This briefing provides an overview of housing policy in Scotland. It describes recent trends in housing tenure and the housing market and provides information on the legislative and administrative background.
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INTRODUCTION

This subject profile provides an overview of some of the main housing policies in Scotland. Given the range of activity in this area, the briefing is not exhaustive. The briefing begins by providing some contextual information on housing tenure and housing market trends.

CONTEXT

HOUSING TENURE

In 2015, there were around 2.43m households in Scotland, an increase of 11% from 2.19m households in 1999. Changing tenure patterns need to be considered within this context as a specific tenure can have reduced in relative proportion but increased in absolute size (Scottish Government 2016a).

Owner-occupation is the most common form of housing tenure. In 2015, 61% of households lived in owner occupied housing, 23%, lived in a social rented property (i.e. provided by councils or Registered Social Landlords) and 14% of households lived in privately rented accommodation (see Fig 1).

Fig 1: Tenure of Scottish Households 2015

![Tenure of Scottish Households 2015](source: Scottish Household Survey 2015 (Scottish Government 2016a))

The tenure profile across different local authorities in Scotland varies. Generally, cities have lower levels of owner-occupied housing and higher levels of privately rented housing. For example, the proportion of dwellings that are owner-occupied ranges from 83% in East Renfrewshire to 44% in Glasgow City. The proportion of dwellings rented privately varies from 4% in East Renfrewshire to 27% in Edinburgh (Scottish Government 2016b).
Changing Tenure Patterns

Fig 2 shows the changing tenure patterns of housing in Scotland since 1999. One of the main changes has been the rise in the number of households renting privately. Around 5% of households lived in private rented housing in 1999 but, by 2015, this had risen to about 14% of households (an absolute rise of around 230,000 households) (Scottish Government 2016a). Tenure change has been particularly marked for younger households. The percentage of households with a 16 to 34 year old highest income householder that live in private rented housing has increased substantially from 13% in 1999 to 41% in 2015. Private renting is now the most common tenure for these households (Scottish Government 2016). The term “Generation Rent” has been used to describe younger households who are likely to live in private rented accommodation for the long term. This trend looks set to continue (Clapham et al 2012, Kemp 2015).

The number of households living in the social rented sector has remained relatively stable in the last few years at around 23% of households. This compares with around 32% of households in 1999 (an absolute decline of around 120,000 households between 1999 and 2015). With the decline of the social rented sector since 1999, an increasing number of families and low income families now also live in the private rented sector (Scottish Government 2016a). In 2015, around 61% of households were owner-occupiers. Levels of owner-occupation remain at similar levels to 1999, after rising to a high of 66% in the mid-2000’s. The increase in total number of dwellings since 1999 means that owner-occupiers have grown in terms of absolute numbers since 1999 (by around 140,000 households) (Scottish Government 2016a).

Fig 2: Change in Tenure 1999 to 2015

Source: Scottish Government (2016a) Scottish Household Survey Data from Fig 3.1

Growth in Private Rented Housing

Both demand and supply factors have contributed to the growth in private rented housing. For example, demand has increased from the expansion of the higher education sector and increased numbers of migrant workers (both groups are more likely to live in private rented housing). With the decline of the social rented sector there is a buoyant demand for private rented properties (Scottish Government 2009). On the supply side, low interest rates, which can
be favourable to buy to let investors, and owners experiencing difficulty selling their properties after the Global Financial Crisis (GFC) have contributed to the supply of private rented housing.

The relative decline in owner occupation, and rise in private renting, may also be explained by barriers to people becoming owner-occupiers. Prior to the GFC there was a period of rapid increase in house prices and, for many households, owner-occupation became unaffordable. With the onset of the GFC this difficulty in accessing owner-occupation was exacerbated when the availability of high loan to value mortgages reduced and the need for buyers to have a higher deposit to secure a mortgage increased (Kemp 2015) (see below for more on the housing market).

**TRENDS IN THE HOUSING MARKET**

As noted above, the GFC impacted on the housing market and affected property sales volumes. Property sales recorded with Registers of Scotland fell dramatically during 2007-08 (see Fig 3).

**Fig 3: House Sale transactions: Scotland**

![Graph of House Sale transactions: Scotland](source: Scottish Government (2016c) based on data from Registers of Scotland)

Since 2013, the improvement in the economic situation, continuing low interest rates and Government initiatives to help people purchase a home may have accounted for a rise in sales volumes. In 2015-16, Registers of Scotland recorded 100,074 house sales, the highest number since 2007-08, although still 34% less than in the 2006-07 when the ten-year high figure of 151,290 sales was recorded (Registers of Scotland 2016).

A trend also reported by Registers of Scotland is the rise in the proportion of sales that are paid for with cash rather than with a mortgage. In 2015-16, cash sales equated to 31.6% of the market, as compared to 17.5% in 2006-07(Registers of Scotland 2016).
Impact of Land and Buildings Transaction Tax on the Housing Market

The Scotland Act 2012 devolved Stamp Duty Land Tax to the Scottish Parliament. This was replaced by the Land and Buildings Transaction Tax (LBTT) which came into force in April 2015. From 1 April 2016, the Scottish Government also introduced a new LBTT supplement on the purchase of additional residential properties, such as buy-to-let properties and second homes, of £40,000 or more (Revenue Scotland 2016).

The Scottish Parliament Finance and Constitution Committee is undertaking an inquiry on the operation of LBTT in its first year, including the impact on the residential property market. It is due to report its findings in December 2016.

House Prices

There are various sources of house price data that will provide differing figures for average house prices depending on the methodology used. For example, data may be seasonally adjusted or mix-adjusted to account for the different types of housing sold over a particular period. Office for National Statistics (ONS) data shows, in September 2016, the average house price in Scotland was £143,006, a 3.4% annual rise (ONS 2016a).

Current house prices are near the historically high levels achieved before the GFC. However, lower interest rates and the increasing availability of higher loan to value mortgage products has meant that paying a mortgage has become relatively more affordable. For example, data from the Nationwide Building Society shows that in Scotland in Q2 2016, first time buyer mortgage payments as a percentage of mean take home pay was 21.5%, compared to the higher ratio of 39% in Q4 2007(Nationwide online).

Despite the relative affordability of paying a mortgage, accessing home ownership for many can be problematic because of the need for relatively large deposits. Data from the Council of Mortgage Lenders indicates that the average first time buyer deposit in Scotland is in the region of £18,000, equivalent to 52% of the average annual first time buyer income (although down from a peak of over 90% during the GFC) (Scottish Government 2016c).

For many younger households, buying a house may only be possible with the help of a deposit from the ‘bank of mum and dad’ (Williams and Wilcox 2015, Kemp 2015, Price Waterhouse Coopers 2016). This has raised concerns about intergenerational differences in the housing market. While an increasing number of younger people have higher housing costs (either rental or mortgage costs) an increasing group of largely older owner-occupiers who paid off their mortgage or have low mortgage costs. Williams and Wilcox (2015) argue that:

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1 The average price figure presented by ONS is a geometric mean, which will typically be closer to the median than the arithmetic mean
“...the challenge is to deal with the gap between asset rich and possibly income poor parents on the one hand and income adequate but asset poor children on the other. Solving this conundrum will be an important contribution to dealing with lower housing supply and market liquidity. With households living longer and the housing stock now supporting three or four generations rather than two or three this is becoming a pressing concern.”

POPULATION AND HOUSEHOLD CHANGE

Changes in the Scottish population have important implications for housing policy. For example, population change will influence how much new housing is needed, where the housing is needed and what type of housing needs to be built. Over the 25 year period 2014-2039, Scotland’s population is expected to increase by 7% (from 5.35 million to 5.7m) (National Records of Scotland 2015).

