This document relates to the Housing (Scotland) Bill (SP Bill 23) as introduced in the Scottish Parliament on 18 December 2000

HOUSING (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Housing (Scotland) Bill introduced in the Scottish Parliament on 18 December 2000:

   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on Legislative Competence; and
   • the Presiding Officer’s Statement on Legislative Competence.

A Policy Memorandum, also prepared by the Scottish Executive, is printed separately as SP Bill 23–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND AND OVERVIEW

4. The Housing (Scotland) Bill carries forward the proposals for legislative change which were set out in the Scottish Executive’s consultation paper Better Homes for Scotland’s Communities – the Executive’s Proposals for the Housing Bill, which was published in July 2000. The Bill contains provisions covering a number of areas relating to the Executive’s overall policy objectives for housing, including provisions in relation to homelessness, tenancy rights, regulation of the socially rented sector, and the roles and responsibilities of the Scottish Ministers, local authorities, Scottish Homes and other bodies. The Bill builds on the existing legislative framework, the majority of which dates back to the 1980s. The Housing Associations Act 1985, the Housing (Scotland) Act 1987 (“the 1987 Act”) and the Housing (Scotland) Act 1988 (“the 1988 Act”) are the main pieces of legislation amended or affected by this Bill. The provisions in the Bill will in the main impact most directly on the socially rented sector, but the Bill also provides a framework for addressing issues across all housing tenures.

5. The Bill is divided into 7 Parts, some of which are subdivided into Chapters, as follows:

- Part 1: Homelessness and allocation of housing
- Part 2: Tenants of social landlords
  - Chapter 1: Scottish secure tenancies
  - Chapter 2: Right to buy
  - Chapter 3: Tenant participation
- Part 3: Regulation of social landlords
  - Chapter 1: Registered social landlords
  - Chapter 2: Local authority housing management
  - Chapter 3: Common provisions
  - Chapter 4: Interpretation of Part 3
- Part 4: Scottish Homes
- Part 5: Strategic housing functions of local authorities
- Part 6: Grants for improvement, repairs etc
- Part 7: Miscellaneous and general
PART 1 – HOMELESSNESS AND ALLOCATION OF HOUSING

Section 1: Homelessness strategies

6. This section requires every local authority to prepare, and submit to the Scottish Ministers, a strategy for preventing and alleviating homelessness in its area. Ministers are able to set a deadline for the submission of strategies. Subsection (2) enables Ministers to give guidance on the form and content of a homelessness strategy. Subsection (3) provides for the revision of the strategy, which may be undertaken by the local authority itself at an appropriate time or, as the case may be, under direction from Ministers.

Section 2: Advice on homelessness etc.

7. This section requires every local authority to ensure that advice and information about homelessness, the prevention of homelessness and services which may assist a homeless person or the prevention of homelessness is available free of charge. Local authorities are not required to provide this advice themselves. Subsection (2) enables the Scottish Ministers to issue guidance on the fulfilment of this duty.

Section 3: Homeless persons and persons threatened with homelessness

8. This section amends various sections of the 1987 Act, which set out local authorities’ duties towards homeless people and people threatened with homelessness.

9. Subsection (1)(a) amends section 24(3) of the 1987 Act to ensure that people who are owed a duty under section 31(2) are to be treated as being homeless if they are provided with accommodation which is not permanent accommodation. A definition of permanent accommodation is inserted into section 24 of the 1987 Act by subsection (1)(c). This means that a local authority’s duty under section 31(2) continues until permanent accommodation is secured. Permanent accommodation is defined in broad terms in this section to acknowledge a range of situations, some of which may not be secured by a local authority, but which could reasonably be considered to be permanent accommodation and, therefore, end the local authority’s duty under section 31(2). Subsection (1)(b) amends section 24(4) of the 1987 Act to provide that a person is threatened with homelessness if it is likely that they will become homeless within 2 months.

10. Section 29 of the 1987 Act places an interim duty on local authorities to accommodate people who they have reason to believe are homeless and have a priority need. Subsection (2) amends section 29 to make this an interim duty to accommodate anyone whom they have reason to believe is homeless, without taking into account whether they are likely to be in priority need.

11. Subsection (3) makes amendments to section 31 of the 1987 Act, which sets out local authorities’ duties towards homeless people. Section 31(2) is amended to require local authorities to secure that the accommodation made available for unintentionally homeless people
in priority need is accommodation which carries a Scottish secure tenancy or an assured tenancy (but not a short assured tenancy). This definition of permanent accommodation is narrower than the definition contained within section 24 in order to acknowledge the types of accommodation which local authorities can secure. Section 31(3) is amended to remove the distinction between intentionally homeless people in priority need and homeless people not in priority need and to enable the Scottish Ministers to prescribe what type of advice and assistance should be provided in those cases. The amendment to section 31(3) allows section 31(4) to be repealed.

12. **Subsection (4)** makes amendments to section 32 of the 1987 Act, which sets out local authorities’ duties towards people threatened with homelessness and provides a definition of accommodation. **Subsection (4)(a)** amends section 32(3) of the 1987 Act to enable the Scottish Ministers to prescribe the type of advice and assistance which should be provided to people threatened with homelessness. The wording of section 32(3) of the 1987 Act is also amended to match the amended wording of section 31(3), although this does not change the effect of this section.

13. **Subsection (4)(b)** amends section 32(5) to ensure that accommodation referred to in sections 31 or 32 does not include accommodation which does not meet any special needs of the applicant or other members of their household. **Subsection (4)(c)** sets out the arrangements which will apply to the regulations on types of advice and assistance made under sections 31 and 32.

14. **Subsection (5)** inserts section 32A into the 1987 Act. Section 32A(1) enables the Scottish Ministers to define the situations in which, as an interim measure, accommodation which is not permanent can be secured for unintentionally homeless people in priority need. It also enables Ministers to prescribe circumstances in which accommodation which does not meet the special needs of the applicant and their household may be secured. Section 32A(2) makes clear that, when interim accommodation is secured in these circumstances, the homeless applicant cannot be subsequently reassessed as being intentionally homeless from that accommodation.

### Section 4: Duty of registered social landlord to provide accommodation

15. **Subsection (1)** enables local authorities to request a registered social landlord which holds accommodation in the local authority’s area to provide a Scottish secure tenancy for an unintentionally homeless person in priority need. **Subsection (2)** requires local authorities, before making such a request, to consider the availability and appropriateness of any accommodation held by the local authority. This duty will have no effect on local authorities which hold no housing stock, but will provide a safeguard against local authorities who hold stock making inappropriate requests to registered social landlords. **Subsection (3)** requires registered social landlords to comply with a local authority request unless there is a good reason for not complying. **Subsection (4)** enables the Scottish Ministers to give guidance on what constitutes good reason and **subsection (5)** sets out the arrangements for consulting on such guidance.
Section 5: Duty of registered social landlord: further provision

16. This section sets out the arrangements which are to apply in the event of any dispute between a registered social landlord and a local authority about whether the registered social landlord has good reason for not complying with a local authority request. Subsection (1) requires that, if both parties cannot reach agreement within a set period (to be defined by the Scottish Ministers in subordinate legislation), they must appoint an arbiter. If there is no agreement on the appointment of an arbiter, Ministers must appoint an arbiter when requested to do so by the local authority. Subsections (3) and (4) deal with the sharing of costs of arbitration and the issuing of guidance by Ministers on the details of the arbitration process. Subsection (5) makes it clear that both registered social landlords and local authorities must comply with the arbiter’s decision.

Section 6: Persons living in hostel accommodation

17. This section enables the Scottish Ministers to make regulations to establish minimum rights for homeless people living in hostels. Subsection (1) enables Ministers to specify the types of occupancy of accommodation to which these minimum rights will apply. Subsection (2) sets out a number of types of occupancy of accommodation which cannot be included in any regulations. Subsections (3) and (4) enable Ministers to specify the terms of occupancy of the accommodation, but do not prevent additional agreements being made between the provider of accommodation and the occupier. Subsection (5) makes it a criminal offence for a provider of accommodation to fail to comply with the terms of the regulations. Subsection (6) sets out the consultation arrangements which would apply to the regulations.

Section 7: Housing lists

18. This section substitutes a new version of section 19 of the 1987 Act. Section 19(1) will now extend a right to register on a housing list for accommodation held by local authorities or registered social landlords to anyone aged 16 or over. Section 19(2) defines a housing list for the purpose of sections 19 and 20 of the 1987 Act.

