This briefing is intended to provide a summary of the main issues raised during Stage 2 consideration of the Housing (Scotland) Bill, and the amendments agreed. It does not seek to outline all of the issues debated or amendments made. SPICe Briefing Housing (Scotland) Bill (Burgess 2010) provides further information on the Bill as introduced.
## CONTENTS

**EXECUTIVE SUMMARY**  
3

**INTRODUCTION**  
4

**STAGE 1 PROCEEDINGS**  
4

**STAGE 1 REPORT**  
5

**STAGE 2 PROCEEDINGS**  
5

**FURTHER CONSIDERATION PRIOR TO STAGE 3**  
7

**STAGE 2 DETAIL**  
8

**THE SCOTTISH HOUSING REGULATOR AND RSL MATTERS**  
8
- Registration Criteria  
8
- Wider Role of RSLs  
9
- Power to Charge Fees  
9
- Scottish Social Housing Charter  
9
- Consultation  
10
- Improvement Targets  
10
- Inquiries and Information  
10
- Regulatory Intervention  
11
- Disposal of Land or Assets by RSLs  
12
- Regulation of Charitable Registered Social Landlords  
12

**20 YEAR RULES**  
12

**THE RIGHT TO BUY**  
13
- Limitation on police housing right to buy  
14
- New supply social housing  
14
- Report on the Right to Buy  
14

**PRIVATE RENTED SECTOR**  
15

**MISCELLANEOUS**  
15
- Protection of unauthorised tenancies  
15
- Protection of Tenants of Social Landlords Facing Eviction for Rent Arrears  
16
- Vacant Dwellings: Council Tax Information  
17
- Housing Support Services  
17

**SOURCES**  
18

**RELATED BRIEFINGS**  
20
EXECUTIVE SUMMARY

The principal policy objectives of the Housing (Scotland) Bill are “to improve the value that social housing delivers for tenants and taxpayers, to safeguard the supply of housing for the benefit of future generations of tenants and to improve the conditions in private sector housing” (Policy Memorandum, para 2). These policy objectives would be delivered by modernising the regime for regulating social landlords, reforming the right to buy social housing, amending the law on registering private landlords, licensing houses in multiple occupation and dealing with disrepair in private housing. The Local Government and Communities Committee, in its Stage 1 Report, supported the general principles of the Bill.

The majority of Stage 2 amendments were lodged by the Government all of these were agreed. Most of the agreed amendments related to the provisions regarding the Scottish Housing Regulator and Registered Social Landlords in Parts 1 to 10 of the Bill. Many of these were technical or minor amendments. A number of amendments sought to increase the participation of tenants, homeless persons and other services users.

Most of the non-Government amendments lodged were in relation to the right to buy provisions, some of which sought to place further restrictions on the right to buy. However, none of the non-Government these amendments were agreed. The only amendments agreed in relation to the right to buy were Government amendments that would introduce new restrictions on the right to buy police housing and to widen the definition of new supply social housing to include properties which are re-acquired by social landlords.

The Government did not lodge any amendments to the private rented sector provisions in the Bill. Instead, it has included the private rented sector provisions in the Private Rented Sector Housing Bill, which was introduced to Parliament on 4 October 2010, and plans to remove the private rented sector provisions from the current bill at Stage 3. This approach was in response to the Local Government and Communities Committee’s Stage 1 Report which stated that it would have been “preferable” to have all the provisions relating to the private rented sector in one bill.

New provisions were introduced by the Government at Stage 2 that would provide protection for tenants facing eviction for rent arrears. Further amendments would allow social landlords and their connected bodies to be exempt from the 20 years rules in relation to long leases and heritable securities. A Government amendment also provided more detail on the issue of the protection of unauthorised tenants. This clarifies that after obtaining a repossession decree against a borrower/landlord, a lender would have to raise further proceedings to evict any assured tenant under the Housing (Scotland) Act 1988.

A non-Government amendment agreed to at Stage 2 relates to the homeless application process. Where a local authority is satisfied that an applicant is homeless or threatened with homelessness, and they believe that the applicant (or any person residing with them) may be in need of housing support services, then they must assess that person’s need for such services. The local authority would be required to provide any housing support services required.
INTRODUCTION

The Housing (Scotland) Bill (SP Bill 36) (“the Bill”) was introduced to the Scottish Parliament on 13 January 2010 by Nicola Sturgeon MSP, Cabinet Secretary for Health and Wellbeing. The Bill was accompanied by Explanatory Notes (SP Bill 36-EN), a Financial Memorandum and a Policy Memorandum (SP Bill 36-PM).

The Policy Memorandum indicates that the principal policy objectives of this Bill are “to improve the value that social housing delivers for tenants and taxpayers, to safeguard the supply of housing for the benefit of future generations of tenants and to improve the conditions in private sector housing” (para 2). These policy objectives would be delivered by modernising the regime for regulating social landlords, reforming the right to buy social housing and amending the law on registering private landlords, licensing houses in multiple occupation and dealing with disrepair in private housing. The Bill includes provisions that would replace and modernise the regulatory framework established by Part 3 of the Housing (Scotland) Act 1988 and the Housing (Scotland) Act 2001 (the 2001 Act). It also proposes to amend provisions in the Housing (Scotland) Act 1987 (the 1987 Act) Antisocial Behaviour etc. (Scotland) Act 2004 (the 2004 Act), the Housing (Scotland) Act 2006 (the 2006 Act).