An even greater rise in the number of households is predicted (see Fig 3). Over the 25 year period 2012 to 2037 the number of households in Scotland is projected to increase by 17% (from 2.39 million to 2.78 - an additional 395,000 households) (National Records of Scotland 2014). The main reason for this change is because more people will be living alone or in smaller households, reflecting Scotland’s ageing population (see below).

Fig 4: Projected change in number of households in Scotland 2012 to 2037

Source: National Records of Scotland (2014) [2012 Based Household Projections](#)

Of particular relevance for housing planning purposes is the geographical variation in household projections. The number of households in almost every council area is projected to increase between 2012 and 2037. The City of Edinburgh and Aberdeen City are projected to grow significantly over the 25-year period, by 39% and 35% respectively. On the other hand, three local authorities are predicted to have a declining number of households: Argyll & Bute, Inverclyde and North Ayrshire (National Records of Scotland 2014).
An ageing population

Scotland’s population is ageing, with a projected increase in the number of people in the older age groups. Over the 25 year period, 2014 to 2039, the 75+ age category is expected to increase by 85%. In contrast, over the same period, the 45-59 age group and 16-29 age group are expected to decrease by around 7% and 8% respectively (National Records of Scotland 2015). An increasingly older population will have implications for supported living and adaptations to allow people to live in their own home longer.

HOUSING POLICY – ORGANISATIONS INVOLVED

Audit Scotland’s report *Housing in Scotland* (2013) noted that there are many public and private organisations involved in housing in Scotland. Based on their report, Table 1 summarises the main organisations involved in housing.

Table 1: Organisations involved in housing in Scotland.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Organisation</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>Scottish Government</td>
<td>Responsible for setting national strategy and policy, provides funding to councils, RSLs and others and leads national initiatives. Has some housing related social security powers.</td>
</tr>
<tr>
<td></td>
<td>UK Government</td>
<td>Responsible for consumer protection legislation and, social security policy, including housing benefit.</td>
</tr>
<tr>
<td></td>
<td>Councils</td>
<td>Have specific “strategic” duties such as assessing and responding to housing needs in their area and preparing local housing strategies and assessing homeless applications. Councils also licence Houses in Multiple Occupancy (HMOs) and keep a register of all private landlords. Twenty six(^2) of the 32 local authorities also own their own housing stock and act as a social landlord.</td>
</tr>
<tr>
<td></td>
<td>Scottish Public Sector Ombudsman</td>
<td>Is the final stage for complaints about councils, housing associations, the Scottish Government and its agencies.</td>
</tr>
<tr>
<td></td>
<td>Scottish Housing Regulator</td>
<td>Regulates how councils and RSLs manage their housing stock, how RSLs manage their finances and governance arrangements and council’s homelessness services.</td>
</tr>
</tbody>
</table>

\(^2\) Six local authorities: Glasgow; Scottish Borders; Dumfries and Galloway; the Western Isles, Argyll and Bute and Inverclyde, have all completed wholesale stock transfers to RSLs and therefore, do not own any housing stock themselves.
<table>
<thead>
<tr>
<th>First -Tier Tribunal for Scotland (Housing and Property Chamber)</th>
<th>Considers disputes about rent and repair issues in private rented housing and the Property Factor’s Code of Conduct (previously these were considered by the Private Rented Housing Panel and the Homeowner Housing Panel). Will eventually consider private rented civil matters, instead of the Sheriff Courts.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not-for-profit</td>
<td>Registered Social landlords (RSLs)</td>
</tr>
<tr>
<td>Private</td>
<td>Private Landlords</td>
</tr>
<tr>
<td>Housing Developers (UK wide)</td>
<td>Build private, council and RSL homes across Scotland</td>
</tr>
<tr>
<td>Financial Conduct Authority and other financial institutions (UK wide)</td>
<td>Regulate and provide finance for council, RSL and private housing.</td>
</tr>
</tbody>
</table>

Source: Adapted from Audit Scotland (2013) Exhibit 2

**Scottish Government Housing Policy Overview**

The Scottish Ministers’ visions for housing until 2020 were set out in the 2011 strategy *Homes Fit for the 21st Century* (Scottish Government 2011). Since then, further more specific strategies have been produced (referred to later at various points in this briefing).

Scottish Government policy development has been assisted by the work of the Joint Housing Policy and Delivery Group (formerly the Housing and Planning Advisory Group) which consists of representatives from organisations and groups who are providing homes and delivering housing services and Scottish Government officials.

In June 2015, the Joint Housing and Policy Delivery Group published a five-year Joint Delivery Plan for Scotland (Scottish Government 2015a). The plan contains 34 actions focused on the areas stakeholders and the Government consider are a priority. The actions are grouped into two main areas, Home and Place (which includes actions relating to a well-functioning housing system and high quality sustainable homes) and Housing Journey and Support Actions (which includes actions relating to independent living, housing options and the private rented sector).

**LEGISLATIVE FRAMEWORK**
Since devolution, there has been a substantial amount of housing related legislation. Annex 1 contains a list of the main Scottish Acts governing housing in Scotland. Further details on the legislative provisions are provided, where appropriate, throughout the briefing.

The Scottish Government has so far committed to introducing three pieces of primary legislation particularly relevant to housing during this parliamentary session - a Warm Homes Bill, a Housing (Amendment) Bill and a Planning Bill (see page 21, 25 and 13) respectively for further details.

**HOUSING POLICIES**

**HOUSING SUPPLY**

One of the key policy aims of the Scottish Government is reflected in one of the Scottish Government’s national indicators - “to increase the number of new homes.”

Housing supply activity is affected by a range of factors, including:

- the supply of land for housing made available through the planning system
- the availability of finance, both to support new development and house purchase
- the capacity and responsiveness of developers and the construction sector
- the supply of enabling infrastructure – e.g. water, sewerage and roads
- housing market conditions (Scottish Government online)

The Scottish Government has the ability to influence some of these factors more than others. For example, it directly invests in affordable housing. Other factors, such as housing market conditions, are subject to wider influences which the Scottish Government may find more difficult to influence.

**New housing supply**

New housing supply is mainly achieved through new build housing completions, although conversions or rehabilitations can also contribute to new supply.

Performance against the housing supply national indicator is “maintaining.”3 In 2015/16, 16,995 new houses were built, refurbished or converted, 0.5% fewer than in 2014/15 (Fig 6). New housing supply remains well below pre-recession levels and is 36% below the level in the baseline year of 2006/07. Fig 5 shows that most of the decline in new supply since 2006/07 is because of a sharp fall in private new build completions (Scottish Government on-line).

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3 This evaluation is based on: any difference within +/- 1,000 houses of last year’s figure suggests that the position is more likely to be maintaining than showing any change. An increase of 1,000 houses or more suggests the position is improving; whereas a decrease of 1,000 houses or more suggests the position is worsening: http://www.gov.scot/About/Performance/scotPerforms/indicator/newhomes
How much new housing Scotland needs is a difficult question and there is no definitive answer. Local authorities have responsibilities for assessing local housing needs through their Housing Needs and Demand Assessments (HNDAs) which are used to help inform local housing strategies and investment priorities. At the national level the Scottish Government only sets targets for its affordable housing supply programme (see below).

In 2015, a report commissioned by Scottish Federation of Housing Associations, CIH (Scotland) and Shelter Scotland estimated a need for a minimum 18,700 homes per year over the next five years, of which at least 64% (12,000) should be affordable homes (Powell, Dunning, Ferrari, McKee 2015). Homes for Scotland has called for the completion of at least 25,000 homes per year over this parliamentary session (Homes for Scotland undated).