Section 8: Allocation of housing

19. This section amends section 20 of the 1987 Act to provide additional criteria governing the operation of the housing list by a local authority or registered social landlord. Subsection (2) states that reasonable preference in allocations must be given to persons – among others – both homeless and threatened with homelessness. Subsection (3) sets out those factors which cannot be taken into account by a local authority or registered social landlord in making allocation decisions.
PART 2 – TENANTS OF SOCIAL LANDLORDS

CHAPTER 1 – SCOTTISH SECURE TENANCIES

Section 9: Scottish secure tenancy

20. This section specifies which tenancies are to be Scottish secure tenancies and makes provision for transition from existing tenancies to the Scottish secure tenancy.

21. The Scottish Ministers may make orders specifying the dates on or after which the tenancies of any prescribed landlord or description of landlord will be Scottish secure tenancies. This would enable all tenancies to convert at the same time, but allows for phased implementation where necessary. Such orders may (subsection (2)) include provisions to protect the rights of the landlord, the tenant or a third party (eg a person with a heritable security over the property) in relation to a tenancy which is converted to a Scottish secure tenancy. An order under that subsection could be used to protect the terms and conditions of the right to buy for existing tenants.

22. In general, a tenancy will only be a Scottish secure tenancy if:
   - the house is let as a separate dwelling;
   - the tenant is an individual and the house is the tenant’s only or principal home; and
   - the landlord is a local authority landlord (as defined in subsection (3)), a registered social landlord, or a water or sewerage authority.

23. Schedule 1 and section 10 define tenancies which could meet these general criteria but will nonetheless not be Scottish secure tenancies.

24. Subsection (7) provides that a tenancy which is a Scottish secure tenancy will continue to be one even where the landlord is no longer a local authority, a registered social landlord or a water or sewerage authority.

25. Subsections (5) and (6) make provisions for joint tenancies, including a requirement on a landlord to grant a joint tenancy, where it is requested in writing, unless it has reasonable grounds for not doing so. Subsection (8) protects the tenancy rights of those tenants who have been temporarily housed elsewhere.

Section 10: Exception for co-operative housing associations

26. This section makes special provision for registered social landlords who are co-operative housing associations, as defined in section 300(1)(b) of the 1987 Act. Tenancies of such co-ops are not Scottish secure tenancies.
Section 11:  Restriction on termination of tenancy

27. This section sets out the five ways in which a Scottish secure tenancy may be terminated:
   • by a court order for recovery of possession on one of the 15 grounds in Part 1 of schedule 2 (under section 13(2));
   • where a tenancy has been abandoned (by operation of section 15(2));
   • on the death of a tenant, and subject to the provisions relating to succession (by operation of section 17);
   • by written agreement between the landlord and tenant;
   • by 4 weeks’ notice given by the tenant to the landlord.

28. Subsections (2) and (3) provide security of tenure for a tenant who is being accommodated temporarily in another house while their own house is not available for occupation.

Section 12:  Proceedings for possession

29. This section entitles a landlord under a Scottish secure tenancy to seek a court order for recovery of possession of a house. Subsections (2) to (4) specify the procedures which the landlord must follow in such circumstances, and include a power for the Scottish Ministers to prescribe the form of notice to tenants. Such a notice must include the ground on which the court order will be sought, which must be one of the 15 grounds set out in Part 1 of schedule 2, and must be served at least 4 weeks before the court order is sought.

Section 13:  Powers of court in possession proceedings

30. This section sets out the circumstances in which the court will make an order for terminating a Scottish secure tenancy and giving the landlord the right to recover possession of the house on a ground set out in Part 1 of schedule 2. In relation to grounds 1 to 7 (“conduct grounds”) the court must make the order where it considers it reasonable to do so. In relation to grounds 8 to 14 (“management grounds”), the court must make the order if it considers other suitable accommodation will be available for the tenant. In relation to ground 15, the court must make the order where it considers that it is reasonable to do so and that other suitable accommodation will be available. Suitability of alternative accommodation is determined by reference to Part 2 of schedule 2. In relation to ground 10, if the house is being redeveloped the court can make an order entitling the tenant to return to the house when the work has been completed.

Section 14:  Abandoned tenancies

31. This section enables a landlord under a Scottish secure tenancy to take action to secure and take possession of a house which appears to have been abandoned by the tenant. The procedures to be followed before taking possession are set out in section 15.
Section 15: Repossession

32. This section sets out the procedures which must be followed by a landlord wishing to take possession of an abandoned house, in the circumstances defined in section 14. The landlord must:

- give 4 weeks notice in writing (subsection (1));
- make sufficient inquiries to satisfy itself that the house is unoccupied and that the tenant has no intention of re-occupying it (subsection (2)); and
- serve a further notice on the tenant (subsection (2)), which brings the tenancy to an immediate end and allows the landlord to take possession of the house without further proceedings.

33. Subsection (4) gives an order making power to the Scottish Ministers to outline arrangements for the securing of tenants’ belongings in their absence and arrangements for their return or disposal.

Section 16: Tenant’s recourse to court

34. This section gives a Scottish secure tenant whose house has been repossessed in accordance with the abandonment procedures in sections 14 and 15 a right of appeal to the court. Where the court finds that the landlord acted wrongly or unreasonably it must order the tenancy to continue or direct the landlord to provide other suitable accommodation (as defined in Part 2 of schedule 2).

Section 17: Succession to Scottish secure tenancy

35. This section and schedule 3 make provision for succession to a Scottish secure tenancy on the death of the tenant. The section includes a right to a second round of succession (subsection (2)). Schedule 3 defines who is a person qualified to succeed to a tenancy and the circumstances in which they can do so. A qualified person is, first, the tenant’s spouse or cohabitee, or a surviving joint tenant; second, a member of the tenant’s family aged 16 or over; or, third, a carer who is providing, or who has provided, care for the tenant or a member of the tenant’s family. The carer must be aged 16 or over, and have given up his or her previous only or principal home, to be qualified to succeed. In all three cases the house of the deceased tenant must have been the only or principal home for the qualifying person.

36. Where a house has been designed or substantially adapted for the use of persons with special needs, then paragraph 5 of schedule 3 specifies that only spouses, cohabitees, joint tenants or persons with special needs can succeed to that tenancy. Other persons who would otherwise be qualified to succeed have a right to alternative suitable accommodation by virtue of subsections (6) and (7).

37. Subsection (8) clarifies that tenancies are not terminated on the death of a joint tenant if the remaining tenant or tenants continue to live in the house. Subsection (9) makes provision for
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a person who would have succeeded to the tenancy, but who cannot because the second round of succession has passed, to remain in the house for 6 months but not under a Scottish secure tenancy. Subsection (10) makes provision for a Scottish secure tenancy to continue (for the purposes of succession) where a tenant has to move to alternative accommodation.

Section 18: Tenant’s right to written tenancy agreement and to information

38. This section gives tenants a right to a written tenancy agreement and to information about the landlord’s policies and procedures. It permits the Scottish Ministers to issue guidance as to the form of the tenancy in a model agreement. Subsection (4) requires landlords to provide a prospective tenant with information about the right to buy prior to the taking up of a tenancy (this could include, for example, whether or not there are any relevant exemptions). They are also required to notify tenants annually about such arrangements. Subsection (5) requires the landlord to notify the tenant of any changes to the legislation, including subordinate legislation, governing the right to buy which might affect the tenant’s right to purchase. Subsection (6) outlines information that the landlord must supply in relation to its complaints procedure. It also lists other information that it must supply on request.

Section 19: Restriction on variation of tenancy

39. This section limits the way in which changes to a Scottish secure tenancy can be made. Rents and other charges can be varied, in accordance with section 20 or by court order under section 21, but otherwise the terms of the tenancy can only be changed by written agreement between the landlord and tenant, in line with the Requirements of Writing (Scotland) Act 1995 (which sets out provisions relating to the signing of contracts).

Section 20: Increase in rent or charges

40. This section requires landlords to give each tenant four weeks notice, in writing, before increasing rents or other charges. Where a landlord proposes to increase rents generally, it must first consult those tenants who would be affected.

Section 21: Variation of tenancy by court order

41. This section allows either a landlord or a tenant to apply for a court order to change a term of Scottish secure tenancy where there is a dispute on a variation in terms. The grounds on which a tenant can seek a change are set out in subsection (2).

