

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

HOUSING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Housing (Scotland) Bill introduced in the Scottish Parliament on 18 December 2000. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 23-EN.

POLICY OBJECTIVES OF THE BILL – GENERAL

2. The Housing (Scotland) Bill is being brought forward as part of the Executive's commitment to social justice and to strengthening Scotland's communities. Housing provision and housing policy have a crucial part to play in achieving those objectives. The Executive believes that individuals prosper in strong and secure communities, and good housing and strong communities lie at the heart of delivering social justice and economic competitiveness. The Bill is intended to contribute to achieving our overall aim of fostering successful balanced communities with high quality affordable houses to rent and to purchase.

3. The core objective of the Bill is to secure a better deal for tenants in the socially rented sector. It is intended to provide the framework which will allow central and local government, voluntary organisations, financial institutions and housing professionals to work together to improve the quality of Scotland's housing and to deliver high quality housing and related services. Although the focus of the Bill is on the socially rented sector, the objective is to deliver better housing across all tenures and help to ensure that a range of decent housing options is available to all, regardless of social, cultural or ethnic background.

4. Within these broad aspirations, the policy objectives of the Bill are:

- to prevent and alleviate homelessness and strengthen the rights of homeless people;
- to provide an enhanced set of rights for tenants in the socially rented sector which reflects the balance of interests between landlords, tenants and the wider community;
- to create a single regulatory framework covering housing across the socially rented sector;

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- to provide for the conversion of Scottish Homes into a new executive agency;
- to enhance the strategic role of local authorities in assessing and tackling local housing needs;
- to update the system of grants available to private owners for improving and repairing their houses.

5. The Bill is one of a number of ways the Executive is pursuing its housing policy. The wider strategy includes providing central heating, insulation and energy advice to pensioners and council and housing association tenants; a Homelessness Task Force set up to review and tackle the causes and nature of homelessness in Scotland; support for a range of New Housing Partnerships; support for the Rural Partnership for Change Initiative, led by Highland Council, which aims to develop innovative ways to tackle housing pressure and target resources effectively in rural areas; encouraging the development of mixed tenure communities with opportunities for both social renting and owner-occupation; and ensuring that housing policy promotes social inclusion, equality of opportunity and the regeneration of communities by focusing resources on those households and communities most in need.

6. The Bill is an important part of the Scottish Executive's provision of new solutions to familiar problems – homelessness, inadequate housing, variable standards of housing management, and demoralised communities. It provides the basis for housing strategies and policies which look beyond the bricks and mortar of the stock to the other factors which can help to fulfil housing needs and aspirations across Scotland. It provides the basis for attracting new investment into housing through community ownership and gives tenants a greater say in how their housing is provided and managed.

CONSULTATION – GENERAL

7. The Bill represents a step forward in the debate and consultation process on housing in Scotland that began under the UK Government and was carried forward by the Scottish Executive. The process began with the UK Government's publication in February 1999 of the Green Paper *Investing in Modernisation – An Agenda for Scotland's Housing*. This was a wide-ranging consultation paper intended to focus the terms of the debate on long term housing strategy for the, then incoming, Scottish Parliament and Executive. On publishing the summary of the 195 responses to the Housing Green Paper in September 1999, the Minister for Communities announced the Scottish Executive's intention to bring forward housing legislation.

8. In June 1999 the Minister for Communities established the Housing Interests Group. This Group, which has met on a number of occasions, is chaired by the Minister and includes bodies that represent the interests of landlords, tenants, local authorities, lenders, housing professionals and homeless people. The Housing Interests Group has provided a forum for a discussion of a number of key policies which are being taken forward in the Bill. In addition, the first stage of the Homelessness Task Force's work focused on the need for changes in the homelessness legislation and its proposals were developed by all the organisations represented on the group.

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The Executive has incorporated these proposals in the Bill. Throughout the process officials met and consulted a wide range of interest groups, including groups representing disabled people and those from ethnic minorities.

9. The Scottish Executive published its consultation document *Better Homes for Scotland's Communities: The Executive's proposals for the Housing Bill* on 5th July 2000. The consultation period ran to September 29th. During this time 3,300 copies of the consultation paper, and a further 500 copies of a short summary of the document, were sent out by the Executive. Those receiving a copy of the consultation paper included COSLA, the Scottish Federation of Housing Associations, lenders, local authority officials, housing association officers, voluntary organisations, tenants' groups, equalities groups, church organisations, MSPs, MPs, MEPs, UK government departments, a range of business and professional organisations and individuals. The summary document was also available in other formats and in other languages, including Urdu, Bengali, Punjabi, Chinese, Arabic and Gaelic.