SPICe Briefing 10/19 The Housing (Scotland) Bill (Burgess 2010) provides further information on the bill as introduced.

STAGE 1 PROCEEDINGS

Stage 1 scrutiny of the Bill was undertaken by the Local Government and Communities Committee (the Committee). During Stage 1 proceedings the Committee took evidence at six meetings between 28 March and 28 April 2010. The Committee also conducted a visit to Fife in March 2010, where it held two informal meetings in Glenrothes. The Stage 1 Debate took place on 23 June 2010. Details of the oral evidence sessions, and the written evidence received by the Committee can be accessed from the Housing (Scotland) Bill section of the Committee’s website. Table 1 provides a summary of Parliamentary consideration of the Bill.

Table 1: Summary of Parliamentary Consideration

<table>
<thead>
<tr>
<th>TABLE 1: SUMMARY OF PARLIAMENTARY CONSIDERATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill introduced</td>
</tr>
<tr>
<td>Stage 1: Local Government and Communities Committee evidence sessions</td>
</tr>
<tr>
<td>Stage 1: Finance Committee evidence session</td>
</tr>
<tr>
<td>Stage 1: Subordinate Legislation Committee evidence sessions</td>
</tr>
<tr>
<td>Stage 1: Local Government and Communities Committee report published</td>
</tr>
<tr>
<td>Stage 1 Plenary Debate</td>
</tr>
<tr>
<td>Government Response to the Stage 1 Report</td>
</tr>
<tr>
<td>Stage 2: Local Government and Communities Committee</td>
</tr>
<tr>
<td>Stage 3: Plenary Debate and consideration of amendments</td>
</tr>
</tbody>
</table>
STAGE 1 REPORT

The Committee supported the general principles of the Bill in its Stage 1 Report. It supported the proposed establishment of the Scottish Housing Regulator (SHR) and the change in approach to a more risk-based and proportionate regulation of landlords, although it highlighted that this should be as “...meaningful, robust, evidence-based and transparent process which involves tenants”. It also stressed the need for as much direct consultation of tenants as possible on the preparation of the Scottish Social Housing Charter. In relation to the right to buy, the Committee considered that the approach the Government had proposed to end the right to buy for new tenants was “appropriate” and agreed with the proposals to end the right to buy for new social housing (David McLetchie MSP dissented from these points).

The Bill contains provisions relating to private rented sector (PRS) housing. The Government had indicated that a further Bill relating to PRS housing would be introduced this Parliamentary Session. However, the Committee believed, “...that it would have been preferable to have consolidated as many of the provisions contained in the current Bill with those proposed in the private sector bill.” The Government’s response to the Stage 1 Report (2010a) proposed to rework the PRS provisions into the Private Rented Sector Housing Bill and to remove the provisions from the current bill at Stage 3. The Private Rented Sector Housing Bill was introduced to Parliament on 4 October 2010.

STAGE 2 PROCEEDINGS

Stage 2 proceedings took place over three meetings on 22 and 29 September and 6 October 2010. Alex Neil MSP, the Minister for Housing and Communities (the Minister) took the amendments forward on behalf of the Government. Table 2 provides a summary of the main changes made at Stage 2. Further details on the Stage 2 proceedings are provided in the rest of the briefing.

Table 2: Summary of Main Amendments Passed at Stage 2

<table>
<thead>
<tr>
<th>Parts 1-10 The Scottish Housing Regulator and Registered Social Landlords (RSLs)</th>
<th>Amendments</th>
<th>Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Amendment 2</td>
<td>Removes the proposed power, under s16 of the Bill as introduced, which would have allowed the Regulator to charge fees in respect of performing any functions in relation to a social landlord.</td>
<td></td>
</tr>
<tr>
<td>Government amendment 3</td>
<td>Extends the legislative registration criteria which a body would have to meet by making explicit what the core objects must be. Specifies a number of additional powers that a body seeking registration may have. Ministers would be able to amend additional powers by Order, but would need to consult first. Sets a new criterion that the body seeking registration would have to carry out, or intend to carry out, the purposes, objects or powers in Scotland.</td>
<td></td>
</tr>
<tr>
<td>Government amendments 8,9,10,12,15,16,20, 21,22,26,29,32,34, 119</td>
<td>Clarifies that the Scottish Social Housing Charter would set both standards and outcomes which social landlords should aim to achieve when performing housing activities.</td>
<td></td>
</tr>
<tr>
<td>Government Amendments 140,141</td>
<td>Would give social landlords and their connected bodies exemptions to the 20 year rules in relation to long leases and standard securities. The intention of these amendments is to facilitate different models of delivery of social housing and to allow social landlords to access different sources of funding.</td>
<td></td>
</tr>
<tr>
<td><strong>Government Amendments 11,28 31</strong></td>
<td>Increases provisions relating to consultation with tenants and other service users. Adds an additional example of a charter outcome to include the participation of tenants in the review of social landlords’ proposals for the provision of housing services. The Regulator would be required to issue guidance on how to involve homeless persons, tenants and other users in the preparation of information to be given by social landlords to the Regulator. The Regulator may require a social landlord to involve tenants, homeless persons and others in the preparation of a performance improvement plan.</td>
<td></td>
</tr>
<tr>
<td><strong>Mary Mulligan Amendments 122,123,124,28A,1 26</strong></td>
<td>Adds “homeless persons or bodies representing the interests of homeless person” to certain sections of the Bill relating to consultation.</td>
<td></td>
</tr>
<tr>
<td><strong>Government amendments 17,18,19,23,27,30, 33, 116</strong></td>
<td>Would give the Regulator the power to set improvement targets in respect of the financial management and governance of RSLs. Would require the Regulator to issue guidance on how it will assess performance against targets and to take account of RSLs’ performance against these targets when deciding whether to take regulatory action.</td>
<td></td>
</tr>
<tr>
<td><strong>Government amendments 38,68,93,108,109, 110,111</strong></td>
<td>Amendments relate to the regulation of charitable RSLs. The Regulator and the Office of the Scottish Charity Regulator would be required to consult with each other in relation to the transfer of charitable assets. A Memorandum of Understanding would need to be developed between the two regulators which must set out their respective roles and how they will work together to avoid duplication.</td>
<td></td>
</tr>
</tbody>
</table>