42. The court has power to make any change in a term of a tenancy, apart from the level of rent or charge, that it considers reasonable having particular regard to safety considerations. The court can require the tenant to pay compensation to the landlord for any financial loss arising from the variation, and to consult anyone who might be affected by the proposed change.
Sections 22 to 26 and schedules 4 and 5: Repairs and improvements

43. Taken together, these provisions set out the rights and responsibilities of the landlord and tenant under a Scottish secure tenancy with respect to repairs and improvements to the house.

Section 22: Repairs

44. This section, with schedule 4, puts the landlord under an obligation to ensure that the house is kept wind and watertight and reasonably fit for human habitation. It enables the tenant to have essential repairs done within a maximum time-scale, in line with regulations made by the Scottish Ministers. Secure tenants currently have this right under the Secure Tenants (Right to Repair) (Scotland) Regulations 1994 (SI 1994/1046).

Section 23: Landlord’s consent to work

45. This section and Part 1 of schedule 5 require a tenant to get the written consent of the landlord to undertaking any work, other than interior decoration, on a house. The landlord must not unreasonably withhold its consent, but can set any reasonable conditions with respect to the work, including any standards that the work must meet. The Scottish Ministers may give guidance to landlords on such conditions or standards of work. Part 1 of schedule 5 includes provision for a tenant to appeal against either a refusal by a landlord to allow a tenant to undertake work, or against a particular condition imposed by the landlord.

Section 24: Reimbursement of cost of work

46. This section applies when a Scottish secure tenancy comes to an end. Where a tenant has carried out improvement work to the house, with the consent of the landlord, the landlord can make a payment to the tenant, or his representative, up to the cost of the improvement work, after deducting the amount of any grant paid by a local authority through a repairs or improvements grant (a “grant paid or payable under Part XIII of the 1987 Act”).

Section 25: Right to compensation for improvements

47. This section sets out the detailed arrangements to support a tenant’s entitlement under the right to compensation for improvement. Where the tenant has carried out certain improvement works with the consent of the landlord they are entitled to be compensated for the cost of those works when the tenancy comes to an end. The Scottish Ministers can make regulations prescribing:

- those works which qualify for compensation;
- certain circumstances in which compensation is not payable;
- minimum and maximum levels of compensation;
- the procedures to be followed, and the factors to be taken into account, when claiming for or determining compensation.

Section 26: Effect of work on rent

49. This section prevents a landlord increasing the rent of a tenant, the successor to the tenancy or the successor’s spouse or cohabitee to reflect any increase in the value or amenities of the house arising from improvement works undertaken and agreed with the landlord by that tenant.

Section 27: Landlord’s consent to subletting etc.

50. This section entitles a tenant to assign or sub-let their house or to take in a lodger with the consent of the landlord. That consent may only be withheld if there are reasonable grounds to do so; subsection (3) sets out examples of what such grounds might be. Those grounds can be modified by the Scottish Ministers by order. Part 2 of schedule 5 provides, among other things, a right of appeal to the court by a tenant whose landlord refuses consent.

Section 28: Landlord’s consent to exchange of house

51. This section provides a tenant with a right to exchange their house with another tenant, providing that both tenants are tenants of a registered social landlord or a local authority and that the landlords of both tenants have given their consent. Such consent may only be refused if there are reasonable grounds to do so; subsection (3) sets out examples of what such grounds might be. Those grounds can be modified by order of the Scottish Ministers. Part 2 of schedule 5 provides, among other things, a right of appeal to the court by a tenant whose landlord refuses consent.

Section 29: Short Scottish secure tenancies

52. This section and schedule 6 set out the arrangements for a new short form of tenancy in the social rented sector to be called a short Scottish secure tenancy. Subsection (1) sets out the basic conditions for this type of tenancy to apply, and requires the serving of a notice by the landlord on the prospective tenant that this type of tenancy will be offered. Schedule 6 sets out a range of circumstances in which a landlord can offer a short tenancy: these include tenants who have previously been evicted for anti-social behaviour; temporary lettings; and properties leased by the landlord from another body. The Scottish Ministers under subsection (3) may modify this list by order.

53. A short Scottish secure tenancy will be for a term of not less than 6 months and on its expiry may continue by tacit relocation (i.e. it will automatically be renewed for the same length of time), or by express agreement between landlord and tenant. Subsection (6) sets out the terms of a short Scottish secure tenancy and indicates that the full Scottish secure tenancy will apply with the exception of section 9(2) and (4) (which apply to existing tenancies which become
Scottish secure tenancies); section 9(6) and schedule 1 (tenancies which cannot be Scottish secure tenancies); section 11 (relating to termination of tenancy); and succession rights under section 17 and schedule 3. As a short Scottish secure tenancy is not included in the definition of a Scottish secure tenancy (section 99), the right to buy provisions do not apply to it. Provisions relating to tenant participation apply by virtue of sections 45 and 46.

Section 30: Recovery of possession

54. This section sets out the arrangements under which a landlord may recover possession of a short Scottish secure tenancy. Subsections (2) to (4) set out the arrangements in more detail including the service of a notice and raising of proceedings. Subsection (5) outlines the circumstances when a court must make an order for recovery of possession: where the tenancy has reached its term, tacit relocation is not operating (i.e. it will not be automatically renewed for the same length of time) and no further contractual tenancy has been entered into, and where a notice has been served.

Section 31: Conversion to a Scottish secure tenancy

55. Where a tenant has been granted a short Scottish secure tenancy because they have previously been evicted from a tenancy for anti-social behaviour, this section provides for the automatic conversion of the short tenancy to a full Scottish secure tenancy after a period of 12 months, unless the landlord has served a notice to quit on the tenant. Subsections (2) and (3) make further provisions for cases where a landlord has served such a notice to quit. There is no such automatic conversion for tenants who have been granted a short tenancy on other grounds.

Section 32: Appeals

56. This provision establishes a right of appeal to the courts against a decision of a landlord not to offer either a Scottish secure tenancy or a short Scottish secure tenancy.

Section 33: Application of sections 18 to 28 to other tenancies

57. This section applies the rights and obligations of the Scottish secure tenancy to a tenancy which would be a Scottish secure tenancy if it were not tied accommodation or part of a building which is primarily for non-housing use. The key provisions of the Scottish secure tenancy which do not apply to such tenancies relate to termination of the tenancy and repossession of the house; to joint tenancies; to succession rights; to the right to buy; and to the tenant participation provisions.

Section 34 and 35: Notices and interpretation of Chapter 1

58. These sections clarify what is meant by certain terms used in this Chapter of the Bill.
CHAPTER 2 – RIGHT TO BUY

59. This Chapter amends existing provisions on right to buy in the 1987 Act and inserts some new provisions. In general, tenants who currently have the right to buy will continue to do so on existing terms until their tenancy comes to an end. However the rent to mortgage scheme, lender of last resort and fixed price option provisions are repealed, with transitional protection for those currently benefiting from those provisions. The Chapter extends the right to buy to all tenants with a Scottish secure tenancy subject to a number of exemptions in certain specified circumstances. Tenants who did not previously have the right to buy, and all tenants entering into new tenancies, will have the right to buy on the revised terms provided for in this Chapter.

Section 36: The qualifying conditions

60. The amendment made by paragraph (a) ensures that a tenant’s right to buy is preserved if there is a change in their landlord or the status of their landlord after the tenancy is granted.

61. Before being entitled to exercise their right to buy a tenant has to have lived in accommodation rented from a relevant landlord for a certain period of time. That period is currently 2 years; paragraph (b) extends that to 5 years for tenants who did not previously have the right to buy and for all new Scottish secure tenants.

Section 37: Exemptions from right to buy

62. This section amends the range of circumstances under which the right to buy cannot be exercised.

63. Subsection (2) repeals the existing provisions relating to specialist and group housing. These are replaced by a single exemption at subsection (5) for groups of houses designed for persons with special needs with or situated near special facilities, or where tenants are in receipt of housing support. Subsection (2) also ends the current exemption under section 61(4)(b) of the 1987 Act for registered housing associations which have not received public subsidy.

64. Subsection (4) amends the exemption for some charitable housing associations. Any registered social landlord which is a Scottish charity on 1 January 2001 will be exempt from the right to buy.