10. In addition to seeking written responses through the publication of the consultation document, Ministers and housing officials spoke at a number of conferences and meetings across Scotland. The Chartered Institute of Housing, the Council of Mortgage Lenders, the Chartered Institute of Public Finance and Accountancy, the Civic Forum, the Glasgow Council for the Single Homeless and the Glasgow Council for the Voluntary Sector, the Scottish Tenants Organisation, the Scottish Federation of Housing Associations, Shelter and Tenant Involvement in the Islands Grampian and Highland Rural Areas all hosted one or more of these events. There were also Scottish Executive initiated open meetings in Kirkwall and Lerwick which contributed to a total of 24 events. These meetings typically involved a presentation on the Executive's proposals for the Bill followed by a question and answer session in which the proposals could be discussed in some detail. The opportunities for dialogue that these meetings afforded were an important and useful complement to the formal, written responses to the consultation paper.

11. Of the almost 250 formal responses to the consultation document most welcomed the general thrust of the proposals for the Bill while offering views on some of the specific proposals. Many respondents also commented positively on the openness of the debate and welcomed the opportunity to express their views. Responses often built on discussions that respondents had had with housing officials in the series of seminars referred to in the previous paragraph.

12. The great majority of respondents expressed strong approval of the unifying effects on the socially rented sector of the measures proposed in relation to the Scottish secure tenancy and the new regulatory framework. There was widespread welcome for the proposal that Scottish Homes should be converted to an executive agency and act as a regulator of social landlords implementing the new regulatory standards. The Executive's legislative proposals for tackling homelessness also received far-reaching support.

13. The issues of detail relating to specific proposals or areas contained within the Bill are dealt with throughout the body of this Memorandum. In addition to these, however, a number of general points concerning the proposals for the Bill were raised. These were primarily concerned with either matters that were not proposed for inclusion in the Bill or the political

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context in which respondents felt the legislation was being brought forward. Of these types, the key issues were:

- *Community ownership:* A number of respondents commented that they believed that the detailed provisions of the Bill would be designed solely to pressurise local authorities into transferring their stock into community ownership. Equally, a number of other respondents took the view that the provisions of the Bill would be an important complement to the opportunities provided by community ownership.
- *The private sector:* Some respondents commented that the intended focus of the Bill, on the socially rented sector, should be widened to include more provisions on the private sector. Many of these respondents recognised that the points they raised were outwith the aim of this particular Bill, but wished to draw attention to areas where they felt future action is required. Some of the points raised in this regard will be positively addressed by the other legislative and funding initiatives the Scottish Executive is already taking forward in pursuit of its housing policy. In addition, the Executive is setting up a new Task Force to examine private sector housing quality issues in general.

HOMELESSNESS AND ALLOCATION OF HOUSING (PART 1, SECTIONS 1 TO 8)

Policy Objectives

14. Sections 1 to 8 set out the Scottish Executive's legislative proposals for improving the existing homelessness legislation. These proposals reflect the Executive's commitment to tackle and prevent homelessness. They are designed to update the legislation, promote the prevention of homelessness and, where it does occur, improve the response to it.

15. Sections 1, 2, 4 and 5 introduce new duties on both local authorities and registered social landlords. The duty on local authorities to produce homelessness strategies is designed to promote the local authority's role as the co-ordinator of action to prevent and alleviate homelessness in its area, and ensure effective cross-working both within the local authority and with other agencies. It is proposed to place a duty on local authorities to secure that advice and information about homelessness and the prevention of homelessness is available. This is a measure that will prevent homelessness by ensuring that relevant advice is available to all those who may need it, including those who are not homeless but may be at risk of being so. Section 4 proposes new duties on registered social landlords, to recognise their increased role in the provision of accommodation. After the transfer of stock from a local authority to registered social landlords, local authorities will be able to continue to access this accommodation on behalf of homeless people as part of contractual arrangements and day-to-day co-operation. Section 4 proposes a statutory duty be placed on registered social landlords to comply with a local authority request to house an unintentionally homeless person in priority need. Section 5 puts in place a statutory procedure which provides for arbitration in cases where a local authority and a registered social landlord are unable to agree in relation to the housing of a person found to be homeless. The overall aim is to ensure that homeless people are not disadvantaged in any way as a result of the transfer of housing stock.

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16. Section 3 proposes a number of changes to the existing duties which local authorities have towards homeless, and potentially homeless, people under the Housing (Scotland) Act 1987. These proposals are designed to require local authorities to intervene earlier in cases of potential homelessness, to confirm that unintentionally homeless people in priority need are entitled to permanent accommodation and to improve the level of support available to homeless people who are assessed as not being in priority need by introducing a minimum package of support which will be available to all homeless people.

17. At present, homeless people living in hostels have no rights in relation to their accommodation. In order to rectify this, section 6 proposes powers for the Scottish Ministers to set out in regulations terms of occupancy for those living in hostels.