**Part 11: Right to Buy**

| **Government Amendments 100, 103** | Would allow Police and Joint Police Boards to refuse applications from tenants to buy their home where it is necessary for the authority or board to retain the house for operational purposes. The landlord would have to have regard to certain criteria in determining whether to refuse the application. New tenancies of police houses would be exempt from the scope of the Scottish Secure Tenancy, except in limited circumstances. This would mean that there would be no right to buy. |
| **Government Amendments 98 and 99** | Would establish a position where properties that were formerly let under a Scottish Secure Tenancy prior to 25 June 2008 that have been sold and subsequently re-acquired by social landlords after 25 June 2008 are defined as new supply social housing. Therefore, tenants of such properties with Scottish Secure Tenancies which are let after the date of commencement of these provisions will generally not have a Right to Buy. Home owners who are selling their property to a social landlord, with the intention of continuing occupation of the house under a Scottish Secure Tenancy will be given adequate notice about the effect of the sale on their future Right to Buy. |

**Part 14: Miscellaneous**

| **Government amendment 101** | Clarifies that after obtaining a repossession decree against a borrower/landlord a lender would have to raise further proceedings to evict any assured tenant under the Housing (Scotland) Act 1988. |
| **Government amendment 102 and 166** | Would give social landlords discretion to retain tenants in their existing tenancies where an order for repossession has been made for rent arrears, and an agreement about repayment of arrears has been made. |
Would avoid the need to treat existing rent arrears as former tenant arrears.

Would require social landlords to comply with re-action requirements before raising eviction proceedings for rent areas under the 2001 Act. The Sheriff Court would have to consider whether landlords have done so before they grant an order to evict.

**Jim Tolson MSP amendment 171**

Would allow local authorities to use information from their council tax records to contact owners of vacant dwellings with the aim of bringing them back into use.

**Mary Mulligan MSP amendment 180**

Where a local authority is satisfied that an applicant for homeless assistance is homeless or threatened with homelessness, and they believe that the applicant, or anyone residing with the applicant, may be in need of housing support services, they will have a duty to assess the applicant’s need for such services.

The local authority must provide the necessary services. The Government would be required to provide guidance.

**FURTHER CONSIDERATION PRIOR TO STAGE 3**

During Stage 2 there were a few amendments lodged by Committee members which were not supported by the Government. However, the Minister indicated that he would be willing to consider the issues further prior to Stage 3. These are summarised below.

**Table 3: Summary of Main Areas where the Government indicated there would be further consideration prior to Stage 3**

<table>
<thead>
<tr>
<th>Member</th>
<th>Amendment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alasdair Morgan</td>
<td>MSP Amendment 140A and 141A</td>
<td>The amendments sought to exempt “rural housing bodies” from the 20 year rules in relation to long leases and heritable securities. The Minister shared his concern about the supply of housing in rural areas but expressed his concern about the “unintended consequences” that might result from the amendments and that they went further than many respondents to the earlier consultation called for. The Minister indicated he would undertake to lodge appropriate amendments at Stage 3 to address the Member’s concerns (Col 3498).</td>
</tr>
<tr>
<td>Patricia Ferguson</td>
<td>Amendment 129</td>
<td>The amendment would have required that, to be registered, a body would have to be “…principally concerned with Scottish housing” and provided for Ministers to determine what that means. The Minister’s view was that this amendment effectively sought to achieve the same as amendment 3 but in a less clear manner, but would be happy to discuss further (Col 3450).</td>
</tr>
<tr>
<td>Mary Mulligan MSP</td>
<td>Amendment 125</td>
<td>The amendment sought to ensure that the Regulator, in the code of practice on inquiries, must set out examples of how its powers would be used, including examples in relation to the regulation of services to homeless persons and persons threatened with homelessness. The Minister indicated that if the committee believed that a duty rather than a power was required “I would be prepared to lodge an amendment at stage 3 that would provide for a prescription to be cast in terms of all those whose interests the regulator is to safeguard and promote (Col 3460).</td>
</tr>
</tbody>
</table>
STAGE 2 DETAIL

Further detail of the main issues that were debated during Stage 2 proceedings is provided below. It is not intended to provide an overview all amendments debated. The Parliament’s webpage on the Housing (Scotland) Bill provides all the groupings of amendments, the marshalled list of amendments, links to the relevant Official Reports and minutes which give the voting record for each of the amendments.