Section 38: Limitation on right to buy: registered social landlords

65. This section inserts a new section 61A into the 1987 Act suspending the right to buy for tenants of a registered social landlord with tenancies in homes not previously subject to the right to buy. This is intended to ensure that registered social landlords have time to adjust to the new arrangements. Subsection (3) of the new section sets a time period for this suspension of 10 years from the date on which the tenancies of the landlord must be Scottish secure tenancies by virtue of an order under section 9(1).
66. Subsection (4) of the new section gives powers to the Scottish Ministers to extend this suspension for a further period or periods as they see fit, subject to a maximum of 10 years for each further period. Subsections (7) to (9) set out the arrangements whereby registered social landlords can end this suspension on a voluntary basis.

67. Subsection (2) of the new section sets out the tenancies which are not included in this suspension. These are tenancies:

- of properties acquired by the landlord after the date when the landlord becomes subject to the Bill’s provisions on Scottish secure tenancies by virtue of an order under section 9(1);
- of properties built after that date where a grant was paid to the landlord;
- of properties first let by the registered social landlord before 2 January 1989 i.e. houses which would have been let initially with a secure tenancy and the right to buy.

68. There is a power for the Scottish Ministers to specify further exemptions by order.

Section 39: Limitation on right to buy: pressured areas

69. This section inserts two new sections into the 1987 Act. The new section 61B allows the Scottish Ministers to designate particular areas as pressured areas for a period of up to 5 years. Any new tenancy granted in a pressured area during that period is exempt from the right to buy for that period.

70. Subsection (1) of the new section specifies that before being designated as pressured an area must meet two criteria: first, the availability of housing provided by the local authority or registered social landlords must be, or be likely to be, substantially less than the need in that area, and second, the exercise of the right to buy in that area must be likely to make that shortage worse. Subsections (7) and (8) provide for a designation to be amended or revoked by the Scottish Ministers; and to be extended for a further period or periods of up to 5 years each.

71. The new section 61C sets out the procedure for designating a pressured area: the proposal must be put forward by a local authority (see section 61B(1)) after local consultation, and the Scottish Ministers can set out in guidance the form of the proposal and the information it should include.

Section 40: Limitation on right to buy: arrears of rent, council tax, etc.

72. This section inserts two new provisions into the 1987 Act. Subsection (1) inserts section 61D which entitles the landlord to refuse an application under the right to buy from a tenant or joint purchaser who has arrears of rent or other charges, of council tax, or of water and sewerage charges. Slightly different provisions apply in each of these three cases to reflect the differences in the bodies to which the arrears may be due.

73. Subsection (2) amends section 63 of the 1987 Act to require a tenant of a registered social landlord who has applied to exercise their right to buy to provide a certificate from the local
authority stating whether or not they have any arrears of council tax or water or sewerage charge, and if so the amount of these arrears. The local authority is required to issue such a certificate free of charge and within a specified time.

Section 41: Limitation on right to buy: conduct

74. This section inserts a new section 61E into the 1987 Act which suspends the right to buy from any person whose house is being repossessed on one of the conduct grounds in paragraphs 1 to 7 of schedule 2 to the Bill.

Section 42: Discounts

75. Section 62 of the Housing (Scotland) Act 1987 sets out provisions for calculating the price at which a property should be sold under the right to buy. This section amends those provisions in the following ways for new Scottish secure tenants. (The existing provisions will continue to apply to tenants who currently have the right to buy by virtue of an order made under section 9(1)).

76. Subsection (2) changes the level of discount to be applied to the market value of the house. It removes the distinction between houses and flats. It sets a new minimum discount of 20% for all those with a 5 year eligibility period. It changes the rate at which the level of discount increases from the minimum, to 2% of the market value for every year beyond 5 years that the tenant has occupied a house let by a relevant landlord. It reduces the maximum level of discount from 60% of the market value of the house to 50%. Finally, it sets a cap on the maximum level of discount at £20,000. This cap can be varied by an order under the subsection inserted in section 62 by subsection (7).

77. In calculating a discount, section 62 of the 1987 Act requires account to be taken of any previous discounts received by the applicant(s). Subsection (4) inserts a new provision in section 62 making clear that a previous discount received by two or more persons jointly should be deemed to have been received in equal proportions.

78. Subsection (3) broadens the definition of appropriate persons for calculation purposes of any previous discount to be deducted from discount entitlement. The definition in section 62(4)(a)(i) to (iv) of the 1987 Act refers to the tenant, the tenant’s spouse, or joint tenant. These will now reflect cohabitees of either sex, by virtue of section 96. Subsection (5) makes technical changes consequent on the changes made by subsections (2) and (3).

79. Subsections (6), (7) and (8) allow the Scottish Ministers to vary the discount rates and set different discount regimes, including different caps, in different areas of the country by order.
Section 43: Assistance to tenants to obtain other accommodation

80. This section amends section 66 of the Housing (Scotland) Act 1988 to allow a local authority (with the approval of the Scottish Ministers) to establish a grant scheme to enable Scottish secure tenants of councils and registered social landlords to buy or extend a house, or to buy land and build a house. That section already allows such a scheme to include provisions for determining which tenants could qualify for grant assistance; subsection (3) inserts a new subsection to make clear that such provisions may in particular specify tenants in pressured areas as qualifying tenants. Subsection (2) extends the scope of these schemes so that grants can be paid to tenants of registered social landlords.

Section 44: Right to buy: miscellaneous repeals

81. This section abolishes the rent to loan scheme and removes the duty of the local authority to act as lender of last resort to tenants who wish to exercise the right to buy but are unable to raise the necessary finance elsewhere. The repeal of section 69(1A) removes the cut-off date which currently limits the scope for refusing the right to buy for certain houses provided for elderly persons and first let before 1 January 1990. A landlord subject to the right to buy can apply to the Scottish Ministers to refuse an application under the right to buy for any house which has been designed or adapted for special needs purposes.

CHAPTER 3 – TENANT PARTICIPATION

Section 45: Tenant participation

82. This section introduces new provisions requiring local authorities and registered social landlords to have tenant participation strategies in place as directed by the Scottish Ministers. It also places a duty on them to maintain a register of tenants groups meeting certain criteria, and it provides a right of appeal for such groups in relation to registration and deregistration.

Section 46: Consultation with tenants and registered tenant organisations

83. This section introduces a new provision to enable both individual tenants and registered tenants groups to be consulted by the landlord on issues affecting them. Subsection (1) requires the landlord to have regard to representations by tenants or tenants groups. Subsection (2) sets out the relevant proposals to which this applies.

Section 47: Tenant management agreements

84. This section replaces the existing provisions of sections 22 and 22A of the 1987 Act and sets out arrangements for a tenant management co-operative to enter into an agreement with a local authority landlord, a registered social landlord or a water or sewerage authority to manage the landlord’s houses. The Scottish Ministers must approve such management bodies and the terms of the agreement between the landlord and the co-operative. There is a right of appeal to
Ministers in the case of an inability to agree terms or a refusal by the landlord to enter into an agreement.

**Section 48: Tenant management agreements: further provision**

85. This section defines the range of functions which a landlord may make subject to a tenant management agreement. *Subsections (4) and (5)* make clear that a local authority’s houses which are the subject of a tenant management agreement are still to be treated as the authority’s houses for the purposes of the authority’s Housing Revenue Account and related financial support from the Executive.

**PART 3 – REGULATION OF SOCIAL LANDLORDS**

**CHAPTER 1 – REGISTERED SOCIAL LANDLORDS**

**Section 49: The register of social landlords**

86. This section places a duty on the Scottish Ministers to maintain an accessible register of social landlords. It also arranges for the transition from the current register of housing associations maintained by Scottish Homes to the new register. The new register will include all those bodies who are currently on the Scottish Homes register, whether they are registered by statute or under contract. The section also provides that Ministers must notify the bodies concerned at least one month before the change in registration arrangements occurs.

**Section 50: Eligibility for registration**

87. This section sets out the basic criteria for registration as a social landlord. A body is eligible if it is either an industrial and provident society or a registered company. In either case the body must have its registered office in Scotland. The body must not trade for profit, and must have housing as one of its objects, although it may be engaged in other activities as provided for in this section. The Scottish Ministers have the power to amend the permissible additional purposes, objects and powers by order, but any such changes will only affect bodies registered subsequently.