18. Section 7 proposes a right to register on a housing list. This is intended to ensure that no-one in housing need can be excluded from a housing list and, therefore, will not be 'lost from the system' as a result. Although it is recognised that, once registered on a list, the landlord will continue to determine the priority of the application, section 8 sets out some broad criteria that should be taken into account by local authorities and registered social landlords together with more specific requirements relating to factors which should not be taken into account.

Consultation

19. In 1999, the Housing Green Paper proposed a thorough and wide-ranging review of the causes and nature of homelessness in Scotland. Most respondents favoured a review, although some argued that it should not prevent immediate action. The Scottish Executive took action soon after coming to power by setting up the Homelessness Task Force. The remit of the Task Force is to 'review the causes and nature of homelessness in Scotland; to examine current practice in dealing with cases of homelessness; and to make recommendations on how homelessness in Scotland can be best prevented'. Its membership includes representatives from Shelter Scotland, The Big Issue in Scotland, the Scottish Council for Single Homeless, COSLA, SFHA, Scottish Homes, the health service, social work services and academia.

20. The Executive was keen for the Task Force to consider possible changes which could be made to the homelessness legislation. The Task Force's work, therefore, was split into two phases, the second of which is ongoing. The Task Force completed its first stage of work – a period of 6 months examining possible changes to the homelessness legislation – in April 2000 and its proposals for the Housing Bill have been taken forward by the Executive. The Task Force has conducted its work in an open and inclusive manner, with all its papers being available on the Scottish Executive's website.

21. The involvement of the Homelessness Task Force has meant that the Executive's proposals on homelessness have been developed in partnership with all the main organisations with an interest. In addition to this partnership approach, the proposals were also included for consultation in *Better Homes for Scotland's Communities*. Of the nearly 100 responses which addressed homelessness, almost all indicated broad support for the Executive's proposals on homelessness. There was particular support for the way in which the Executive had taken

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forward the recommendations of the Homelessness Task Force and the proposals for increasing the rights of homeless people. In addition to this broad support, there were a number of responses which called for legislative changes which went significantly beyond the recommendations of the Homelessness Task Force. There were also helpful suggestions, concerning the detail of the Executive's proposals, which have been taken into account in the Bill. These include introducing time limits into the arbitration procedures between registered social landlords and local authorities, extending the criteria governing the allocation of houses (which at present only apply to local authorities) to registered social landlords and ensuring that the right to register on a housing list applies to all landlords in the socially rented sector.

Alternative Approaches

22. The main alternative approaches would be:

- *Radically to alter the existing homelessness legislation, including dismantling the current assessment of housing need by removing the categories of priority need and intentionally homeless.* The Scottish Executive believes that radical legislative change such as this would need very careful consideration as it would have far reaching effects. In particular, the Homelessness Task Force took the view that that consideration of the priority need and intentionally homeless categories should form part of its longer-term programme of work. Any proposal at this stage to introduce such changes would prejudice that consideration.
- *To introduce more statutory duties and statutory definitions.* This approach would attempt to specify how each homeless person should be dealt with, by including a number of statutory definitions and duties in areas which are already dealt with in the Code of Guidance on Homelessness. The Executive believes that its proposals offer as much statutory detail as is required. Further legislative detail would restrict the ability of local authorities to respond to each case of homelessness in the most appropriate way, taking account of both the relevant guidance and the needs and circumstances of the individual concerned. The proposals to regulate and monitor the way in which local authorities deliver their homelessness duties will ensure a more consistent application of Guidance to which authorities must have regard.
- *No legislative change.* Some may argue that no legislative change is required, and that the focus of the Executive's efforts should be to improve day-to-day delivery of services. The Executive agrees that improving the delivery of services will be an important factor in tackling homelessness, but does believe that legislative change is required, in order to update the legislation to take account of the transfer of stock into community ownership; increase the level of support for homeless people not in priority need; and ensure that advice and homelessness strategies are in place.

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TENANTS OF SOCIAL LANDLORDS (PART 2, SECTIONS 9 TO 48)

Policy Objectives

23. This part of the Bill sets out the Scottish Executive's proposals for a common tenancy to be made available to all tenants of social landlords in Scotland. This will give tenants of registered social landlords (mainly housing associations) and local authorities the same fundamental tenancy rights. At present there are differing arrangements in the two sectors and tenants moving between social landlords can receive markedly different rights and levels of service. The Scottish Executive's intention is to create a single tenancy – the Scottish secure tenancy – which delivers a uniform set of rights across the socially rented sector.

24. The proposals for the new tenancy are based on the terms of the existing secure tenancy. This reflects the high levels of tenant confidence and satisfaction with the basic provisions of the existing tenancy. The Scottish Executive is taking the opportunity, however, to enhance and expand the range of rights afforded to tenants by the new tenancy. The Executive wishes to ensure that, in the context of increasing diversity in social housing provision, tenants can be confident of a high level of basic rights, whoever their landlord is.