**Housing Supply Funding**

Over this parliamentary session, the Scottish Government aims to spend at least £3bn on funding housing supply. In 2016-17, the housing supply budget is around £690m (Scottish Government 2015b). While the overall housing supply budget is broadly similar to the 2015-16 budget, the amount allocated to affordable housing, around £572m, has increased by just over a fifth.

The Scottish Government also funds the *Help to Buy (Scotland) Affordable New Build Scheme* which helps buyers purchase a new build property from a participating developer (with the Scottish Government taking an equity share in the property).

For further information see SPICe Briefing (2016) *Housing Supply Budget* (Berry 2016) and the Scottish Government webpages: [https://beta.gov.scot/policies/more-homes/affordable-housing-supply/](https://beta.gov.scot/policies/more-homes/affordable-housing-supply/)
Scottish Government Affordable Housing Supply Targets

The Scottish Government sets targets for how much affordable housing it wants to deliver through its Affordable Housing Supply Programme (AHSP). In this context, affordable housing means:

- Social rented housing (i.e. that provided by RSLs or councils)
- Low cost home-ownership
- Mid-market rented housing

Over the five year period (1 April 2016 to 31 March 2021) the Scottish Government’s target is to deliver at least 50,000 affordable housing units, of which 35,000 will be for social rent.

This represents a substantial increase of 67% on the previous five year target for the delivery of at least 30,000 units. That target was exceeded - 33,490 units were delivered, of which 22,523 were for social rent (see Fig 6).

Fig 6: Affordable Housing Supply Programme Completions 2000-01 to 2015-16

Source: Scottish Government Affordable Housing Supply tables online  
Other measures to increase housing supply

Many stakeholders have welcomed the Scottish Government’s affordable housing targets and resources dedicated to housing supply. However, it has been pointed out that other challenges, such as availability of land, infrastructure and the planning system will need to be addressed for new housing supply to increase (SFHA 2016). Furthermore, there needs to be enough skilled people to build the houses. Following the recession many professional and other skilled workers left the construction industry and there have been reports that there are still gaps in the construction industry workforce (BBC 2015).

More Homes Scotland

In March 2016, the Scottish Government announced their More Homes Scotland overarching approach to support the increase in the supply of homes across all tenures. In addition to financing housing supply projects through the housing supply budget, this approach includes:

- **Supporting infrastructure, land and housing delivery**

  The provision of the right infrastructure and land assembly has been a challenge to the development of some key housing sites (Scottish Government 2016d). To help address these problems, a Housing Infrastructure Fund consisting of grants and loans has been established. Up to £50m for the scheme has been made available in 2016-17. As part of the development of their Strategic Housing Investment Plans (SHIPs), councils were invited to identify priority housing sites that could, with the fund’s support, bring forward housing within the next five years. Eligible works will include physical infrastructure generally required to start a project, such as roads, sewers, decontamination and demolition work.

- **A more effective planning system**

  A review of the planning system, part of which focussed on housing delivery, was undertaken by an independent panel. Their report, Empowering Planning to Deliver Great Places, made five specific recommendations around the ‘delivery of high quality homes’ (Beveridge, Biberbach and Hamilton 2016).

Scottish Ministers published their response to the report of the independent planning review panel on July 11, 2016 (Scottish Government 2016e). Ten key actions are currently being taken forward. These include actions to:

- help local authorities to strengthen their skills and capacity for housing delivery in the short term through a range of measures, including financial assistance where appropriate (Recommendations 13 and 16).
- finalise the draft advice on planning for housing and infrastructure delivery, including a clear definition of effective housing land which will be consistently applied within the current system (Recommendation 13).
- take forward pilot Simplified Planning Zones for housing (Recommendation 14).

At the end of 2016, the Scottish Government expects to publish a White Paper for consultation to inform the introduction of a planning bill in the Parliament in 2017.
HOMELESSNESS

There are many reasons why people can find themselves homeless or threatened with homelessness. Relationship breakdown is a common cause of homelessness but other reasons could also include being evicted due to mortgage or rent arrears, mental health issues or addiction problems.

Local Authority Duties

Local authorities have a duty to assess homeless applications made to them. If the applicant is assessed as ‘unintentionally homeless’ the local authority has a duty to secure ‘settled’ accommodation for the applicant. This will normally mean a permanent social rented let, although the applicant may have to spend some time in temporary accommodation before a suitable property becomes available.

Over the years, legislation has increased the rights of homeless people to greater support from their local authority. The Scottish Government’s “2012 homelessness commitment” saw the abolition of the ‘priority need’ test. Previously, only homeless applicants who were assessed by a local authority as being ‘unintentionally’ homeless with a ‘priority’ need were entitled to settled accommodation. Now this right applies to any applicant who is assessed as unintentionally homeless. This change has particularly increased the rights of single homeless people, many of whom would not have previously been given ‘priority’ status.

The number of homeless applications to local authorities has been decreasing, despite these legislative changes (see Fig 7). In 2015-16, there were 34,662 homelessness applications made to local authorities, 4% lower than the number of applications received in the same period in 2014-15 and 33% lower compared to 2003-04 (Scottish Government 2016f).

Fig 7: Number of Homeless Applications made to local authorities 2002/03 to 2015/16

![Graph showing the number of homeless applications](image)

Source: Scottish Government (2016f)

The fall in homeless applications is mainly due to the impact of housing options/ homelessness prevention strategies adopted by most local authorities over the past few years (see below) rather than to changes in the underlying drivers of homelessness (Scottish Government 2016f). It has been suggested that, “…If the ‘homelessness-type’ approaches to Housing Options

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4 Under provisions in the Housing (Scotland) Act 1987
5 The Homelessness etc (Scotland) Act 2003 Act set the framework for the abolition of priority need.
services are combined with formal homelessness assessments, the overall number of homelessness presentations to Scottish local authorities has remained relatively steady in recent years (around 54,000 per annum)" (Fitzpatrick, Pawson, Bramley, Wilcox and Watts, B 2015).

**Housing Options and Homelessness Prevention**

**What is ‘Housing Options’?**

Housing Options is an information and advice process that councils use when someone approaches them with a housing problem. It aims to prevent homelessness wherever possible …

The service focuses on people’s personal circumstances, helping them to explore all options including council housing, housing association homes and private rented accommodation. It can also provide support for underlying issues that can underpin housing problems such as debt, family breakup and mental health problems. This means that, rather than just making a homeless application, housing officers can work with other services to help people before they reach crisis point.

(Source: Scottish Government online)

Scottish Government policy has been for housing options to be developed locally and as such there are wide variations in how housing options services are structured throughout the country (Shelter Scotland 2015). Five Housing Options Hubs (which receive Scottish Government financial support) have been established to help promote the housing options approach to homelessness and to share best practice across all Scottish local authorities.

Since April 2014, Scottish Government has been collecting local authority data to evaluate the success of the policy on housing options. The statistics confirm the wide variation in practice. As local authorities decide for themselves what constitutes an approach for housing options advice, this leads to large differences in the volumes of approaches they record. The outcomes achieved for people who get advice through the housing options process also varies considerably. For example, over the period January to March 2016, almost 60% of approaches in East Dunbartonshire resulted in people remaining in their current accommodation while in East Ayrshire, over 60% of approaches resulted in people being found alternative accommodation (Scottish Government 2016g).

**Scottish Housing Regulator Housing Options Report**

The Scottish Housing Regulator’s thematic report Housing Options in Scotland (2014) found that, in some cases, people seeking housing advice were not being offered a homeless assessment which they were entitled to, and this led to an under-recording of homelessness. One of the SHR’s recommendations was that the Scottish Government should produce new guidance on housing options. This guidance was published in March 2016 (COSLA and Scottish Government 2016).
The previous Infrastructure and Capital Investment Committee undertook an inquiry into the 2012 Homelessness Commitment in 2011/12 (Scottish Parliament Infrastructure and Capital Investment Committee 2012). A follow up inquiry was also undertaken in 2014. In its legacy report it said that its successor Committee may wish to take forward scrutiny of this document (Scottish Parliament Infrastructure and Capital Investment Committee 2016).