THE SCOTTISH HOUSING REGULATOR AND RSL MATTERS

Under provisions in Part 3 of the 2001 Act, the Scottish Ministers are responsible for inspecting and regulating RSLs and inspecting the landlord and homelessness functions of local authority landlords. These functions used to be carried out on behalf of Scottish Ministers by Communities Scotland. In 2008, the Scottish Government established the Scottish Housing Regulator (SHR) as an executive agency so that these functions could be discharged on the basis of operational independence from Ministers. This was an interim arrangement following the abolition of Communities Scotland. The Government’s longer term objective was to have these functions carried out by an independent regulatory body.

The Bill proposes to establish the SHR as an independent regulator with the objective of safeguarding and promoting the interests of tenants, prospective tenants, homeless people and others using housing services provided by social landlords. The SHR would be required to keep a register of social landlords, set out the criteria for registration and the circumstances in which a body may be removed from the register. The Bill also provides for Ministers to establish a Scottish Social Housing Charter, and the SHR would have to assess, and report, on RSLs performance against that charter.

Registration Criteria

One of the policy objectives of the Bill is to encourage improvements in the level and quality of social housing by allowing for a wider range of bodies to be registered and regulated by the SHR. The 2001 Act focused on the structure and status of a social landlord by stipulating that to be eligible to register the body must non-profit distributing and must be either an industrial and provident society or a registered company.

The Policy Memorandum for the Bill, proposed a new approach whereby eligibility for registration would not be dependent on the structure and status of the body but on what the body is established to do. The criteria (under s24 of the Bill as introduced) would be that the body does not trade for profit and any other criteria as specified by Ministers in an order. The Committee’s Stage 1 report agreed with the Subordinate Legislation Committee’s view that there should be more detail of the registration criteria specified on the face of the Bill. In response, the Government proposed amendments to s24 extending the registration criteria that the body must meet. Amendment 3 specifies the registration criteria that a body must meet and specifies a number of additional powers or objects that a body may have. These amendments are based on s58 (2) and (3) of the 2001 Act. The Government would be able to amend the purposes, objects or powers by order. Amendment 5 would require the Government to consult before making an order.

Patricia Ferguson MSP lodged amendment 129 that would have required a body to be “…principally concerned with Scottish housing” before it could be registered. The Minister’s view was that this amendment effectively sought to achieve the same as amendment 3 but in a less clear manner. He invited the member to withdraw the amendment and indicated that, “…I would be happy to discuss with her afterwards how we might produce an amendment at stage 3 that
would address what I believe are our shared objectives” (Col 3450). On that basis Patricia Ferguson MSP did not move the amendment.

Wider Role of RSLs

Committee members lodged amendments concerning the wider role of RSLs. Mary Mulligan MSP proposed amendment 128 which would have required the SHR to monitor, assess and report on social landlords “contribution to and promotion of the environmental well being and regeneration of the areas in which the accommodation is situated.” The Minister argued that the SHR’s functions should be tightly focused on core housing services (Col 3444). Mary Mulligan MSP pressed the amendment arguing that it is difficult to separate RSL’s core functions from the other jobs that they perform. The amendment fell on division.

Another amendment by Mary Mulligan MSP (130) sought to ensure that the wider role was included in the examples of outcomes that the Scottish social Housing Charter may contain, as set out in section 32 of the Bill as introduced. The Minister supported this amendment and it was agreed.

Patricia Ferguson MSP’s amendment 134 would have had the effect of specifying that the SHR may include in any performance report it publishes (under s39 of the Bill as introduced) information about the wider role of social landlords. The Minister argued that there were enabling powers elsewhere in the Bill (under section 39(2)(c)) that allowed the SHR to do this. The amendment fell on division.

Power to Charge Fees

Government amendment 3 removed the proposed power (under s16 of the Bill as introduced) which would have allowed the SHR to charge fees, in performing any function in relation to a social landlord. This provision was based on one that Ministers already have under the 2001 Act. Ministers have never used this power, but have instead funded the work of regulation from public expenditure. The Minister indicated that this approach would still be taken but some tenants’ groups had expressed concern that future governments may decide that landlords should contribute to the cost of regulation. Therefore, in order to allay tenant’s concerns in this area the provision would be removed.

Scottish Social Housing Charter

Section 31 of the Bill as introduced would allow for Ministers to specify the standards and objectives (“outcomes”) that social landlords must aim to achieve in a Scottish Social Housing Charter. The Minister indicated that the stakeholder sounding board on the bill had expressed concern that there was some uncertainty over what an outcome actually would be.

Government amendments (amendment 8 grouped with amendments 9, 10, 12, 15, 16, 20 to 22, 26, 29, 32, 34 and 119) sought to clarify that standards and outcomes are two different things. The amendments provide for the Scottish Social Housing Charter would set both standards and outcomes which social landlords must achieve. The Minister indicated that this would give a “…clearer indication that ministers have the flexibility to set a mixture of standards and outcomes if consultation of stakeholders suggests that that is warranted” (Col 3452).
Consultation

The Committee’s Stage 1 report stressed the need for full involvement of tenants in housing services, and in particular in the preparation of the Scottish Social Housing Charter. A group of Government amendments proposed to address some of these concerns.