25. To that end, sections 9 to 16 set out the conditions under which a Scottish secure tenancy will be made available and under which it can be terminated. These provisions establish the Scottish secure tenancy as the standard tenancy for all existing and new tenants of social landlords after a date to be specified by order.

26. Section 17 sets out the hierarchy of succession rights. As part of the Scottish Executive's desire to enhance the rights of tenants, this section introduces a new second round of succession as part of the Scottish secure tenancy. The new rights of succession also include new rights for carers to succeed to a tenancy. More generally, the terms upon which the Scottish secure tenancy is based recognise same sex relationships.

27. The Scottish Executive wishes to encourage greater tenant involvement in decision-making about housing policies and services. The Bill thus sets out a legislative framework that will allow this greater involvement to take place. Sections 18, 45 and 46 therefore introduce new rights to information, consultation and participation, as well as duties on landlords to prepare a strategy for promoting tenant participation.

28. There are also measures at sections 47 and 48 which consolidate and extend the ability of tenants to form and operate tenant management co-operatives, responsible for managing certain aspects of their properties. This right has been available to secure tenants since 1980; by carrying it forward into the Scottish secure tenancy tenants of registered social landlords as well as local authorities will enjoy this right.

29. At present, secure tenants have the right to assign or sublet their tenancy to another person, subject to the consent of their landlord, which must not be unreasonably refused. Section 27 carries these rights forward into the Scottish secure tenancy, while, as part of the Executive's

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policy of strengthening the rights of tenants wherever appropriate, section 28 adds a similar right to an exchange with another tenant of a social landlord.

30. The Scottish Executive expects that almost all tenants of social landlords will be entitled to the full core provisions of the new tenancy. However, the Executive recognises that there will be some exceptions to this where the full Scottish secure tenancy is not appropriate or desirable. Thus sections 29 to 31 set out the circumstances in which it will be possible for local authorities and registered social landlords to offer a short Scottish secure tenancy and the arrangements that will apply to this tenancy. It is envisaged that this new short tenancy will be used in a number of circumstances where the house is to be let on a temporary basis. In addition, it will be used to offer probationary tenancies where tenants have been evicted in the previous 3 years for anti-social behaviour. In all cases, the short tenancy will include all the rights of the full Scottish secure tenancy with the exception of the right to buy, rights of succession and security of tenure.

31. The Housing (Scotland) Bill will also reform the arrangements under which tenants can exercise their right to buy the house in which they live. Therefore sections 36 to 44 allow for a “modernised” right to buy for those with a Scottish secure tenancy, with exemptions and suspensions operating in some cases. In framing the detail of the reformed right to buy, the Executive’s primary concern was to create a better balance between the rights of individual tenants and the needs of the wider community.

32. The main components of the Executive’s proposals and their associated objectives are to:

- reform the discount structure so it more fairly reflects the subsidy associated with other mechanisms to support housing;
- extend the initial eligibility period to ensure that those who benefit from the right to buy have paid rent as a tenant for a reasonable period;
- retain the cost floor rules to protect public investment in housing;
- suspend the right to buy from tenants who have been served a Notice of Proceedings for breach of their tenancy obligations, and/or have debts to their local authority in respect of services. This is to achieve a better balance between tenants rights and their responsibilities;
- abolish the requirement for landlords to act as lender of last resort, to safeguard the interests of tenants on marginal incomes, or in properties considered a ‘lending risk’ as a contribution to sustainable home ownership;
- extend the current exemption provided to certain registered social landlords with charitable status to include those who have obtained charitable status in recent years;
- enable councils to apply to have their areas designated as pressured areas, where acute shortages of socially rented housing are likely to be exacerbated by the right to buy.

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Within designated pressured areas, the right to buy will be suspended for new tenants in order to safeguard houses for rent;

- give local authorities the power to offer tenants in such designated areas a cash alternative to purchase a home on the open market to enable home ownership to be achieved without diminishing the supply of social housing;
- extend the right to buy to tenants of those housing associations outside the existing right to buy arrangements to achieve a common set of tenancy rights in the social sector;
- exempt from the right to buy group housing for those with special needs;
- withhold the extension of such rights in this sector for an initial period of up to 10 years to enable housing associations to offer such rights in a way which does not prejudice their financial viability. The possibility exists to extend this period further if there are continuing financial viability problems.

Consultation

33. In addition to the main consultation on the proposals for the Bill there has been extensive consultation which has focused on the new tenancy and the reform of the right to buy.

34. In December 1999, the Scottish Executive published its discussion paper *A New Single Social Tenancy for Scotland: Rights, Obligations and Opportunities*. Subsequently a working group was established to consider the drawing up of a model tenancy agreement. The group is made up of representatives from the Scottish Executive, the Scottish Federation of Housing Associations, the Convention of Scottish Local Authorities, Scottish Homes, Shelter, the Chartered Institute of Housing, the Tenant Information Service, the Tenant Participation Advisory Service, the Scottish Tenants Organisation and Tenant Involvement in the Islands Grampian and Highland Rural Areas. In September 2000 the Scottish Executive issued a discussion paper *Single Social Tenancy Agreement: Draft Model* for comment by 8 December 2000.