**Temporary accommodation**

Local authorities may need to use temporary accommodation for homeless households who are awaiting the outcome of a homeless assessment, for those who are only entitled to temporary accommodation or for those who are waiting for permanent accommodation to be found.

At 31 March 2016, there were 10,555 households in temporary accommodation, a decrease of 12 households from the previous year. Of the households in temporary accommodation, 3,884 had children, an increase of 8% compared with one year earlier (Scottish Government 2016g).

**Time spent in temporary accommodation**

Local authorities have reported substantially lengthening periods of time spent in temporary accommodation. Reasons include the pressure on the supply of permanent social tenancies, and the challenges to moving on presented by welfare reform measures (Fitzpatrick et al 2015). In April 2016, the Scottish Government started collecting local authority data on the length of time people spend in temporary accommodation—publication of the first data set is forthcoming.

Recent research commissioned by Shelter Scotland reported that changes to the funding of temporary accommodation present a major challenge. For example, in terms of maintaining accommodation standards and the impact on funding for core services. They recommended that the Scottish Government and COSLA should pursue a new model of funding, that recognises and supports the full costs of delivering temporary accommodation and homelessness services (Shelter Scotland 2016a).

**Standards of temporary accommodation**

Secondary legislation provides for the type of accommodation that is unsuitable for homeless households containing children and pregnant women (this effectively bans the use of bed & breakfast accommodation unless there are exceptional circumstances). In 2014, the legislation was amended to include reference to such accommodation also having to be “wind and watertight.”

In its *Fairer Scotland Action Plan* the Scottish Government (2016h) committed to improving the provision of temporary accommodation by:

- working with local government to develop a new approach in the face of UK welfare reforms
- developing minimum standards, based on the equivalent standards for permanent social housing
- introducing a cap of one week for families with children and pregnant women living in B&B accommodation, unless there are exceptional circumstances

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6 The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 SSI 2014/243 replaces the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004
Homelessness Prevention and Strategy Group

Scottish Government homelessness policy development has been assisted by a Homelessness Prevention and Strategy Group.

A recent area of interest for this group has been in ‘multiple exclusion homelessness’, described as a, “form of ‘deep’ social exclusion involving not just homelessness but also substance misuse, institutional care (e.g. prison) and/or involvement in ‘street culture’ activities (e.g. begging and street drinking)” (Fitzpatrick, Bramley and Johnsen 2012). In the Fairer Scotland Action Plan, the Scottish Government commits to:

“…strengthen links between homelessness services and health services, including mental health and primary care services, so that the effects of homelessness on health are better understood and addressed and so that those facing homelessness combined with multiple exclusion get joined up support”. (Scottish Government 2016h)

Shelter Scotland has argued that there needs to be a new national homelessness strategy. They argue that, despite recent progress with housing prevention and links with health colleagues:

“The organic nature of these – and other – developments, has led to change without clear coherent direction, important developments often being significantly delayed and increased understanding not leading to improved practice” (Shelter Scotland 2016b)

OLDER PEOPLE AND SUPPORT FOR LIVING AT HOME

A key policy priority of successive governments has been to support people to live at home for as long as possible, rather than in care homes or hospital settings. With an increasingly elderly population, as described above, this policy aim will continue.

The Scottish Government’s Age, Home and Community: a Strategy for Housing for Scotland’s Older People: 2012-2021 (2011) set out various aims that would be pursued including making better use of existing housing and increasing housing support services with a focus on prevention. The SNP Manifesto made a commitment to refreshing this strategy to take account of changing needs and demographics and to help address issues of isolation (SNP 2016). The Manifesto also said,

“We will also consider the introduction of a similar scheme to Help to Buy for new build homes to encourage growth in the retirement housing sector to better meet the need for affordable retirement homes, sheltered, and very sheltered housing.”

Health and Social Care Integration

The Scottish Government aims to achieve greater integration between health and social care services. Social care services include those that support people to live their daily lives and help them with basic personal care like washing, dressing and eating. Integration is seen as a way of improving both the outcomes for individuals and the efficiency of services. The Public Bodies (Joint Working) (Scotland) Act 2014 sets out the legislative framework for the integration of health and social care services. The Act requires each Health Board and Local Authority to delegate some of its functions to the Integration Authority (IA).

IAs became fully operational from 1 April 2016 and are responsible for strategic planning, allocating budgets and overseeing the delivery of a range of community health and social care services.
services. IAs have some housing related responsibilities. They must take responsibility for aids and adaptations as a minimum, but they may also choose to take responsibility for housing support and homelessness services themselves.

SPICe briefing Integration of Health and Social Care (Burgess 2016) provides further information on this policy.

Housing Adaptations

With an ageing population, demands for adaptations, such as stairlifts, ramps and walk-in wet rooms are increasing (Scottish Government 2012a). Social landlords are expected to provide assistance to tenants who need adaptations to their house, as long as that need has been identified by an assessment, and they are a priority according to their local policy.

Local authorities also have duties regarding the provision of adaptations to private housing to meet the needs of disabled occupants7 where this need has been assessed. Funding restrictions can mean that households have to be prioritised for assistance. In 2015-16, local authorities spent around £22.5m on disabled adaptations in the private sector (Scottish Government 2016i).

In 2012, the Adaptations Working Group (which was set up by the Scottish Government) reported that the current tenure-based arrangements are, “…inherently complex and inhibit transparency, simplicity and efficiency” (Scottish Government 2012a). The Group argued that financial support should no longer be determined by a person’s tenure and that a single local funding pot for all adaptations be created.

The Scottish Government is currently running some pilots to look at a "single funding pot" for adaptations, as recommended by the working group. It has also launched a pilot Help to Adapt scheme in twelve local authority areas which helps home owners over 60 years of age to pay for adaptations using equity in their home to secure a low-cost loan from the Scottish Government. Link Group Limited is the managing agent for the scheme. Further information is available at this link: https://linkhousing.org.uk/what-we-do/help-to-adapt/

SPICe Briefing Housing Adaptations (Major) (Wane 2016) provides further information on housing adaptations.

HOUSE CONDITIONS AND STANDARDS

House Conditions

Information on the condition of Scotland’s housing stock is gathered through the Scottish House Condition Survey (SHCS) (Scottish Government 2015c). The latest report covers 2014. Key findings include:

- Two out of five dwellings (41%) were in Energy Performance Certificate Band C or better, an increase of 71% since 2010 and 11% from the previous year.
- The estimated level of fuel poverty remained similar to the revised 2013 estimate. 34.9% (around 845,000 households) were fuel poor and 9.5% were living in extreme fuel poverty.
- Around 73% of properties had some kind of disrepair.

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7 Duties exist in the Housing (Scotland) Act 2006
• Just over half 53%, of properties had some disrepair to critical elements. Critical elements are those whose condition is central to a dwelling being wind and weather proof, structurally stable and safeguarded against further rapid deterioration. For example, roof coverings, roof guttering and downpipes and external walls.

• Around 3% of dwellings suffered from some degree of damp while condensation was recorded in 9% of the housing stock, similar to 2013 levels.

### Housing Standards

Currently, there are different standards which apply to houses in different tenures (owner-occupied, private rented, social rented) and this may influence the condition of housing in different tenures (see Table 2).