Government amendment 11 would include, as an example of a Charter outcome (as set out in section 32), an outcome for social landlords in respect of the participation of tenants in the review of social landlords’ provision of housing services.

Amendment 28 would allow the SHR to issue guidance on how landlords should involve homeless persons, tenants and other service users in the preparation and validation of information that the SHR has requested, and to allow the SHR to require landlords to provide information on that involvement. The Minister indicated that this amendment was intended to respond to concerns raised at Stage 1 by the committee about the shift from cyclical inspections to a more risk-based approach to regulation.

Amendment 31 would give the Regulator the power to allow it to require a social landlord to involve tenants, homeless persons and others in the preparation of a performance improvement plan when required by the SHR.

Mary Mulligan lodged a number of amendments (122,123,124,28A,126) with the effect of including “homeless persons or bodies representing the interests of homeless persons” in various aspects of the Bill concerned with consultation. The Minister acknowledged that these would improve the Bill and the amendments were agreed.

Improvement Targets

The Government proposed amendment 17 which would give the SHR the power to set financial management and governance targets that RSLs must aim to achieve. The amendment would allow such targets to be set for individuals RSLs, a group of RSLs or all RSLs. The SHR would also have a power to issue guidance relevant to these powers. The aim of this amendment is to add to the range of regulatory tools that the regulator can use to promote improvement in the management of RSLs.

Inquiries and Information

Section 44 of the Bill as introduced would allow the SHR to prepare and publish a report of any inquiries it makes. Under section 44(2) the SHR would have to publish a statement setting out the types of inquiries on which it intends to publish reports and make arrangements for bringing its statement to the attention of social landlords. It would also have to send a copy of the report to the social landlord concerned and every registered tenant organisation associated with that social landlord.

Amendment 24 would require the SHR to bring its statement about the types of inquiries on which it intends to publish reports to a wider audience, including tenants, Ministers and the Accounts Commission for Scotland. Amendment 25 sought to clarify that the SHR does not have to send a copy of a report to a registered tenant organisation unless the report is to be published in terms of the statement issued under section 44(2). In evidence the Minister explained that “It is important that the regulator has the flexibility to carry out an inquiry without necessarily publishing a report—if, for example, publication would compromise commercial confidentiality, undermine the lenders’ confidence or put tenants' interests at risk” (Col 3459).
Section 48 of the Bill as introduced would require the SHR to issue a code of practice that sets out how it intends to make inquiries and use the other powers in Part 4 of the Bill. Section 48(2) provides that the code of practice may set out example of situation in which it may make inquiries. Mary Mulligan MSP lodged amendment 125 which sought change section 48(2) and provided that the code of practice would have to set out examples of situations in which it may make inquiries, including examples in relation to services provided to homeless persons and persons threatened with homelessness. The Member outlined her concerns about the regulation of homelessness services. However, the Minister expressed some reservations about the amendment but indicated that “If she and the committee believe that a duty rather than a power is required in that regard, I would be prepared to lodge an amendment at stage 3 that would provide for a prescription to be cast in terms of all those whose interests the regulator is to safeguard and promote (Col 3460). On this basis Mary Mulligan withdrew the amendment.

Regulatory Intervention

Part 5 of the Bill would give the SHR a range of powers to intervene where it has concerns about a social landlord’s performance, governance arrangements or financial viability. The SHR would have to issue a code of practice explaining how it would use its intervention powers.

Under section 55 of the Bill as introduced the SHR would have to prove, before appointing a manager for financial or other affairs, that there has been misconduct or mismanagement. Amendment 127 removes that provision with the effect that the SHR would not have to prove that there had been misconduct or mismanagement before appointing a manager to ensure that the RSLs financial or other affairs are managed to an appropriate standard. The aim of this change was to ensure the SHR was provided with flexibility to act quickly where necessary to protect tenants’ interests or secure the RSL’s affairs. (The equivalent provision at section 71 of the Housing (Scotland) Act 2001 allows Ministers to appoint a manager where they consider it ‘necessary or expedient’.)

Section 64 of the Bill as introduced, would give the SHR the power to require a transfer of assets where the SHR has considered that there has been misconduct or mismanagement in a RSL’s affairs or that a transfer of some, or all, of the RSLs assets would improve the management of those assets.

Government amendment 38 would give the SHR the additional option of transferring assets where the RSLs viability is in jeopardy for financial or governance reasons or because it cannot provide housing services to an acceptable standard. The amendment would also require the SHR to be satisfied that it would improve the management of the assets. According to the Minister, “This safeguard provides an additional check on the SHR's use of its powers and responds to concerns raised by the Glasgow and west of Scotland forum of housing associations that the provision gives the regulator significant powers” (Col 3463).