35. The Scottish Executive has also consulted widely on the details of its right to buy proposals. A Right to Buy Working Group consisting of representatives from the Scottish Executive, Scottish Homes, SFHA, COSLA, Shelter, CIH and CML was formed, in August of this year, to consider the details of the reformed right to buy in respect of:

- the operation of designated pressured area status;
- the extent of exemptions for specialist housing;
- the arrangements for determining the potential impact of the right to buy on the financial viability of some housing associations.

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36. There has also been a series of consultation meetings between officials, housing association and SFHA representatives which have focused on the right to buy.

37. In addition, the Scottish Executive published an information paper – *Evolving the Right to Buy: Evidence for Scotland* – which set out the analysis underpinning the proposed reforms.

38. Around 200 respondents responded to the Housing Bill Consultation Paper on the subject of the new tenancy. The majority of the respondents welcomed the introduction of a new common tenancy agreement and the fact that it was being based on the secure model. The main comments received related to the specific detail of the proposals:

- *Recovery as a result of persistent arrears.* The majority who offered comment suggested that the new ground for persistent rent arrears should not be pursued since adequate grounds for recovery already exist. The Scottish Executive agrees and the Bill contains no such provision.
- *Compulsory transfer on management grounds.* The Executive consulted on a proposal to strengthen the existing grounds on which anti-social tenants might be transferred to alternative properties. Many respondents recognised the problems associated with anti-social behaviour but expressed concerns about how the Executive's proposals in this area might operate in practice and, in particular, the scope it might provide for arbitrary action by landlords. The Scottish Executive recognises these concerns and the Bill does not include this proposal.
- *Rights of carers.* A number of respondents offered comment on the details of any proposed residency test in respect of the succession rights of carers and these views have been taken into account in the legislative proposals contained within the Bill.

39. There has also been widespread comment on the right to buy proposals that were outlined in the Consultation Paper. A number of groups, most particularly associated with the housing association movement, expressed some concern at the Executive's proposals to extend the right to buy across the whole of the socially rented sector. Particular issues raised included the potential impact on the financial viability of housing associations and the position of charitable housing associations. The initial proposals, as set out in the Consultation Paper, have been modified to take account of these points so that the Bill now allows for an extension of the proposed 10 year extension where it can be justified on financial viability grounds. There are also changes to the previous exemption for registered social landlords with charitable status and the provisions on pressured area status which reflect the views expressed by the Right to Buy Working Group.

40. The initial proposals relating to rights to information and consultation for tenants have been extended to include a new statutory right to participation which takes account of the recently published report by the Tenants Information Service and subsequent consultation with all the main landlords and tenant organisations.

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Alternative Approaches

41. The main alternative approaches to the Scottish Executive's proposals to create the Scottish secure tenancy would be:

- *To retain the status quo.* Continuing with the current arrangements would not deliver the fundamental policy aim of achieving a common standard of tenancy for all tenants of registered social landlords and local authorities. By providing a tenancy which applies across the board the way is clear for the Scottish Executive to create a regulatory framework that can address and improve standards across the socially rented sector. The consultation process also revealed strong support for the introduction of a new common tenancy agreement.
- *To standardise tenancies based on assured regime.* Pursuing this option would standardise tenancy agreements but around a model that would offer an inferior set of rights to those presently enjoyed under the secure tenancy by the vast majority of tenants in Scotland. The assured regime is also used in the private sector, and has, as a result, been perceived to be associated with a lack of regulatory control. To standardise on this model would undermine the basic objective of offering an enhanced package, guaranteed in statute, for all tenants.
- *To standardise the tenancy around the existing secure tenancy only, and not seek to enhance its terms.* Pursuing this option would have the advantage that it is based on the strongest statutory tenancy presently available and adopting this form of agreement would not, therefore, involve a diminution of rights. However, this option does not take the opportunity to enhance the rights on offer for all tenants and thus does not deliver the desired policy outcome.
- *To bring forward the Scottish secure tenancy without the right to buy.* This would undermine the Executive's commitment to provide enhanced rights for all tenants and would, even if the rights of existing tenants were protected, undermine the principle of equality across the whole sector. The right to buy is popular with tenants and removing the right to buy would markedly lessen the chances many tenants have to own their own home; an aspiration a large majority of them share.