**Section 51: Registration**

88. This section gives the Scottish Ministers the power to register as a social landlord any body which is eligible and to determine the way in which such application must be made. Ministers can charge for registration. Ministers must also inform the relevant registrar when an industrial and provident society or company registered under the Companies Act 1985 is registered with them.
Section 52: Removal from the register

89. This section sets out the circumstances in which the Scottish Ministers may remove a body which is on the register of social landlords, and the process for so doing. The criteria for removal are that the body is no longer eligible for registration, has ceased to exist or does not operate, or otherwise meets the criteria for removal from the register established by Ministers under section 53. Ministers must give the body at least 14 days notice before removing it from the register and must inform the relevant registrar who must record the removal.

Section 53: Criteria for registration or removal from register

90. This section places a duty on the Scottish Ministers to establish and publish criteria for registration as a social landlord or for removal from the register. Ministers must have regard to these criteria when deciding whether or not to register or de-register a body, and before establishing or varying any criteria they must consult bodies representing registered social landlords.

Section 54: Appeal against decision on registration or removal

91. This section provides an appeal mechanism for bodies who are aggrieved by a decision of the Scottish Ministers not to register it as a social landlord or to remove it or not remove it from the register. The appeal is to the Court of Session, and where the appeal is against the decision relating to the removal of a body from the register Ministers must not remove the body from the register until the appeals process is complete. Ministers must also give notice to the relevant registrar of any appeal against a decision relating to the removal of a body from the register.

Section 55: Regulation of registered social landlords

92. This section introduces schedule 7, which makes detailed provision about the regulation of registered social landlords. The schedule is largely a restatement and updating of the provisions of the Housing Associations Act 1985 (most of which is repealed by paragraph 10 of schedule 9. Parts 1 and 2 of schedule 7 include provisions which cover:

- the control of payments by a registered social landlord to members, officers and employees of the landlord;
- the constitution of registered social landlords, and changes to the rules of the registered social landlord;
- powers to remove members of the governing body or to appoint new members to the governing body;
- the amalgamation, dissolution, rearrangement or reconstruction of the registered social landlord; and,
- powers to deal with circumstances where a registered social landlord is being wound up or dissolved.
This document relates to the Housing (Scotland) Bill (SP Bill 23) as introduced in the Scottish Parliament on 18 December 2000

93. **Part 3 of schedule 7** allows the Scottish Ministers to lay down requirements as to accounts and audit arrangements for a registered social landlord. **Part 4** gives powers to Ministers to undertake an inquiry into the affairs of a registered social landlord and to take action following an inquiry or audit. Those powers include the power to direct the transfer of part or all of the land of a registered social landlord where Ministers are satisfied that there has been misconduct or mismanagement or where the management of its land would otherwise be improved.

**Sections 56 to 59: Disposal of land and related matters**

94. These sections together set out the provisions governing registered social landlords who wish to dispose of land (including houses). “Disposal” is defined in section 57(6).

**Section 56: Power of registered social landlord to dispose of land**

95. This section provides the basic power for a registered social landlord to dispose of land held by it, subject to sections 57 to 59 and 67 and schedules 7 and 8, and without prejudice to tenants’ right to buy.

**Section 57: Consent required for disposal of land by registered social landlord**

96. This section requires the consent of the Scottish Ministers for any disposal of land by a registered social landlord. Consent may be given generally or in particular circumstances. Before giving their consent, Ministers must have regard to the views expressed by those consulted – section 59 and schedule 8 set out the circumstances in which consultation is to take place.

**Section 58: Disposals not requiring consent**

97. This section specifies those disposals which do not require the consent of the Scottish Ministers – principally the granting of a tenancy or the sale of a property under the right to buy. It includes a power for Ministers to specify further disposals which do not require their consent.

**Section 59: Disposal of land: consultation with tenants**

98. This section requires a registered social landlord to consult its tenants before making a disposal. There are exemptions from this requirement for certain categories of disposals: disposals which do not require consent under section 57 (these are defined in section 58); disposals covered by the alternative consultation arrangements in schedule 8; and disposals of an interest by way of security for a loan.
Section 60: Inspections

99. This section gives the Scottish Ministers powers to carry out an inspection of the management of the affairs of a registered social landlord in relation to the provision of housing accommodation and related services. (The scope of this term is set out in section 74.) An inspector has right of access at reasonable times to the premises of the registered social landlord and to any relevant document, and the landlord must ensure that the inspector is given all information, explanation or other facility which the inspector may reasonably require for the purposes of the inspection. It is a criminal offence not to comply with the requirement of an inspector without a reasonable excuse. This section mirrors the provisions of section 63, which applies to inspections of local authorities’ housing functions.

Section 61: Inspection reports

100. This section requires the Scottish Ministers to issue a report of any inspection carried out under section 60, and to send a copy of it to the registered social landlord. Ministers may also publish any such report. The report must identify any ways in which the landlord’s activities were found to be unsatisfactory. This section mirrors the provisions of section 64, which apply to reports on local authorities’ housing functions.

Section 62: Appointment of manager

101. This section allows the Scottish Ministers to appoint a special manager to a registered social landlord. They can either appoint a manager themselves or can require the landlord to appoint a manager. Ministers can make such an appointment to ensure that the management of the affairs by a registered social landlord is of an appropriate standard either generally or in relation to a particular matter, and they may specify which of the affairs of the landlord the manager is to manage. Subsection (2) allows Ministers to determine the period and terms and conditions for the appointment of the manager. The manager will have general powers to do what is necessary to fulfil their functions, and may also be given specific powers by Ministers.

CHAPTER 2 – LOCAL AUTHORITY HOUSING MANAGEMENT

Section 63: Inspections

102. This section provides powers for the Scottish Ministers to carry out an inspection of the exercise of the functions of a local authority in relation to the management of housing accommodation and the provision of related services. The provisions of this section mirror the provisions of section 60, which applies to inspections of registered social landlords’ housing activities.
Section 64: Inspection reports

103. This section requires the Scottish Ministers to issue a report of an inspection carried out under section 63 and send a copy to the local authority. The provisions mirror the provisions of section 61, which applies to reports on registered social landlords’ housing activities.

Section 65: Remedial plans

104. This section allows the Scottish Ministers to require a local authority to prepare and submit to them a remedial plan setting out the authority’s proposals for dealing with matters which have been found to be unsatisfactory in an inspection report. Before requiring a local authority to submit a remedial plan, Ministers must send a draft requirement to the authority, specifying a period within which the authority may make comments to Ministers on the proposed requirement. Ministers must have regard to those comments before imposing any requirement on the local authority to produce a remedial plan. When a local authority has submitted a remedial plan, Ministers may approve it, reject it or approve it with modifications. They may also approve it and impose conditions as to its adoption and implementation by the authority. If a plan is approved by Ministers the authority must adopt and implement it in accordance with any conditions imposed. When a plan is rejected, the authority must prepare a revised plan and submit it to Ministers.

Section 66: Appointment of manager

105. This section empowers the Scottish Ministers to carry out an inspection of the implementation of a remedial plan, imposed under the previous section, by a local authority. Where, as a result of such an inspection, Ministers consider that the remedial plan is not being implemented satisfactorily, they may appoint a manager to exercise such functions of the authority as they specify. Such functions must be in relation to the management of housing accommodation and the provision of related services. Such a manager must not be appointed before consultation with the local authority, representative bodies of local authorities, and the Accounts Commission for Scotland, and Ministers must have regard to any comments received from those bodies before making an appointment of a manager. A manager is to be appointed on such terms and conditions and for such period as Ministers may determine. The manager has general powers necessary to carry out the functions imposed on them, and also has such specific powers as Ministers may specify.

CHAPTER 3 – COMMON PROVISIONS

Section 67: Disposals of tenanted houses: consultation and consent

106. This section, together with schedule 8, sets out the duties of local authorities, registered social landlords and the Scottish Ministers in relation to consultation of tenants before a disposal which would result in a change of landlord. It includes a requirement to carry out a ballot of affected tenants before their houses are transferred into new ownership, and a duty on Ministers
not to give their consent to such a transfer unless they are satisfied that a majority of those expressing a view in the ballot wish the disposal to proceed.

107. Subsection (2) provides that no tenanted property of a local authority or registered social landlord should be transferred to any landlord other than a registered social landlord, unless Ministers are satisfied that transfer to a registered social landlord is not appropriate.

Section 68: Power to obtain information

108. This section and section 69 make provision for the Scottish Ministers to have access to the information held by a registered social landlord or a local authority in connection with the management of housing accommodation and the provision of related services. Ministers can serve a notice on a person requiring the person to provide them or a person authorised by them with such information or documents as they may specify. Subsections (3) to (6) specify the persons on which a notice may be served: in general, no notice is to be served on an officer, member, employee or agent of the local authority or landlord unless a notice has previously been served on the local authority or landlord and has not been complied with or the information or documents are not believed to be in the possession of the local authority or landlord.