#### Table 2: Housing Standards in Scotland

<table>
<thead>
<tr>
<th>Which standard?</th>
<th>Who does it apply to?</th>
<th>What does it involve?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tolerable Standard Housing (Scotland) Act 1987 (ss 85-87)</strong></td>
<td>All Households</td>
<td>Minimum basic standard. Councils have duties to address Below Tolerable Standard (BTS) housing in their area. Councils have statutory enforcement powers to deal with BTS housing.</td>
</tr>
<tr>
<td><strong>Repairing Standard Housing (Scotland) Act 2006 (s13)</strong></td>
<td>Private Landlords</td>
<td>Landlord must ensure their property meets the Repairing Standard. Private tenants and councils can report potential breaches of the standard to the Private Rented Housing Panel.</td>
</tr>
<tr>
<td><strong>Scottish Housing Quality Standard/ Energy Efficiency Standard for Social Housing Scottish Government Policy Target</strong></td>
<td>Social Landlords</td>
<td>Social landlords must ensure their stock meets the SHQS. Social landlords must ensure their stock meets the EESSH by December 2020.</td>
</tr>
</tbody>
</table>

**The ‘Tolerable Standard’**

The Tolerable Standard, as set out in the Housing (Scotland Act 1987) (‘the 1987 Act’) is a "condemnatory" standard. In other words, it is not reasonable to expect people to continue to live in a house that falls below it. The standard applies to housing in all tenures. The SHCS reports that 2% of stock is below tolerable standard (BTS). Pre-1919 dwellings are most likely to be BTS (Scottish Government 2015).

The 1987 Act does not place any duties on house owners to ensure that their property meets the Tolerable Standard. Instead, the Act (s85) places a duty on every local authority to secure that all houses in their area which do not meet the tolerable standard are closed, demolished or brought up to the tolerable standard. Local authorities also have enforcement powers to address BTS housing, for example through serving owners of BTS housing with work notices (see Repairs and Improvements in Private Sector Housing Below).
Scottish Housing Quality Standard

The Scottish Housing Quality Standard (SHQS) applies to social rented properties. The SHQS is a set of five broad housing criteria, covering specific elements, which must all be met if the property is to pass SHQS. This is a policy standard that does not have a legislative basis. It was announced in 2004 and social landlords were expected to ensure that by April 2015, all their properties met the standard (in some cases exemptions are available).

The 2014 SHCS reported, that in the social rented sector, the SHQS failure rate was 45% (an improvement since 2010 when the failure rate was 61%). The main reason for failure was on the energy efficiency criteria (see below for more on energy efficiency). The SHCS notes the difficulties that surveyors may have in identifying the presence of cavity wall insulation. If it was assumed that all social rented dwellings have insulated cavity walls where this is technically feasible the failure rate would be 34% (Scottish Government 2015c).

Social landlords also return information on the proportion of their stock that meets the SHQS, provided on a self-assessment basis, to the Scottish Housing Regulator. These results show a higher proportion of stock, 91%, meeting the standard (Scottish Housing Regulator 2016). The Scottish Government suggests there are various reasons for these different figures, including the different methodologies for collecting information (Scottish Government 2016j).

Private owners and private landlords are under no obligation to bring their properties up to the SHQS. However, the SHCS collects the same data for all dwellings to allow comparison across the housing stock. Around 48% of all private housing stock failed the SHQS, although the failure rate for private rented housing alone was higher at 54% (Scottish Government 2015c).

The Repairing Standard

Private landlords must meet certain basic repair and maintenance requirements, known as the Repairing Standard (set out in Chp 3 of the 2006 Act). If a tenant thinks their landlord is not meeting the Repairing Standard then, after giving the landlord a chance to fix the problem, they can take their case to the First-Tier Tribunal for Scotland (Housing and Property Chamber). A decision will be made on whether the Repairing Standard has been breached and, if so, what action the landlord needs to take. Local authorities may also seek a determination on the Repairing Standard either with the tenant participating in the application or not.

Please note that these cases were previously considered by the Private Rented Housing Panel (PRHP). Their functions transferred to the Housing and Property Chamber on 1 December. Further information available here: https://www.housingandpropertychamber.scot/repairs

Energy Efficiency

Energy Efficiency Standard for Social Housing (EESH)

In 2014, the Scottish Government launched the Energy Efficiency Standard for Social Housing (EESH) which replaced the energy efficiency elements of the SHQS.

The EESH sets the minimum energy efficiency standard for social housing. Social landlords must ensure that all social housing meets this new standard by December 2020. The new standard is based on minimum energy efficiency (EE) ratings found on Energy Performance Certificates (EPCs). The ratings which homes will be expected to achieve will vary depending on the property type and the type of fuel used to heat the home. Essentially this means that no social rented property will be lower than a ‘C’ or ‘D’ energy efficiency rating. A review of

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8 This includes compliance with the Tolerable Standard
EESSH which will assess progress towards meeting the 2020 milestone is expected to take place in 2017.

Compliance with EESSH is monitored by the Scottish Housing Regulator (SHR). Social landlords reported to the SHR that 68.6% of social housing met the EESHH in 2015/16 (Scottish Housing Regulator 2016).

Energy Efficiency Regulations for Private Sector Homes

The Scottish Government is also planning to consult on phased regulation of other existing buildings to bring them up to higher energy efficiency standards as well as to look at financial incentives. They are considering the timing of these consultations within the context of the development of the new Scotland’s Energy Efficiency Programme.

Warm Homes Bill

The SNP Manifesto also made a commitment to introduce a Warm Homes Bill to tackle fuel poverty and improve energy efficiency. It is not yet clear what the scope of the Bill is likely to be or when it may be introduced in the Parliament. The Existing Homes Alliance (2016) has suggested the Bill should include the following components:

- Regulatory framework for district heating.
- Energy performance targets.
- Triggers for minimum standards of energy performance.
- Strengthen Tenement Management Schemes to facilitate energy efficiency upgrades.
- Renewed fuel poverty targets and provisions for independent scrutiny of progress.


Repair and improvements in private housing

In the first parliamentary session (1999-2003), the Scottish Executive set up a Housing Improvement Task Force to undertake a major review of housing quality in the private sector. This work led to legislative provisions relating to housing quality in the Housing (Scotland) Act 2006 (‘the 2006 Act). One of the main policy aims of the legislation was to encourage home-owners to take greater responsibility for the upkeep of their properties. In this respect, there was a move away from a grant based approach to assisting private sector repair work which featured in previous legislation\(^9\).

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\(^9\) Many of the provisions in the Housing (Scotland) Act 2006 replaced provisions in the Housing (Scotland) Act 1987.
To address disrepair in owner-occupied housing in their areas local authorities can use powers in the 2006 Act\(^{10}\) to:

- Create Housing Renewal Areas to address sub-standard housing on an area wide basis.
- Serve a “work notice” on owners of properties that are in disrepair requiring them to undertake specified work.
- Serve owners of properties with maintenance orders, to ensure that houses (and common parts) are adequately maintained to prevent them from falling into disrepair. It was anticipated that these orders will be particularly useful for flats and tenement properties where there are particular problems with repair of common parts.

Statistics indicate that maintenance order powers are used infrequently (Scottish Government 2015i). The Commission for Housing and Wellbeing (2015) recommended that the Scottish Government, in consultation with local authorities, should review the use of the powers in the 2006 Act, including their use for common repairs in flatted blocks, to ensure that these are fit for purpose and being used when appropriate.

In their response to the Commission, the Scottish Government (2016j) referred to amendments made to the 2006 Act by the 2014 Act. These included changes to reduce administration in maintenance orders, more flexibility in the use of work notices and repayment charges and new missing share powers. They committed to, “…engage with stakeholders to evaluate the use of these powers and, in particular, will work with local authorities to feed lessons learned from the use of powers such as Housing Renewal Areas, to identify further options for improvements to legislation.”