REGULATION OF SOCIAL LANDLORDS (PART 3, SECTIONS 49 TO 74)

Policy Objectives

42. The Bill includes a number of measures that radically alter the provision of social rented housing in Scotland. As a wider range of social landlords provide housing under the Scottish secure tenancy, the Scottish Executive proposes to create a new regulatory framework. A crucial dimension of the new regulatory framework will be its extension to cover not just housing associations (as in the past) but also other bodies providing social housing (to be collectively known in the future as registered social landlords). In addition, the regulatory framework will include the housing management activities of local authorities, the homelessness functions of

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local authorities and any management (factoring) services provided by either registered social landlords or local authorities to private owners.

43. With the winding up of Scottish Homes as a Non-Departmental Public Body (see below) these regulatory functions will be undertaken on behalf of Scottish Ministers by the new executive agency. In sections 49 to 54 the Bill requires the Scottish Ministers to keep a register of social landlords and sets out criteria for registration and deregistration and the permitted functions of registered social landlords.

44. It is important that the new executive agency is able to take an active role in ensuring that the appropriate standards, across the social rented sector, are met. Section 70 therefore sets out a power for the Scottish Ministers to issue guidance on the provision of housing accommodation to both registered social landlords and local authorities. To guarantee these standards and requirements are met, a power is provided at sections 68 and 69 to obtain information from registered social landlords and local authorities.

45. The executive agency will, therefore, be provided with mechanisms for the assessment, benchmarking and reporting of performance against published standards for all social landlords. The Scottish Executive is clear, however, that these mechanisms need to be backed up by further powers which will provide the ability to secure real change where it is clear that a landlord is under-performing. Section 62 thus sets out a power for the Scottish Ministers to take steps to appoint a manager to the board of a registered social landlord where it is failing to meet the required standards. It is a key component of the Executive's vision for housing that all tenants in the social rented sector should have a guarantee of the highest possible standards and analogous provisions are therefore included in relation to local authority housing management functions. The situation in relation to local authorities is different, however, in that external scrutiny from the regulator must sit alongside the checks, balances and authority of local democracy. Measures are therefore taken at section 63 to allow the regulator to carry out inspections of a local authority's functions in relation to its housing management role. Subsequent to any such inspection, the executive agency will, under section 64, issue a report to the authority, and may publish it. Where the report identifies unsatisfactory aspects of a local authority's housing management function, the regulator will, under section 65, be able to require the local authority to submit a plan to address the issues identified within the report. If, after all these stages and a further inspection of the implementation of the remedial plan, the regulator remains unsatisfied that the local authority has succeeded in meeting the standards required section 66 gives the Scottish Ministers the power to appoint a special manager to the local authority. The special manager will have a full range of powers to do what he or she considers necessary to implement the required changes.

46. This Part of the Bill also contains a number of provisions associated with the new regulatory framework. Section 71 places a duty on the Scottish Ministers to publish a code of practice for the exercise of their regulatory functions. Section 72 contains a discretionary power for Scottish Ministers to make charges for the regulatory functions of the new executive agency. Also, as part of the Executive's policy of empowering tenants, section 67 makes provision for there to be a ballot in cases where a transfer of stock by a local authority or registered social landlord would result in a change of landlord.

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Consultation

47. The concept of a single housing regulator was initially put forward in the Housing Green Paper, *Investing in Modernisation*. Views were sought on the merits of establishing a single regulator with responsibilities for housing associations, other community landlords and the housing functions of local authorities including their strategic role.

48. Responses to *Investing in Modernisation* demonstrated that there was considerable support for the concept of a single regulator which would encompass the management functions of local authorities. There was substantially less support for the regulation of the strategic housing functions of local authorities and this idea has not been progressed. The Homelessness Task Force subsequently recommended that regulation should be extended to cover the homelessness duties of the local authority. The Scottish Executive also had further exploratory discussions with interested parties about the scope for regulating the non-housing activities of registered social landlords, non-housing community bodies generally and factoring services provided to private owners.

49. These various ideas were set out in the relevant section of *Better Homes for Scotland's Communities*. There were around 130 responses on the subject, and again the great majority welcomed the thrust of the proposals.

50. There were concerns expressed by voluntary sector representatives about the proposals for the statutory regulation of non-housing community bodies even though the intention was that this would be used on a very selective basis. In the light of these comments the Executive has decided not to include this proposal in the Bill and instead, it will seek to undertake further pilot work in this area on a purely contractual basis.

51. Some respondents underlined the need for the regulatory work of the executive agency to be more independent of the Scottish Ministers. Some consultees noted the proposed code of practice for the executive agency (as proposed in the Consultation Paper) and suggested that this should be statutory. This idea has been taken forward in the Bill. Other consultees proposed that there should be an entirely autonomous regulatory body, but the Executive has rejected this since it would involve setting up a new body which would be less accountable than the executive agency.

52. A number of consultees pointed to the need for a strong consumer input into the regulatory work of the executive agency and some specifically proposed a statutory consumer council or advisory panel. The Executive agrees that the views of consumers should be taken very closely into account, but considers that this is best achieved through appropriate working methods and procedures.