Section 69: Power to obtain information: further provision

109. This section contains supplementary provisions in relation to the power of the Scottish Ministers to obtain information under section 68. It includes provisions relating to the disclosure of confidential information. It provides technical clarification of what is meant by a document and producing it, and entitles a person receiving documents under section 68 to copy or make extracts of them. This section also makes it a criminal offence to fail to do anything necessary to provide information under section 68, or to alter, suppress or destroy a document which a person may have been required to produce.

Section 70: Issue of guidance by the Scottish Ministers

110. This section gives the Scottish Ministers the power to issue guidance with respect to the management of housing accommodation and related services by local authorities and registered social landlords. Subsection (2) exemplifies the issues and activities on which guidance may be issued. Before issuing any guidance, or revised guidance, Ministers must consult such persons as they think fit. Subsection (6) provides that any guidance issued under this section, under Part 1 of the Bill or under section 37 of the Housing (Scotland) Act 1987 (homelessness), is relevant in determining whether or not there has been mismanagement by a local authority or a registered social landlord, or whether action needs to be taken to ensure a proper level of management.
Section 71: Code of good practice

111. This section places a duty on the Scottish Ministers to publish a code of practice on the operation of regulation under this Part of the Bill.

Section 72: Charges for regulatory functions of the Scottish Ministers

112. This section allows the Scottish Ministers to charge a local authority or registered social landlord an amount in respect of their expenses in exercising their regulatory functions in connection with the provision of housing accommodation and related services by the authority or landlord. Ministers are required to consult the authority or landlord before charging them.

CHAPTER 4 – INTERPRETATION OF PART 3

Section 73: Meaning of “subsidiary” and “associate”

113. This section defines terms which occur in this Part of the Bill in relation to the provisions concerning the power to obtain information from registered social landlords.

Section 74: Interpretation of Part 3

114. This section clarifies the meaning of certain terms which occur in this Part of the Bill.

PART 4 – SCOTTISH HOMES

Section 75: Transfer of functions to the Scottish Ministers

115. This section transfers to the Scottish Ministers the functions currently exercised by Scottish Homes. Those functions are mainly the functions set out in Part 1 of the 1988 Act, which is modified by paragraph 13 of schedule 9 to the Bill.

Section 76: Property and liabilities

116. Under this section the Scottish Ministers may make orders to deal with the transfer of Scottish Homes’ property and liabilities either to them or to such other person as the order specifies, regardless of any pre-existing provision which would act to inhibit the transfer. Ministers may also under this section issue a certificate in order to provide conclusive evidence that a property or liability has or has not transferred.

Section 77: Transfer of staff

117. This section provides that the Scottish Ministers may make an order transferring the staff of Scottish Homes to the staff of the Scottish Administration. The terms and conditions of
transferring staff will be determined by Ministers but, taken as a whole, must not be less favourable than those enjoyed by an individual employed by Scottish Homes immediately before the transfer. *Subsections (3) and (4)* are designed to provide protection to the staff that a transfer of employment under this section is not construed as a break in the continuity of their employment.

**Section 78: Dissolution etc.**

118. This section provides that Scottish Homes as a separate legal entity may be dissolved on a date set by the Scottish Ministers in an order. Ministers may also make an order to deal with any residual matters associated with the transfer of the functions, property, liabilities and staff of Scottish Homes and its dissolution. Provision made under this power may include retaining Scottish Homes in a residuary form to deal with issues arising from its winding up.

**PART 5 – STRATEGIC HOUSING FUNCTIONS OF LOCAL AUTHORITIES**

**Section 79: Local housing strategies**

119. This section entitles the Scottish Ministers to require a local authority to carry out an assessment of housing needs and provision, and the provision of related services, within the local authority’s area for a given period. *Subsection (2)* specifies core factors that a local authority must include within its assessment; there is provision at *subsection (2)(d)* for this to include such other matters as Ministers may specify at the time of requiring an assessment.

120. In addition, a local authority is required to prepare, and submit to Ministers, a local housing strategy. The strategy must cover the exercise of the local authority’s functions both on its own and in co-operation with registered social landlords and other bodies in its area with a view to ensuring the economic, efficient and effective provision of housing and related services in a way which encourages equal opportunities. Provision is made for local authorities to produce, with the agreement of Ministers, joint strategies. *Subsection (5)* makes provision for Ministers to specify such matters as: the period to be covered by the strategy; the matters to be included in the strategy; the procedures and consultation processes to be followed in preparing the strategy; the form and manner of the production of the strategy and its accompanying documentation; and the time by which it must be submitted.

121. The Scottish Ministers must make such requirements of local authorities as are necessary to ensure that every local government area is included in a local housing strategy. The section places a duty upon local authorities to keep their strategy under review and provide information concerning the implementation of their strategies to Ministers upon their request; it also allows for a local authority to modify and resubmit a strategy.
Section 80: Grants for housing purposes

122. This section gives the Scottish Ministers powers to make grants to local authorities for housing purposes of such amount, and subject to such terms and conditions, as they see fit. This grant is intended to allow local authorities to fund registered social landlords and other bodies and existing arrangements will continue for funding expenditure on local authorities own stock. It will be possible, however, for grants to be paid in connection with relevant housing-related debt.

123. **Subsection (3)** establishes that grant payments in respect of housing related debt will be confined to the debt which would otherwise have been charged to the Housing Revenue Account (HRA) under the terms of paragraph 3(a) of Schedule 15 to the 1987 Act. The grant may be towards some or all of the following: the servicing of debt remaining on the HRA following a partial stock transfer; repayments in relation to servicing of debt following a whole stock transfer; debt repayments in respect of breakage costs resulting from the early repayment of debt; and the repayment of principal. Following a whole stock transfer an order, under section 84(2), will remove the duty to keep a HRA.

124. **Subsection (5)** allows a local authority to enter into a management or agency agreement with the Scottish Ministers to enable Ministers to exercise the authority’s functions in relation to some or all of the sums received by the authority under this section.

Section 81: Grants for housing support services

125. This section enables the Scottish Ministers to pay grants for housing support services to local authorities. Grants can be of such amount and subject to such terms and conditions as Ministers see fit. Provision is also made for Ministers to make regulations prescribing the types of service, and categories of accommodation, eligible for grant.

Section 82: Assistance for housing purposes

126. This section provides local authorities with the powers necessary to provide assistance, financial or otherwise, to registered social landlords and other persons for housing purposes and for preventing or alleviating homelessness, and to individuals for constructing and maintaining housing. Where assistance is provided by means of guarantees or indemnities, or from Housing Revenue Account resources, the authority needs to secure the consent of the Scottish Ministers. Assistance is also subject to regulations and guidance made by Ministers under section 83.

Section 83: Assistance for housing purposes: further provision

127. This section allows the Scottish Ministers to set out in regulations and in guidance provisions governing assistance from local authorities to registered social landlords and other persons (including individuals), and provides powers for local authorities to set terms and conditions on the grants that they themselves make. **Subsection (5)** allows Ministers to amend...
earlier legislation so as to ensure that assistance which could be given under this section does not conflict with or duplicate existing powers.

**Section 84: Alteration of housing finance arrangements**

128. This section enables the Scottish Ministers to change the housing finance arrangements of a local authority.

129. Where local authorities transfer ownership of their housing to another body, it will no longer be appropriate to retain the requirement on Ministers to estimate Housing Support Grant in respect of that authority. Similarly, if an authority’s housing stock is transferred there is no need for them to continue to operate a Housing Revenue Account (HRA) under the terms of section 203 of the 1987 Act. **Subsections (1) and (2)** therefore enable Ministers to disapply, by order, the relevant sections of the 1987 Act.

130. **Subsection (3)** establishes that, where a local authority holds land formerly held on the HRA, an order repealing the duty to keep a HRA under subsection (2) may also make provision about the holding of, and accounting for, such land. **Subsection (4)** directs that a local authority disposing of such land cannot do so for other than the best price reasonably obtainable, unless Ministers consent to alternative arrangements. Where such former HRA land is disposed of, **subsections (5) and (6)** allow for Ministers to direct that any receipt from the sale of the land be used to reduce any outstanding former HRA debt, or for some other housing related function.

