceed substantially) the amount of housing which is (or is likely to be) available. The second condition is that the exercise of the RTB by tenants in the area is likely to worsen the situation.

23. Local authorities should consider, wherever possible, the waiting list-to-let ratio for the area (or the specific house types within that area being considered) for the last three years. This could be for either calendar years or financial years.

24. There is no preferred geographical unit which should be used in determining ratios; while large areas may be appropriate in some circumstances, this may not always be the case. The geographical unit selected should, however, be recognisable to current and potential tenants as a housing search area.

25. Where a local authority is considering designating a large area as pressured they should consider whether they have enough evidence to justify the designation in all settlement areas within it. For example, whilst the overall waiting list-to-let ratio for the larger area may show evidence of pressure, this may mask differences between smaller settlement areas. Local authorities should consider whether they can justify their decision in relation to all settlement areas, should it be challenged (for example by judicial review).

26. Local authorities should ensure that the waiting list information which they use to determine these ratios is as up to date and accurate as possible. This includes information from partner RSLs. There are a number of problems with housing registers when using them to understand preferences for locations within the authority. See page 83, paragraph 8 of the housing need and demand assessment guidance for further information. Also, with varying eligibility policies, re-housing priorities and actual chances of re-housing, there is likely to be great variation, across different local authority areas, in the propensity of households in need to actually register.

27. In particular, those transfer applicants and other applicants on the waiting list classed as not having a housing need, should be removed from the totals used to calculate ratios. The ratio should be calculated using the remaining applicants' first choices, where possible.

28. Where applicants make multiple choices, and those choices are not ranked in order of preference, an alternative approach will need to be considered. Local authorities should seek to demonstrate how areas proposed for designation are relatively more pressured than areas for which designation is not sought and in relation to the council area as a whole. In cases such as this other information from administrative systems such as turnover rates and letting times may help to inform the decision as to whether or not there are specific pressures on a particular area. In addition, qualitative information from local housing officers in relation to specific issues arising in particular areas might also be used to inform the process where the data is such that a simple pressure ratio based on an applicant's single choice cannot be derived.

29. Where the social housing application form does not provide the opportunity for an applicant to specify a preferred location, a local authority will need to be clear about what approach has been taken in order to determine the waiting list-to-let ratio for any specific area.

30. Local authorities may wish to be mindful of how the ratios in their proposed designation areas compare with the national average. Details of the national housing list and letting information can be found at

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/HousingLists>

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/Lettings>

31. From this information local authorities will be able to calculate a national waiting list-to-let ratio. It should not be assumed that areas with ratios above the national average will necessarily be stronger candidates for designation, or that areas with lower ratios should not be considered.

Consultation

32. Consultation is a key element to the pressured area designation process and there is a statutory duty on local authorities, before designating an area, to consult with:

- Every RSL with houses in the area under consideration – (an RSL may also wish to suggest designation be considered in a particular area)
- Such bodies representing the interests of tenants and other residents in the area, and such other persons, as local authorities think fit.

33. Section 61C(3) of the 1987 Act (as amended by the 2010 Act) requires that reasonable steps must be taken to publicise the proposal to make, amend or revoke the designation and the reasons for so proposing.

34. As a matter of good practice, it is expected that local authorities will undertake wide ranging local consultation that clearly considers whether there is a need for designation, taking account of the detail of the areas and house types affected and the possible duration of any designation.

35. Local authorities may also wish to consider consulting with local property professionals, such as estate agents, who have an expert knowledge of the local housing market.

SECTION B - Supporting evidence

36. Local authorities may wish to consider supporting evidence where it is felt that this would assist in considering whether to make a pressured area designation.

Estimated number of sales

37. It may be helpful to consider the estimated number of sales which would be suspended, during the course of the designation period, by a pressured area designation. This will necessarily be an estimate because sales will always be subject to tenants' future intentions, which are difficult to predict.

Local Housing Strategy

38. Local authorities may wish to consider how any potential pressured area designation supports the local housing strategy. Local authorities should consider what else is being done to address housing need in addition to consideration of pressured area designation. For example for property type, is there an issue regarding a shortage of appropriately sized properties, and therefore how would the local authority propose to address this, as part of the local housing strategy?

Housing need and demand assessment

39. Information from housing need and demand assessments, which underpin local housing strategies, may be a useful source of evidence for demonstrating pressure in a particular area or for a house type within that area.

Further Supporting Evidence

40. Consideration of the following may also be helpful:

- former right to buy properties' re-sales data, although they can be resource-intensive to provide;
- information on income data, to show whether waiting list applicants can sustain a mortgage of sufficient size to purchase a former council property;
- analysis of how the social rented stock has decreased historically, although they may be time consuming to provide;
- analysis of the impact on letting resulting from the 2012 homelessness target.