**Schemes of Assistance**

Part 2 of the 2006 Act also requires local authorities to set out a Scheme of Assistance detailing the support that will be offered in its area. Local authorities can provide assistance for house repairs, improvements, adaptations and construction, as well as the acquisition or sale of a house. The assistance can take various forms, including standard and subsidised loans, practical assistance and grants, although Scottish Government guidance (2009) discourages the use of grants.

Local authorities must provide advice and assistance to owners who have been served a statutory work notice requiring them to bring a house into a reasonable state of repair. Grant assistance must be provided for most work to adapt homes to meet the needs of disabled people, other than for home extensions. All other assistance is discretionary.

In 2015-16, councils provided householders with 173,050 instances of help. Most of this help (156,175 cases or 90% of all cases) was in the form of non-financial assistance such as website hits, leaflets or advice. Total spending was around £44 million, of this 53% of spending (£23m) was paid in grants to disabled households (6,482 grants were paid) (Scottish Government 2016i).

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\(^{10}\) Chapter 5 and Chapter 6 of the Housing (Scotland) Act 2006
Energy Efficiency and Repairs

There is a range of schemes in place to help householders improve the energy efficiency of their homes and to reduce fuel poverty. The Energy Saving Trust, in partnership with a range of advice providers and energy companies, manages these schemes on behalf of the Scottish Government through Home Energy Scotland.

A new £10 million pilot equity loans scheme to assist owners with energy efficiency improvements and repairs was launched in September 2016. The pilot, operating in Glasgow, Argyll and Bute and Perthshire will provide equity loans of up to £40,000 to home-owners on low incomes to help them undertake the necessary work (Scottish Government 2016). Expressions of interest can be made through Home Energy Scotland. The scheme will begin operating in winter 2016.

Repairs to Common Property

A common constituency enquiry relates to repairs to common property in tenements. Key to this question is what the title deeds say about repair responsibilities and, if they are wholly or partially silent on the matter, what the Tenement Management Scheme (as introduced by the Tenements Scotland Act 2004) requires. A forthcoming SPICe briefing will provide more detailed advice on this matter.

The website Under One Roof provides impartial advice on repairs and maintenance for flat owners. The website is available at this link: http://www.underoneroof.scot/

SOCIAL HOUSING

RSLs and local authorities, which own their own stock, will perform a variety of different social landlord functions including the following.

ALLOCATIONS

Provisions in the 1987 Act govern social housing allocations. Social landlords must have an allocation policy that sets out how their housing stock will be allocated, taking into account the legislative requirements. For example, the 1987 Act (ss3-6) requires that landlords must give “reasonable preference” to certain categories of applicants, such as homeless persons and those living in overcrowded conditions. Scottish Government guidance provides further advice and good practice examples (Scottish Government 2011c).

Provisions in the Housing (Scotland) Act 2014 (ss3-6) will amend the 1987 Act to increase the flexibility of landlords when allocating housing and allowing them to make the best use of social housing. These provisions are likely to be commenced in 2017 and, in the meantime, draft guidance has been published by the Scottish Government (2016l).

TENANCY MANAGEMENT

Landlords and tenants must ensure they adhere to the conditions set out in their tenancy agreement, which will normally be a Scottish Secure Tenancy agreement (SST), provided for by the Housing (Scotland) Act 2001. In certain circumstances, largely relating to temporary lets for housing support, or antisocial behaviour, a less secure form of tenancy agreement (a short SST) may be given to tenants.

The 2014 Act will also change certain aspects of the SST provisions regarding succession, assignation, joint tenancies and subletting. The 2014 Act will make changes designed to help
landlords tackle antisocial behaviour. For example, a new streamlined eviction process will be introduced (Scottish Government 2016). Again, these provisions are likely to be commenced in 2017 and draft guidance is available. Further information is on the Scottish Government website here: https://beta.gov.scot/policies/social-housing/

Tenant Participation

The 2001 Act (s 53) places a duty on social landlords to have tenant participation strategies in place and to maintain a register of tenants groups meeting certain criteria. The Act (s54) also enables both individual tenants and registered tenants groups to be consulted by the landlord on issues affecting them.

Repairs and Maintenance

Generally, social landlords are responsible for ensuring their properties are in wind and watertight condition and for major repairs to the structure and installations of the house. Under the ‘Right to Repair’ scheme tenants have the right to have small urgent repairs (up to a value of £350) carried out within a given timescale. These repairs are known as ‘qualifying repairs’ and include, for example, blocked flues, unsafe rotten timber flooring or insecure external doors.

Right to buy

Reform of the Right to Buy has been a recurrent policy theme since devolution. With the aim of protecting social housing and safeguarding the Government’s investment in social housing, the right to buy ended completely in Scotland on 1 August 2016 (as a result of provisions in the 2014 Act).

THE REGULATION OF SOCIAL RENTED HOUSING

The Scottish Housing Regulator (SHR) is the independent regulator of social landlords in Scotland. The Housing (Scotland) Act 2010 (the 2010 Act) (s2) sets out SHR’s statutory objective to safeguard and promote the interests of current and future tenants, homeless people and other people who use services provided by social landlords.

The 2010 Act requires the SHR to monitor, assess and report regularly on social landlords' performance of housing activities and RSLs' financial well-being and standards of governance, and to intervene where appropriate. SHR also keeps a publicly available register of social landlords. The SHR’s approach to regulation is set out in its Regulatory Framework for social housing in Scotland (Scottish Housing Regulator 2012).

It is not the SHR’s role to intervene in a complaint between a tenant and a social landlord. Rather, it is the role of the Scottish Public Services Ombudsman to deal with individual complaints that cannot be resolved by using the landlord's complaints procedure. The SHR does have a role where there is a 'significant performance failure'. A significant performance failure is something that the landlord does, or fails to do, that puts the interests of its tenants at risk (Scottish Housing Regulator 2016b).

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11 The Scottish Secure Tenants (Right to Repair) Regulations 2002
The Scottish Social Housing Charter

The 2010 Act requires Scottish Ministers to set out standards and outcomes that social landlords should aim to achieve when performing housing activities in a document known as the “Scottish Social Housing Charter” (‘the Charter’). The Charter, which has been in place since April 2012, has 16 standards and outcomes.

The SHR is responsible for monitoring and reporting on landlords’ performance in achieving the outcomes and standards in the Charter. Every social landlord submits an Annual Return on the Charter which assesses performance against a range of key performance indicators.

The SHR publishes reports about each landlord’s performance against the Charter. Reports from each social landlord are on the Regulator’s website along with a comparison tool to allow tenants to find out how their landlord’s performance compares with others. This comparison tool is here: https://www.scottishhousingregulator.gov.uk/find-and-compare-landlords

In the National Report on the Scottish Social Housing Charter: Headline Findings 2015/16, the SHR reports that most landlords continue to perform well across almost all Charter outcomes. Average performance for landlords has improved for those service areas that are most important to tenants (e.g. repairs and maintenance). There is a more mixed picture of user satisfaction with other landlord services, including factoring management of sites for Gypsy/Travellers and services for those who are homeless or at risk of becoming homeless. The SHR intends to publish further analysis later this year looking more closely at landlords and service areas where average performance could be improved (Scottish Housing Regulator 2016a).

The 2010 Act requires Ministers to review the Charter standards and outcomes from time to time. The Scottish Government undertook a consultation on the charter outcomes in the summer of 2016 (Scottish Government 2016n). An analysis of consultation responses suggested there were no major revisions required to the Charter outcomes (Nicholson 2016). A revised charter, which requires approval by resolution of the Scottish Parliament, is expected to be laid in the Scottish Parliament in early 2017.