**PART 6 – GRANTS FOR IMPROVEMENT, REPAIRS ETC.**

**Section 85: Extension of power to make improvement grants**

131. This section amends section 236 (power of local authorities to make improvement grants) of the Housing (Scotland) Act 1987.

132. **Subsection (1)** extends the works eligible for grant to include the provision of heating systems and insulation, replacement of unsafe electrical wiring and installation of mains-powered smoke detectors. **Subsection (2)** details more works in buildings in common ownership that may be eligible for grant.

133. **Subsection (3)** inserts a new section in the 1987 Act to the effect that, where improvement grant is applied for by a tenant, that tenant must have had responsibility for the works in respect of which grant is sought for 2 years previous to application. The new subsection also sets out the terms under which the Scottish Ministers are entitled to vary, by order, the works and cases eligible for grant.
This document relates to the Housing (Scotland) Bill (SP Bill 23) as introduced in the Scottish Parliament on 18 December 2000

Section 86: Application for grant

134. This section amends section 237 of the 1987 Act to extend the information required upon application for a grant to include details of the income and financial circumstances of the applicant. This section also makes it a criminal offence for an applicant to make a fraudulent or misrepresentative application.

Section 87: Age of buildings eligible for grant

135. This section amends section 240 of the 1987 Act with the effect that grant will normally only be paid in respect of houses provided 10 years or more prior to the date of an application for grant. There continues to be provision for grant to be paid in respect of newer housing, where the Scottish Ministers agree to a local authority’s request for permission to do so.

Section 88: Applicant’s contribution to expense of works

136. This section inserts a new section 240A in the 1987 Act with the effect that local authorities will be able to assess the appropriate level of contribution to works made by an applicant. Provision is made for the Scottish Ministers to make regulations concerning the assessment of the financial circumstances of an applicant or by reference to other criteria as Ministers think fit.

137. The section also enables an applicant to appeal the decision of a local authority where the applicant believes a local authority has wrongly assessed the level of the applicant’s contribution. Where the sheriff finds in favour of an applicant there is provision for the decision to be returned to the local authority for reconsideration.

Section 89: Approval of application

138. This section amends section 241 of the 1987 Act requiring local authorities to take account of the approved expense and the applicant’s contribution in advising an applicant of the amount of grant approved.

Section 90: Amount of grant

139. This section amends section 242 of the 1987 Act with the effect that the maximum limit of the approved expense of an improvement grant shall not exceed £20,000. This section provides that the amount of grant awarded shall be the approved expense minus the applicant’s contribution.

140. Provision is also made for the Scottish Ministers to determine cases in which grants shall be paid as a percentage of the approved expense. These “minimum percentage grants” will be determined by order. In such cases a local authority will pay the minimum percentage grant or the amount referred to in paragraph 139 above, whichever is the greater.
This section also makes provision about successive awards of grant where an application for grant is made less than 10 years after an earlier award. Such earlier award or awards are subtracted from the amount of grant awarded. Certain categories of work are exempt from this calculation. Those works include grants made in respect of works to provide standard amenities (under section 244 of the 1987 Act), minimum percentage grants and works to adapt a house for a disabled person (as under section 236 of the 1987 Act).

Section 91: Improvement grants: the tolerable standard and standard amenities

142. This section amends section 86(1) of the 1987 Act to extend the tolerable standard to include a suitably located shower or bath and a wash-hand basin. Section 244 of the 1987 Act is amended so that the standard amenities for the purposes of that section are defined by reference to particular amenities listed in the definition of the tolerable standard.

Section 92: Amount of repairs grant

143. This section amends section 248 of the 1987 Act in relation to maximum amount of repairs grant payable. Provision is made for the new limit, for arrangements concerning tests of resources and for minimum percentage grants etc. to apply to repairs grants as they do to improvement grants.

Section 93: Grants for means of escape from fire

144. This section amends section 249 of the 1987 Act in relation to grants for the provision of means of escape from fire in houses in multiple occupation, where local authorities have served a notice requiring such provision.

Section 94: Improvement of energy efficiency and safety

145. This section adds a new section 250A to the 1987 Act to encourage works to improve energy efficiency and safety. This section will allow local authorities to offer grant applicants the opportunity of having additional work carried out so as to replace unsafe electrical wiring, install a mains-powered smoke detector and to provide thermal insulation and, in the case of buildings in common ownership, a main door entry-phone system and a fire-retardant door at the entry to each house.

PART 7 – MISCELLANEOUS AND GENERAL

Section 95: Local authority maintenance of houses etc. of registered social landlord

146. This section amends the provisions relating to the supply of goods and services by a local authority to certain public bodies to enable a local authority to provide such goods and services to a registered social landlord. Furthermore, a local authority’s ability to carry out works of maintenance for a registered social landlord will not be restricted to “minor” works.
Section 96: Meaning of “family” and “spouse”: cohabitation

147. This section provides definitions of “family” and “spouse” for the purposes of this Act. The terms of this definition recognise same sex relationships and children who are treated in practice as family members.

148. This section also amends section 83 of the 1987 Act to provide for similar recognitions in respect of that Act.

Section 97: Orders and regulations

149. This section sets out the general provisions applying to subordinate legislation to be made under the Bill.

Section 98: Ancillary provision

150. This section gives the Scottish Ministers a free-standing power to make orders containing such ancillary provision as is necessary or expedient for the purposes or in consequence of the Bill.

Section 99: Interpretation

151. This section clarifies the meaning of various expressions used in the Bill.

Section 100: Modification of enactments

152. This section introduces schedule 9 which makes changes to other legislation needed as a consequence of the Bill.

Section 101: Commencement and short title

153. This section allows the Scottish Ministers to set different dates to commence different provisions of the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

154. The Bill will have far-reaching implications for central government, local authorities, registered social landlords, tenants of the socially rented sector, some voluntary organisations
and businesses, and the wider public. The way in which social housing in Scotland is planned, provided and managed is likely to change considerably over the next few years, as local authorities consider transferring houses into community ownership and take on additional strategic responsibilities, and as the role and responsibilities of registered social landlords, Scottish Homes and others also change. The Bill puts in place a new framework which will ensure that this process takes place as smoothly as possible, and that the rights and interests of tenants are protected and promoted throughout.

155. Much of the Bill is enabling legislation which does not of itself impose significant direct costs. Such direct costs as there are will be in the main relatively short term costs, and will be closely associated with the more general process of change. It is not possible therefore to separate out entirely those costs which are an immediate consequence of the Bill provisions from the costs of change more generally. In addition, a number of the provisions in the Bill will require subordinate legislation to be implemented in due course. The detail of this subordinate legislation will also influence the eventual overall costs associated with the Bill and this will be taken into account as the relevant orders and regulations are prepared.

156. This Financial Memorandum therefore summarises the likely broad effect of the Scottish Executive’s proposals giving more details where it is possible to do so. Details of the Executive’s broad spending plans for housing from 2001-02 to 2003-04 were announced in September and are available in “Making a Difference for Scotland: Spending Plans”.

**COSTS ON THE SCOTTISH EXECUTIVE**

157. The key direct costs to the Scottish Executive relate to the dissolution of Scottish Homes, the establishment of a new executive agency and the change in the functions of the new agency. There will be some additional costs as a consequence of extended regulation and monitoring responsibilities which will be offset to some extent by reductions over time in its development planning and funding responsibilities. There will also be a significant increase in the short term in the level of guidance and advice which the Scottish Executive will need to provide. This will relate in particular to the new rights and responsibilities of tenants and landlords under the changes to tenancy and homelessness legislation, the introduction of a single regulatory framework and the introduction of local housing strategies.

158. In addition, the Scottish Executive will continue to bear significant costs in support of local authorities, registered social landlords and others in respect of New Housing Partnerships and transfers to community ownership, development funding and tackling homelessness. This expenditure is not a direct consequence of the Bill, but the way in which it is administered will be affected by changes facilitated by the Bill. Provision has been made in the Executive’s spending plans to cover estimated costs up to the year 2003/04. This includes £375m in respect of New Housing Partnerships and community ownership and £857m as grant-in-aid to Scottish Homes (including funding for its development programme). It also includes provision for tackling homelessness, for improving tenant participation and for additional support to local

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¹ Including £44m in NHS cash balances for use in the repayment of NHP debt principal.
This document relates to the Housing (Scotland) Bill (SP Bill 23) as introduced in the Scottish Parliament on 18 December 2000

authorities in respect of supporting people. Details of some of these resources have already been announced by the Executive; the remainder will be announced shortly.