53. A number of respondents were concerned that the new regulatory regime should avoid duplication with the work of other regulatory bodies and some consultees considered that local authorities, as democratically elected bodies, should not be regulated at all. The Executive intends to ensure that work of the new executive agency meshes in closely with the Accounts

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Commission and any other relevant bodies (e.g. the proposed Scottish Commission for the Regulation of Care). It does, however, believe that it is appropriate to regulate both the housing management functions of local authorities and their homelessness duties to ensure consistent and appropriate standards for all tenants.

54. Some consultees wished to see regulation extended to the privately rented sector. The Executive's view is that it is not appropriate to extend the proposed regulatory framework into the market rented sector where there is a quite different legislative framework for tenancies.

Alternative approaches

55. The main alternative approaches in relation to regulation are:

- *To restrict regulation to registered social landlords.* This would fail to meet the Scottish Executive's key policy aim of ensuring that all tenants in the social rented sector are guaranteed a good standard of service. Although the Accounts Commission has a responsibility for the oversight of the best value arrangements for all local authority services, they do not regulate the provision of particular services. The proposed single regulatory framework will complement the common tenancy arrangements which will also apply to the social rented sector as a whole.
- *To extend regulation to include the private rented sector.* The private sector now largely provides rented housing at market rents linked to the statutory tenancy framework set out in the Housing (Scotland) Act 1988. Licensing of houses in multiple occupation (with local authorities acting as the licensing agent) has been introduced throughout Scotland in order to ensure satisfactory standards in a sub-sector that has generated problems in the past. The Scottish Executive does not believe that the case has yet been made for wider measures but it will be reviewing this further through the proposed Task Force on housing quality in the private sector.

SCOTTISH HOMES (PART 4, SECTIONS 75 TO 78)

56. Scottish Homes was established in 1989 following a merger of functions of the Scottish Special Housing Association and the Housing Corporation in Scotland. Its functions are as set out in the Housing (Scotland) Act 1988 and can broadly be summarised as:

- the provision of development funding (which includes planning capacity at national, regional and project levels);
- registration and monitoring of housing associations;
- policy development, research and information;
- landlord for its own housing stock.

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57. The continued need for these functions and the appropriate delivery mechanism were considered against the backdrop of the Scottish Executive's key priorities for housing which were outlined in the introduction to this document. Against these priorities, and particularly the increased emphasis on the strategic role of local authorities, it was clear that changes would be required in the way that Scottish Homes undertook the functions entrusted to it. Scottish Homes has, to date, had responsibility for the regulation of social landlords but the proposed extension of regulation and inspection to local authority housing management functions (including possibly the imposition of sanctions in cases of under-performance) further called into question the desirability of Scottish Homes remaining as a non-departmental public body. Ministers therefore concluded that their policy objectives would be best served by converting Scottish Homes from being an NDPB into an executive agency of the Scottish Executive, directly answerable to them and – through them – to the Scottish Parliament.

58. The executive agency will have no separate formal status but will be an administrative creation of the Scottish Executive. The Bill therefore contains no references to the executive agency but refers instead to the Scottish Ministers. Section 75 of the Bill provides for the transfer to the Scottish Ministers of the functions of Scottish Homes. In effect those functions that transfer will be performed by the executive agency. The Executive does not, however, intend that the Scottish Ministers should take on the landlord function. That function will therefore be repealed. However that will be subject to a transitional provision made under section 78, enabling the residual Scottish Homes to exercise that function in relation to the housing stock existing at that time until that stock is transferred. Section 76 provides for the transfer to the Scottish Ministers of the property and liabilities of Scottish Homes, while section 77 makes provision for staff of Scottish Homes to transfer to become members of staff of the Scottish Administration on terms no less favourable than they enjoy immediately before the transfer. Section 78 formally brings to an end Scottish Homes' separate existence as an NDPB and provides for any necessary transitional arrangements to be made by order. These powers will be used to allow Scottish Homes to continue for a period in residuary form to deal with outstanding issues following the transfer of its functions to the Scottish Ministers.

Consultation

59. *Investing in Modernisation* sought views on the future role of Scottish Homes. The outcome of that consultation was broadly that there was general support for institutional change with strong support that local authorities should take a lead strategic role at the local level. There was widespread agreement that Scottish Homes' expertise should be retained in some form. Views were also expressed that greater accountability was needed in the way these functions would be delivered in future. This response generally supported Ministers' views that there was a need for the majority of Scottish Homes' functions to continue to be delivered but that the time was right to review the institutional arrangements.