Re-classification of Housing Associations

The Office for National Statistics (ONS) decides how bodies are classified for the purposes of the National Accounts and economic statistics. RSLs are classed as private sector bodies but, following a review of their classification ONS have decided that RSLs should be classified as public bodies (ONS 2016). This would mean that net borrowing by RSLs would count as Government expenditure and could therefore potentially impact on the ability of RSLs to borrow.

To ensure that RSLs can continue to borrow privately to support the delivery of the affordable homes target, the Scottish Government has committed to introduce legislation, to allow the ONS to re-classify housing associations as private bodies. The legislation is expected to contain measures similar to those in the Housing and Planning Act 2016 which addressed the same issue in England when the ONS reclassified housing associations there to the public sector. These measures are likely to:

- remove the need for the Regulator’s consent to the disposal of assets by RSLs
- limit the Regulator’s ability to appoint members and managers to RSLs
- remove the need for the Regulator’s consent to the restructuring, voluntary winding up and dissolution of RSLs (Scottish Government 2016o)
PRIVATE RENTED HOUSING

As explained earlier (p4), the private rented sector has grown substantially in the last 10 years and is now the most common type of housing for younger people in Scotland.

Improving the management and condition of privately rented properties has been a key policy theme of successive Governments. In 2013, the Scottish Government published their private rented housing strategy, *A Place to Stay, A Place to Call Home* (Scottish Government 2013), with the aim of improving management standards and quality of service for tenants and prospective tenants, as well as enabling growth and investment in the sector.

Various legislative requirements for private landlords have been introduced. These requirements include, for example (this is not an exhaustive list):

- **Private Landlord Registration** - Private landlords must register themselves, and the properties they let with the relevant local authority (provisions are set out in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004). The local authority must be satisfied that the landlord is a fit and proper person before they can be entered on the register.

- **Tenancy Deposits** – Landlords who receive a tenancy deposit are required to pay the deposit into an approved tenancy deposit scheme and to provide the tenant with key information about the tenancy and deposit (under the Tenancy Deposit Regulations 2011).

- **Repairing Standard** - Private landlords must meet certain basic repair and maintenance requirements, known as the [Repairing Standard](#) (see p 20)

- **Licensing of House in Multiple Occupation** – Where a house is occupied by three or more persons from three or more families as their only or main residence, the landlord must apply to the relevant local authority for a licence.

While many landlords adhere to these regulatory requirements there are some who do not. In April 2016, Citizen’s Advice Scotland reported that over 6,000 people contacted the CAB service over the previous year, a 23% increase over the previous two years, to report problems with landlords and poor housing in the private rented housing sector (Citizen’s Advice Scotland 2016).

Although private landlord representative bodies (e.g. Scottish Association of Letting Agents) have been supportive of the Scottish Government’s attempts to improve standards in the sector they have argued that existing legislation, “…has not been matched with an effective programme of enforcement, rendering many of them ineffective” (Scottish Association of Landlords 2016).

The Commission on Housing and Wellbeing’s Chair’s Report One Year On (2016) noted that although work is underway to develop revised guidance for local authorities on landlord registration, several questions need answering, such as, “Is the current system of landlord registration delivering for tenants? Is it increasing the standard of privately rented accommodation?” It recommended that the Scottish Parliament Local Government and Communities Committee review whether the powers available for regulating the private rented sector, including landlord registration, are delivering against their objectives.

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Further information on the private landlord registration scheme can be found on the Landlord Registration website at: [https://www.landlordregistrationscotland.gov.uk](https://www.landlordregistrationscotland.gov.uk)

**TENANCY REFORM**

Currently, the majority of tenants in the private rented sector will have a short assured tenancy governed by the Housing (Scotland) Act 1988. These tenancies are usually for an initial term of six months and can come to an end without the need for court action after that term has ended. At the end of the term of the let, a landlord can end the tenancy, provided the correct procedures are followed. This is known as the “no-fault” ground for possession.

**A new private residential tenancy**

The Private Rented (Tenancies) (Scotland) Act 2016 will introduce a new private residential tenancy to supersede the existing short assured and assured tenancies. The aim is to create a simplified tenancy regime providing greater security of tenure for tenants, along with security for investors.

A key change will be that the new tenancy will be open-ended and will not have a fixed term, unlike the short assured tenancy. For a private residential tenancy to end, the tenant must give the landlord notice that they wish to leave, or the landlord has to give the tenant a notice to leave. That notice must set out which of the specified eviction grounds the landlord is using. If the tenant does not leave at the end of the tenancy, the landlord will have to apply to the new First Tier Tribunal Housing and Property Chamber (see below) for an eviction order to be made. Tenants will have recourse to the Tribunal if they think that their tenancy has been ‘wrongfully terminated’.

The Act also contains provisions that will enable local authorities to seek a declaration of a ‘rent pressure zone’, from the Scottish Government, in their area where private landlords will be restricted from increasing rents, for existing tenants with a private residential tenancy, above a certain level. A rent pressure zone designation would need to be approved by Parliament. It is expected that the new private residential tenancy will be in place in early 2018.

**REGULATION OF LETTING AGENTS**

The Housing (Scotland) 2014 Act will introduce a framework for the regulation of letting agents in Scotland with the aim of improving overall levels of service and professionalism within the industry. The regulatory framework includes:

- a mandatory register of letting agents with an associated ‘fit and proper’ person test and training requirement that must be met to be admitted to the register;
- a statutory Code of Practice all letting agents must follow. The Code of Practice sets out the standards of practice letting agents must meet, a requirement to hold client money protection and professional indemnity insurance and comes into force on 31 January 2018.
- a new way for tenants and landlords to resolve complaints against letting agents for breaches of the statutory code of practice through a First-tier Tribunal.
- powers for Scottish Ministers to obtain information, and of inspection, to support monitoring of compliance.

**FIRST-TIER TRIBUNAL – HOUSING AND PROPERTY CHAMBER**
The Tribunals (Scotland) 2014 sets up a streamlined two-tier structure for tribunals that are devolved to, or created by, Acts of the Scottish Parliament, under the judicial leadership of the Lord President. The two tier structure consists of a First-tier Tribunal and an Upper Tribunal which primarily deals with appeals. SPICe Briefing Tribunals (Scotland) Bill provides background and details of the policy objectives of the Act.

The Chamber Regulations divide the First-tier Tribunal for Scotland into the five chambers, one of which is a Housing and Property Chamber. The responsibilities of the Private Rented Housing Panel (which considered rent and repairs matters in private housing and the Homeowner Housing Panel (which considered whether a property factor has carried out their property factor duties or complied with the Property Factor's Code of Conduct) were transferred, in so far as practicable, to the Housing and Property Chamber on 1 December 2016.13

Currently, the Sheriff Courts have jurisdiction for all civil cases relating to private rented housing matters. Provisions in the Housing (Scotland) Act 2014 will transfer the sheriff’s existing jurisdiction to deal with private rented civil matters (including repossession cases, cases relating to the private landlord registration scheme and disputes concerning compliance with tenancy agreements) to the Housing and Property Chamber. The grounds which allow someone to raise an action and the issues to be taken into account in deciding a case will remain the same. It is anticipated that these cases will transfer to the chamber by December 2017.

The aim of this move is to provide more efficient, accessible and specialist access to justice for both landlords and tenants. One of the criticisms of the Sheriff Court process currently operating is the lack of consistency in decision-making amongst sheriffs and a lack of specialism amongst sheriffs in dealing with housing matters (Berry, Evans and Harvie-Clark 2016).

HOUSING BENEFIT AND WELFARE REFORM

Housing Benefit is reserved, although the benefit is administered by local authorities in Scotland. It is a significant benefit in Scotland – around 441,00014 people receive it and £1.8bn was spent on the benefit in 2015-16 (DWP 2016). Universal Credit is gradually replacing six working age benefits, including Housing Benefit. Many of the current features of the housing benefit regulations are replicated in the housing costs element of Universal Credit, although there are some differences (Wilson 2013). Housing Benefit for pensioners will eventually be contained in Pension Credit.