New executive agency

159. Scottish Homes staff in post when it is dissolved as a non-departmental public body will transfer into, and become members of staff of, the Scottish Executive. It is not possible at this stage to put a precise figure on the number of Scottish Homes’ staff who will transfer but it may be between 500 and 600. The increased running costs of the Scottish Executive arising from the transfer will be found from the grant in aid allocation formerly made to Scottish Homes to meet staff costs.

160. The vast majority of former Scottish Homes staff will transfer to a new executive agency. This new agency will take over responsibility for many of the functions undertaken currently by Scottish Homes although the present scope and nature of these functions will change to take account of the provisions contained in the Bill. This is discussed in more detail below. Detailed consideration is being given to the overall impact of those countervailing changes for the staffing and funding needs of the Agency.

161. The Scottish Ministers will continue to meet the costs of servicing any debt remaining at the time of Scottish Homes’ dissolution from resources which would otherwise have been provided for this purpose through grant in aid.

Changing functions

162. The Bill contains provisions which will increase the costs of regulating the provision of social housing. In particular, the new executive agency will have higher costs for its regulatory functions than Scottish Homes does at present because of the additional responsibilities in respect of local authorities’ housing management functions; the homelessness duties of local authorities and registered social landlords; and the anticipated increase in the number of bodies seeking registration as a social landlord as a consequence of community ownership transfers.

163. At present, the Scottish Executive routes development funding through Scottish Homes (£215m in 2000-01). The Bill provides powers which allow responsibility for this funding to be transferred to local authorities in line with the policy of the Scottish Ministers and, in particular, the criteria that are agreed for this transfer to take place. Over time, the Executive therefore expects there to be a reduction in the costs of the new executive agency relating to this function and in the associated planning function, but there will continue to be a need for the executive agency to advise local authorities on the structure and content of their local housing strategies, to assess these strategies and to monitor councils’ performance in implementing the strategies.

164. The Bill also includes new grant making powers allowing the Scottish Ministers to make payments to local authorities in connection with housing related debt following the transfer of stock. This will be an additional cost to the Executive. It is not possible at this stage to quantify what the final costs will be but as noted above, the Executive’s spending plans make provision
for £375m for community ownership as a whole over the next 3 years. The actual amount spent will be dependent on the number of councils which transfer their housing stock and the size and nature of the residual housing debt. Savings on Housing Revenue Account allocations and Housing Support Grant will help to reduce the overall cost.

New guidance

165. Given the scale of change in Scottish housing that is anticipated over the next few years the Scottish Executive will need to produce additional guidance and models across a number of areas. In particular, these will aim to encourage good practice by local authorities and other landlords in providing the new rights associated with the Scottish secure tenancy and the new responsibilities in connection with homelessness. There will also need to be extensive guidance in respect of local housing strategies and the transfer of responsibility for development funding, and as part of the extended regulatory framework. This will require additional resources to be used by the Executive and the executive agency in the short term but these should be more than repaid by the added value in the provision and management of Scottish housing.

COSTS ON LOCAL AUTHORITIES

166. The Bill will have a significant impact on local authorities in a number of ways, both in their strategic functions and in their capacity as landlords. In particular the Bill’s provisions on homelessness, which include the duty to secure temporary accommodation, are likely to give rise to significant additional costs. The Executive’s spending plans, announced in September, set aside resources to tackle homelessness. This provision includes a total of £27m (£3m, £12m, £12m) over the next 3 years to meet the additional costs placed on local authorities by the homelessness provisions in the Bill.

167. The new duty on local authorities to secure advice and information about homelessness will require resources in addition to those already used for the provision of advice and information. The duty to secure that temporary accommodation is available while advice and assistance is given to homeless people not in priority need will also require some additional resources. This duty will ensure that anyone who is not offered temporary accommodation at present will be offered access to it. This is likely to increase demand for temporary accommodation from people who do not approach the local authority at the moment. This increased demand will require some additional funding to make more temporary accommodation available.

168. The Bill enables the Scottish Ministers to define elements of advice and assistance which should be provided to homeless people. The focus of this proposal is to ensure that local authorities adopt a more proactive approach to advice and assistance by changing the priorities and focus of their services, rather than requiring additional resources, although there may be some additional costs. The duty to produce homelessness strategies is likely to incur some administrative costs, although many local authorities are already fulfilling a strategic role in relation to homelessness.
169. Local authorities, where they remain landlords, will face additional one-off costs in implementing the new Scottish secure tenancy. The Executive will take account of the need to give landlords sufficient time to prepare for the new tenancy and to introduce it in a way which seeks to minimise these costs for landlords. Local authorities will also bear any additional costs resulting from the new statutory requirements to inform and consult tenants and encourage tenant participation. Many local authority landlords will already be informing and consulting tenants but, in future, all landlords will be expected to meet the specified statutory requirements. These costs are a legitimate charge against the rental income of the authority but, in addition, the Executive will be making available £4m of funding over 2 years to support landlords (both local authorities and registered social landlords) and enable them to build sufficient capacity to meet their new obligations under the Scottish secure tenancy in relation to tenant involvement. This will supplement existing Scottish Executive funding to the voluntary sector to support tenant training and development.

170. Some local authorities may also incur additional costs to enable them to meet the standards of housing management against which they will be assessed under the new single regulatory framework. However, those local authorities which are already demonstrating best practice should incur fewer additional costs, while those authorities with most improvement to make should find their additional costs in the short term offset by savings in the longer term as they meet their duty to ensure the economic, efficient and effective provision of housing and related services.

171. While local authorities remain landlords they will also be affected by the exercise of the right to buy. The effect of the Bill will be to reduce the average discount achieved by council tenants which, in turn, will increase the receipts for local authorities resulting from sales. However, this may be offset by a possible reduction in the number of sales achieved as a greater number of properties will be excluded from the right to buy by virtue of the operation of various exemptions and suspensions.

172. The enhanced strategic role the Bill provides for local authorities will also have financial implications. Local authorities (and the other organisations involved in producing local housing strategies) will be required to meet the costs of preparing local housing strategies out of their existing budgets. However, local authorities currently meet the costs of producing housing plans out of their own budgets and they will continue, in future, to get advice and assistance from the executive agency. There will be financial implications for local authorities where they proceed to take responsibility for resource allocation through strategic housing budgets but, at this stage, it is not possible to forecast accurately the scale and timing of these costs which will be taken into account in due course, as part of overall Executive support for local government.

173. Introducing a test of resources under the reforms made to the improvement and repairs grant system will also involve some additional costs being incurred by local authorities. Local authorities will also incur costs in their new role administering and funding housing support services and this will be taken into account in future decisions on Executive support for local government expenditure.
COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

174. Registered social landlords, like local authorities, will face additional costs in implementing the new Scottish secure tenancy.

175. As a result of the Scottish secure tenancy, and the rights associated with it, registered social landlords will be required to take on the costs of consultation, information and the rights to manage and repair, as discussed above in relation to local authorities’ landlord role. Additional funding will be made available to support registered social landlords as part of the additional £4m of funding identified above.

176. As part of the Scottish secure tenancy some registered social landlords will face changing financial implications through the extension of the right to buy. Analysis\(^2\) by the Scottish Executive suggested several possible ways in which a landlord could be detrimentally affected, but concluded that in the final analysis the financial impacts of the right to buy sales will be determined by the specific circumstances of individual organisations, the perceived quality of the services they provide and the way their businesses are developing out with right to buy activity. The provisions of the Bill nevertheless seek to take account of the potential adverse effects in the number of ways, particularly through the provision of a 10 year exemption period for registered social landlords and the possibility of extending this where there are continuing financial viability concerns. The Scottish Executive’s Right to Buy Working Group is considering the detailed arrangements for determining the potential impact of the right to buy on the financial viability of some housing associations.

177. Registered social landlords have indicated that they may incur some additional administrative costs with the introduction of the new arrangements for providing housing support services which would be taken into account in determining the overall cost of these services to the local authority as the commissioning body.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

178. On 14 December 2000, the Minister for Social Justice (Jackie Baillie) made the following statement:

“In my view, the provisions of the Housing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

\(^2\) Evolving the Right to Buy: Evidence for Scotland. Scottish Executive 2000
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

179. On 15 December 2000, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Housing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”