Patricia Ferguson MSP also lodged amendment (135) which would have amended section 64 to require the transfer of assets under a direction by the SHR only to be made with the approval of Ministers. The Minister argued that the provision would be against the Bill’s principles of an independent regulatory regime. Patricia Ferguson MSP argued that “…we are seeking to ensure that the ultimate sanction is subject to the greatest possible scrutiny” (Col 3464). The amendment was moved and fell on division.
Disposal of Land or Assets by RSLs

Part 9 sets out requirements for the disposal of land or assets by RSLs. Government amendments (52, 53, 58, 59, 70-92) sought to clarify the special procedures where an RSL wishes to transfer some of or all its houses to another RSL.

The effect is that an RSL seeking to make a transfer that would result in a change of landlord must first seek the SHR’s consent. If consent is granted, the transfer must be subject to the RSL either balloting or seeking the written agreement of the tenants whose houses would be transferred. Only if a majority of tenants who vote or who are asked for written consent are in favour of the transfer can the change of landlord go ahead. This procedure would also apply to certain restructurings. The Minister stated that, “…Such a safeguard is important not only for tenants but for landlords as the need to secure tenant support will make it much harder for another landlord to contemplate a hostile takeover bid” (Col 3491).

Regulation of Charitable Registered Social Landlords

154 of the 210 RSLs have charitable status. These bodies are also subject to regulation by the Office of the Scottish Charity Regulator (OSCR). Government amendments sought to formalise the working relationship and memorandum of understanding between the two regulators. Amendment 93 would require the SHR and OSCR to establish a memorandum of understanding setting out how they will work together and how they will prevent any duplication. The memorandum would have to be kept under review and publicised.

Amendments 39 and 68 would ensure that the charitable assets of an RSL which was previously a charity would continue to be used for charitable purposes after any transfer.

20 YEAR RULES

Government amendments would introduce new sections to the Bill relating to the 20 year rules in relation to long leases and standard securities, as governed by the Land Reform (Scotland) Act 1974 (c.38). Changes to these rules were consulted on as part of the consultation on the private sector housing bill (Scottish Government 2010b).

The 20 year lease rule limits the length of residential leases. Owners have the right to terminate the lease at any time after 20 years. The consultation paper indicated that this may hinder the development of new models of housing provision, for example, private investors might wish to finance the building of homes and then lease them to a RSL for an agreed period of time. But the consultation paper noted that this type of model is unlikely to be financially viable for the provision of affordable housing, without public subsidy, if the lease can only last for 20 years. Amendment 140 would make a limited amendment to the 20 year lease rule which would exempt social landlords and their connected bodies from the rule. This provision would only apply to new leases.

The 20 year rule in relation to standard securities means that after 20 years a borrower is entitled to redeem any standard security over their mortgage. This has the potential to increase the risk for lenders as, for example, a borrower who fixes on an interest rate for a period of more than 20 years may redeem the loan before the term is complete. This has restricted the ability of housing associations to access certain types of finance e.g. bond issues by the Housing Finance Corporation. Therefore, the government proposed amendment 141 that would give social landlords and their connected bodies the option to give up their right to redeem debt early if they wish to do so.
Alasdair Morgan MSP lodged amendments 140A and 141A that would have had the effect of allowing rural housing bodies to be exempt from the 20 year rules too. He argued that in many remote rural areas there were no social housing providers operating. The Minister shared his concern about the supply of housing in rural areas but expressed his concern about the “unintended consequences” that might result from the amendments and that they went further than many respondents to the earlier consultation called for. The Minister indicated he would undertake to lodge appropriate amendments at Stage 3 to address the Member’s concerns (Col 3498).

THE RIGHT TO BUY

Part 11 of the Bill would amend the Housing (Scotland) Act 1987 by ending right to buy for new supply social housing, ending the right to buy for new tenants entering the social rented sector and reforming pressured area designations. The Scottish Government estimates that the proposed reforms would result in the retention of between 10,000 and 18,000 homes for social rent between 2012 and 2022.

There were various amendments lodged by members relevant to this Part of the Bill. Jim Tolson MSP and Patrick Harvie MSP lodged amendments that would have placed further restrictions on the right to buy. Jim Tolson MSP stated that his “amendments aim to make the right-to-buy legislation fairer for tenants and buyers” (Col 3499). Patrick Harvie indicated that his amendments sought to “continue and complete” the process of reform to the right to buy (Col 3506).

One of Jim Tolson’s amendments (136) proposed removing section 128 of the Bill as introduced. Section 128 would protect the right to buy of tenants who moved to new tenancies for specified reasons, for example where the tenant was moved by their landlord as their home was due to be demolished. Similarly, he proposed removing (through amendment 138) the exceptions to the limitation of tenants to purchase new supply social housing, for example where a tenancy had been ended by the landlord on management grounds. A further amendment (139) proposed to suspend the right to buy for non-charitable RSLs for 40 years instead of the current 10-year period, which runs from 2002 to 2012.

One of Patrick Harvie’s amendments (164) would have had the effect of removing the more generous terms and conditions of the preserved right to buy. All tenants with the right to buy would only be able to buy on the modernised terms and conditions. Amendment 160 would have had the effect of making tenants who have a preserved right to buy subject to the application of pressured area status designation, which is a provision that, at the moment, only covers only tenants with a modernised right to buy.

The Minister indicated that he would not be supporting the amendments proposed by both Members. The main arguments made against the amendments were that it was that the Government’s clear policy intention was not to alter the rights of existing tenants, and that such proposals had not been consulted on. These amendments fell on division.