The UK Government has implemented a series of changes to housing benefit, including the introduction of the “bedroom tax,” and changes to the Local Housing Allowance (LHA) (which determines the amount of benefit payable to tenants in private rented housing) with the aim of reducing public expenditure and making the system fairer.

Most recently, the LHA rates have been frozen at April 2016 rates for the next four years (although Targeted Affordability Funding may be available from 2017/18 to support areas where higher rent increases are causing a shortage of affordable accommodation (HC Deb 9 Nov 2016). Furthermore, new social sector tenants (from April 2016) will have their housing benefit capped at LHA rates. The cap will apply from 2019 (initially this was planned to take place from April 2018)(see Wilson 2016 for further details of reforms to housing benefit). This measure is most likely to affect tenants under 35 whose maximum housing benefit is limited to the LHA rate for a room in shared accommodation and supported accommodation (Scottish Federation of Housing Associations 2016).

13 The transfer was achieved through secondary legislation SSI 2016/336 and SSI 2016/338).
14 At Aug 2016, DWP Stat-xplore.
In a written statement, the Work and Pensions Secretary, Damian Green MP, indicated that the LHA cap for those living in supported accommodation would be deferred until 2019/20. From then, core rent and service charges will be funded through Housing Benefit or Universal Credit up to the relevant LHA rate. For costs above the level of the LHA rate, the UK Government will devolve an amount to the Scottish Government and it will be for the Scottish Government to decide how best to allocate funding (HC Deb).

In a further written statement on 21 November (HC Deb 21 Nov 2016), Damien Green outlined the UK Government’s intention to apply the LHA rates to all new and existing social sector tenants on Universal Credit from 2019, to “…ensure simplicity and a streamlined process” (some transitional protection arrangements will apply).

Giving evidence to the Local Government and Communities Committee on their pre 2017-18 budget scrutiny, some stakeholders (e.g. the Association of Local Authority Chief Housing Officers) expressed concern about the impact of welfare reform measures on the ongoing provision of housing services and the potential impact on the development of new accommodation (Scottish Parliament Local Government and Communities Committee 2016).

The Scotland Act 2016 devolves some social security powers relevant to housing. These include:

- a power for Scottish Ministers to make regulations to vary the housing costs element for people in rented accommodation. The Scottish Government has indicated that it will use this power to abolish the ‘bedroom tax’ for Universal Credit tenants and has sought views on how this power could be used further (Scottish Government 2016p).
- powers to vary how the housing costs element of Universal Credit is paid. The Scottish Government plans to give tenants in social rented accommodation the choice to have the housing element paid direct to their landlord.
- Discretionary Housing Payments (DHPs). The Scottish Government intends to use this power to continue to mitigate the impact of the bedroom tax for tenants still on Housing Benefit.

SPICe Briefings Scotland Act 2016: Discretionary Payments and New Benefits (Berry and Kidner 2016) and Scotland Act 2016: Scotland Act 2016: Universal Credit (Berry and Wane 2016) provide further information.
# ANNEX 1: SUMMARY OF SCOTTISH HOUSING LEGISLATION

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td><strong>Housing (Scotland) Act 1987</strong></td>
<td>• Provides the framework for the management and allocation of social rented housing  &lt;br&gt;• Gives local authorities duties with respect to homelessness  &lt;br&gt;• Sets out the provisions regarding the operation of the right to buy  &lt;br&gt;• Provides local authorities with powers to tackle sub-standard housing in their areas  &lt;br&gt;• Provides that local authorities must maintain a housing revenue account for income and expenditure relating to its own housing stock</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 1988</strong></td>
<td>This Act deregulated the private rental market in Scotland. It introduced two new forms of tenancy in the private sector from 2 January 1989 – the assured tenancy and the short assured tenancy, with less security of tenure.</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 2001</strong></td>
<td>The focus of this Act is on the social rented sector. It introduced the Scottish Secure Tenancy (SST) for tenants of RSLs and local authorities and made reforms to the right to buy and homelessness legislation. It also created a single regulatory framework covering housing across the social rented sector and enhanced the strategic role of local authorities in assessing and tackling local housing needs.</td>
</tr>
<tr>
<td><strong>Homelessness etc (Scotland) Act 2003</strong></td>
<td>The policy intention of this Act was to improve the rights of homeless people, largely through amending the 1987 Act. The Act provided the framework for the eventual abolition of the priority need test by 31 December 2012.</td>
</tr>
<tr>
<td><strong>Antisocial Behaviour (Scotland) Act 2004</strong></td>
<td>This Act established the framework for the private landlord registration scheme and the system for serving anti-social behaviour notices on private landlords.</td>
</tr>
<tr>
<td><strong>Tenements Act (Scotland) 2004</strong></td>
<td>This Act provided a structure for the maintenance and management of tenements if this is not provided for in the owner’s title deeds. A key innovation is that it provides for decision making by majority.</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 2006</strong></td>
<td>The main purpose of this Act was to address problems of condition and quality in private sector housing. It reformed local authority powers to deal with disrepair in their areas and the system of supporting owners to undertake repairs. It also contained provisions governing the “Home Report” (the set of documents that sellers must provide to potential buyers) and re-enacted, with changes, the system of licensing of houses in multiple occupation which is now contained in secondary legislation.</td>
</tr>
<tr>
<td><strong>Home Owner</strong></td>
<td>The policy intention of this Act was to strengthen protection for home</td>
</tr>
<tr>
<td>Act</td>
<td>Description</td>
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<td>--------------------------------------------------------------------</td>
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<tr>
<td><strong>and Deport Protection Act 2010</strong></td>
<td>owners facing repossession. It requires all repossession cases to call in court, lenders to demonstrate to the court that they have considered reasonable alternatives to repossession and enable home owners to be represented in court by approved lay representatives.</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 2010</strong></td>
<td>This Act modernised the system of regulation of social housing and provided for the end of the right to buy for new tenants and new supply social housing.</td>
</tr>
<tr>
<td><strong>Property Factors (Scotland) Act 2011</strong></td>
<td>This Act provides that Scottish Ministers must prepare and maintain a register of property factors and makes it an offence to act as a property factor without being on the register. The Act also makes provision in relation to the resolution of disputes between homeowners and property factors.</td>
</tr>
<tr>
<td><strong>Private Rented (Housing) Scotland Act 2011</strong></td>
<td>This Act amended the private landlord registration system provisions in the 2004 Act with the aim of improving enforcement of the scheme. It introduced a power for local authorities to serve a statutory overcrowding notice that local authorities can use to address overcrowding in the private rented sector. It also made relatively minor changes to the system of HMO licensing in the 2006 Act and other miscellaneous provisions such as the duty on private landlords to provide a document (a tenant information pack) at the start of a tenancy.</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 2014</strong></td>
<td>This was a wide ranging Act which included provisions to end the right to buy, reforms to the mobile home site licensing system and the introduction of a letting agent regulation system and the transfer of private rented housing civil cases from the sheriff court to a new Tribunal.</td>
</tr>
<tr>
<td><strong>Private Housing (Tenancies) (Scotland) Act 2016</strong></td>
<td>This Act will introduce a new private residential tenancy that will supersede the existing assured and short assured tenancy.</td>
</tr>
</tbody>
</table>
SOURCES


Nationwide [online] [http://www.nationwide.co.uk/~/media/MainSite/documents/about/house-price-index/downloads/ftb-affordability-indices.xls](http://www.nationwide.co.uk/~/media/MainSite/documents/about/house-price-index/downloads/ftb-affordability-indices.xls)


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