On the other hand David McLetchie MSP proposed amendments that would have removed some of the proposed restrictions to the right to buy in the Bill. He argued that “owning one’s own home remains an aspiration and a motivator for many Scots” (Col 3510). He further argued that the receipts raised from right to buy sales would be available to invest in new housing. One amendment (155) would have had the effect of removing the proposed provision ending the right to buy for new tenants. A further amendment (159) proposed to reduce the maximum time a pressured area designation could be in force from 10 years (as the Bill proposed) back to the current 5 year maximum. The Minister did not support these amendments and they fell on division.
Limitation on police housing right to buy

Government amendments proposed to introduce new section into the Bill that would amend the 1987 Act and restrict the right to buy in relation to police houses. The effect of amendment 100 would be to allow Police Authorities and Joint Police Boards to refuse applications from tenants to purchase their house (where they would otherwise have that right) if it is necessary for the authority or board to retain the house for operational purposes. The amendment sets out the criteria that the landlord would have to have regard to in determining the application. The criteria include any representations by the tenant which indicate special reasons for wishing to purchase the house.

A further amendment (103) would ensure that new tenancies of police houses would be exempt from the scope of the Scottish Secure Tenancy (SST) (by making an amendment to schedule 1 of the 2001 Act), except in limited circumstances. This would mean that they would not be eligible for the right to buy.

The Minister explained that the background to the amendment, “... is the situation in the Highlands and Islands, particularly remote rural areas in some island communities where, without a police house, it is difficult for new recruits or new officers who are relocated to those villages to find accommodation. Without accommodation, there is the potential for adverse impacts on policing in that area” (Col 3560).

New supply social housing

A Government amendment (99) proposed to establish a position where properties that were formerly let under a Scottish Secure Tenancy prior to 25 June 2008 that have been sold and subsequently re-acquired by social landlords after 25 June 2008 are defined as new supply social housing. Therefore, tenants of such properties with Scottish Secure Tenancies which are let after the date of commencement of these provisions will generally not have a Right to Buy.

A further Government amendment (98) proposed to ensure home owners who are selling their property to a social landlord, with the intention of continuing occupation of the house under a Scottish Secure Tenancy would be given adequate notice about the effect of the sale on their future Right to Buy.

The Minister explained the background to the amendments “The main way in which social landlords re-acquire former social housing is through the Government’s Mortgage to Rent scheme. This scheme enables local authorities and housing associations to buy properties from owners who would otherwise face the threat of repossession by a lender. This allows families to remain in the community, but as social renters rather than owners. In some cases the house bought is former social housing stock”. (Col 3520)

Report on the Right to Buy

A further amendment (143) by Mary Mulligan MSP would have required the Minister to report on the effect of the right to buy within 5 years of the section 131 of the Bill coming into force. This was in response to the conflicting information members had received about the potential impacts of the Bill’s proposals. The Minister responded that various statistics were already collected relevant to this section but did undertake to an analytical report on the effect of the changes to the right to buy (Col 3562). The Member withdrew the amendment.
PRIVATE RENTED SECTOR

Part 12 of the Bill would amend Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 to clarify or strengthen provisions relating to the registration of private landlords. Part 13 of the Bill would also make changes to the system of Houses of Multiple Occupation licensing.

The Committee, in its Stage 1 report, indicated that it would have been preferable to have had all the provisions relating to the private rented sector (PRS) in one Bill. The Minister responded by offering to remove the PRS provisions from the Housing (Scotland) Bill at Stage 3 and to include the relevant provisions in the PRS Housing Bill. The PRS Housing Bill, which was introduced to Parliament on 4 October 2010, includes the landlord registration provisions which were originally included at sections 133 to 136 of the Bill (with amendments) and the HMO licensing scheme provisions at section 141. In light of this approach the Government did not lodge any amendments relating to the PRS sections of the Bill.

However, Mary Mulligan MSP did lodge amendments to the PRS provisions, prior to the PRS Housing Bill being introduced. These amendments included:

- Amendment 172: Duty on relevant person to register
- Amendment 173: Duty of letting agents and lenders to notify landlords of their duty to register
- Amendment 136: Duty on the Scottish Minister to publicise the requirement to register
- Amendment 167: Local authority allocation of landlord registration numbers
- Amendment 168: Duty of registered landlord to include registration numbers in advertisements
- Amendment 169: Duty on private rented housing panel to obtain and provide the landlord’s registration number to the relevant local authority
- Amendment 174 and 175: matters to consider in registration
- Amendment 176 and 177: enforcement of registration provisions

The Minister’s main response to these amendments was that many of the proposals sought to achieve the same objectives as the proposed provisions in the PRS Housing Bill and in some cases offered more precise drafting. He also highlighted his view that the amendments would benefit from further Parliamentary scrutiny, which Stage 1 proceedings would provide. Mary Mulligan MSP argued that, “As the minister has introduced the bill that is before us and the committee has taken evidence on it, it is legitimate to respond to that evidence and lodge these amendments” (Col 3566). Mary Mulligan MSP withdrew amendment 127, but pressed the rest which fell after division.

MISCELLANEOUS

Part 14 of the Bill contains a number of miscellaneous provisions.

Protection of unauthorised tenancies

Section 142 in Part 14 of the Bill as introduced was a “marker” provision and proposed to give Scottish Ministers the power to introduce, by order, provisions to strengthen legislative protection for unauthorised tenants, who may be at risk of eviction following repossession action being initiated against their landlord, and their landlord failing in his contractual obligation to secure the approval of his lender for such a tenancy.
The issue was discussed by the Repossessions Group in their report of June 2009 (Scottish Government 2009) and a consultation exercise was conducted in the autumn of 2009, with a view originally to taking an amendment at Stage 2 of the Home Owner and Debtor Protection (Scotland) Bill. However, no clear consensus emerged from that consultation exercise. Ministers therefore reconvened the Repossessions Group to look further at the issue. At the time of the introduction of the Bill the group had not finalised their considerations.

The Committee, it its Stage 1 report, expressed its concern that it was being asked to give Ministers the powers to introduce secondary legislation on an issue which was still being considered by the Repossessions Group and called for further detail to be provided to the committee before the Stage 1 debate. The Repossessions Group’s report (Scottish Government 2010c) was published prior to Stage 1 debate. The Group noted that practice of most lenders had been strongly influenced by case law (Tamroui v Clydesdale Bank plc). The effect of that decision is that after obtaining a repossession decree against the borrower/landlord, the lender must raise further proceedings to evict any assured tenant under the Housing (Scotland) Act 1988. However, because there was still an element of uncertainty the Group recommended legislative provisions to remove this uncertainty. The effect of Government amendment 101 is to put the case law decision onto a statutory footing.

Protection of Tenants of Social Landlords Facing Eviction for Rent Arrears

Government amendments 102 and 166 sought to strengthen the protection of tenants of social landlords facing eviction for rent arrears. These amendments stem from a consultation paper (Scottish Government 2010d) aimed at improving the consistency and rigour of pre-eviction processes. Amongst the proposals consulted on were the potential role pre-action protocols or pre-action requirements could play in reducing rent arrears related evictions and allowing landlords to retain tenants in their existing tenancy after a decree for repossession has been granted without the need to start a new tenancy. These two provisions received general support from consultees (Scottish Government 2010e).

The Bill as introduced did not contain any provisions regarding these issues. However, Shelter (Scotland) raised the issues in its Stage 1 evidence to the Committee. The Committee’s Stage 1 report considered that there may be further merit in the proposal and suggested that the Scottish Government should gather more evidence on the proposals.

The effect of amendment 102 would be to give social landlords discretion to retain tenants in their existing tenancies after a decree for eviction on the ground of rent arrears has been made. The Minister indicated that this amendment was particularly intended to provide additional support for tenants who were unable, or unaware, of the need to take legal advice at an early stage to prevent decree being granted. The amendment would also have the effect of avoiding the need for social landlords to treat existing rent arrears as former tenant arrears which are more difficult for landlords to recover.

Amendment 166 would require social landlords to comply with pre-action requirements before raising eviction proceedings under the 2001 Act for rent arrears. The Sheriff Court would have to consider whether landlords had complied with the requirements before they grant an order to evict. As the Minister stated, “The purpose of pre-action requirements is to ensure that landlords apply consistent good practice before taking tenants to court for eviction for rent arrears, to ensure that eviction is truly a last resort” (Col 3575). This provision is similar in principle to that introduced for homeowners with mortgage arrears in the Home Owner and Debtor Protection (Scotland) Act 2010.
**Vacant Dwellings: Council Tax Information**

Jim Tolson MSP lodged amendment 171 which would allow local authorities to use information from their council tax records to contact owners of vacant dwellings with the aim of bringing them back into use. He argued that, “Sharing that information with the housing department will allow many of the 50,000 or so empty homes in Scotland to be targeted for rented homes” (Col 3579). The Minister welcomed the amendment and it was agreed.

**Housing Support Services**

Mary Mulligan lodged amendment 180 which would insert a new provision into section 32B of the 1987 Act which concerns the duties of local authorities in relation to homeless persons. Where a local authority is satisfied that an applicant is homeless or threatened with homelessness, and they believe that the applicant (or any person residing with them) may be in need of housing support services, then they must assess that person’s need for such services. The local authority would be required to provide any housing support services required. Ministers would be required to prepare and issue guidance on this provision.

This was a proposal made by Shelter at Stage 1 proceedings. The Government’s response to the Stage 1 Report suggested that the Government “...was not sufficiently persuaded of the merits of this proposal and will not be taking forward amendments to the Bill". In response to the amendment the Minister indicated that there was no consensus amongst the housing bill sounding board or the 2010 steering group on whether a legislative provision was the “...best way forward". However, he concluded that, “..it is sufficiently flexible for me to be content to support it. However, I will consult widely about its implementation if the committee and Parliament accept it" (Col 3583). The amendment was agreed.
SOURCES


RELATED BRIEFINGS

SB 10/19 Housing (Scotland) Bill. SPICe Briefing

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Kate Berry on extension 85157 or email kate.berry@scottish.parliament.uk. Members of the public or external organisations may comment on this briefing by emailing us at spice@scottish.parliament.uk. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament’s Public Information Service at sp.info@scottish.parliament.uk.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

www.scottish.parliament.uk