60. Taking account of these responses, in December 1999 the Minister for Communities announced to the Scottish Parliament her intention to replace Scottish Homes as a non-departmental public body and to bring the majority of the current functions and staff into a new executive agency which would operate as the Scottish Executive's housing and communities agency. This policy was set out in *Better Homes for Scotland's Communities* which identified

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the new agency's relationship with Ministers alongside the detailed proposals of its constitution, functions, powers and duties. In this context, views were sought on the future role of the executive agency which would replace Scottish Homes and whether those functions entrusted to it remained necessary and, if they were, how they should be carried out in future in the light of the other proposals being considered.

61. Over 90 responses to *Better Homes for Scotland's Communities* commented on some aspects of this, although primarily with the details of how the new arrangements would work. This is discussed elsewhere in the discussions of regulation and the strategic role of local authorities. There has been wide ranging support for the basic proposal to wind up Scottish Homes as a separate non-departmental public body.

Alternative approaches

62. The three main alternative options in relation to this issue are: (a) to maintain the status quo; (b) establish separate bodies to undertake the regulatory and development funding functions and; (c) bring all Scottish Homes' functions and staff into the Scottish Executive core.

- Option (a) entails Scottish Homes remaining as a NDPB with its current range of functions expanded to include the regulation and monitoring of local authorities. The Scottish Executive takes the view that the current institutional arrangements are not, however, compatible with the emphasis being placed on local authorities taking the strategic lead in housing issues locally; nor do they deliver the Executive's desire of greater accountability in the way the current functions are delivered.
- The arguments in favour of option (b), establishing separate regulatory and development funding agencies, are that it would avoid any potential conflicts of interest between, on the one hand, the regulation of registered social landlords and local authorities and, on the other, the provision of funding for them. The Scottish Executive does not believe that there are serious conflict of interest issues which cannot be resolved by suitable administrative arrangements. Furthermore, the Executive's intention is that the increased strategic role of local authorities will, over time, include them taking a lead in allocating development funding. This role is, therefore, likely to become a residual function of the new executive agency. It is the Executive's view that this is a good reason not to create a new, separate entity to perform what is set to be a declining function.
- Option (c) entails bringing all Scottish Homes' functions into the main body of the Executive. A number of respondents to the Consultation Paper expressed the view that it was very important that the regulation of registered social landlords had to be kept free from political interference. The arrangements being proposed are to have a standalone executive agency operating within the context of a published framework document, with an accountable chief executive and with access to the independent scrutiny and advice of non-executive directors. Those arrangements should deliver the re-assurance that Ministers will not be involved in the day to day affairs of the agency in a way that would be difficult to do if the functions were internalised within the Scottish Executive core. In addition, there is already a well-established and successful policy of having operational

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matters handled by executive agencies in a range of other areas elsewhere in the Scottish Executive.

STRATEGIC HOUSING FUNCTIONS OF LOCAL AUTHORITIES (PART 5, SECTIONS 79 TO 84)

Policy Objectives

63. The Scottish Executive believes it is right that local authorities should increasingly take a lead role in co-ordinating and implementing community planning in their areas. The Executive is clear, therefore, that local authorities should adopt a wider strategic and enabling role in housing. COSLA have expressed their support for this move in their report *Housing into the Millennium: A New Agenda for Councils*.

64. To this end, the Executive proposes to make local authorities responsible for producing strategies which identify the housing needs of their areas. The new role envisaged by the Scottish Executive will entail **central and local government working with the relevant registered social landlords, public and voluntary sector agencies, the private sector and most importantly with communities themselves**. Facilitated by the advent of community planning, effective partnership working should ensure that housing plans and programmes are integrated with social and economic policies and programmes. By placing a statutory requirement on local authorities to produce local housing strategies, the Executive intends to demonstrate the importance it attaches to a proper housing planning system.

65. Section 79 therefore requires local authorities to carry out a comprehensive assessment of housing needs and conditions in its area. This assessment forms the basis of its local housing strategy which should establish a shared understanding between partners and providers of the issues and priorities within an area and provide an agreed framework within which housing providers and investors can operate and contribute to an agreed strategy. The strategy will also provide a framework within which objectives and targets can be set, options identified and appraised and progress monitored by planning partners and others with an interest. The Bill ensures that this framework will include measures to ensure the economic, efficient and effective provision of housing in a way that encourages equality of opportunity for all.

66. Local housing strategies are therefore expected to identify the broad picture of investment needs for existing and new housing provision. They should also contain sufficient information on market conditions, housing needs, area regeneration requirements and other priorities to inform both decisions by local authorities on use of resources under its central budget and any bids for resources from the Scottish Executive and others.

67. Section 80 provides for the Scottish Ministers to make grants to local authorities for housing purposes. This will be used to replace existing streams of grant support provided by the Scottish Executive for housing purposes. (Capital consents issued to local authorities under the Local Government (Scotland) Act 1973 will remain in place.) It will also allow for the inclusion

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of those housing resources currently routed through Scottish Homes. Ministers may agree to a proposal that the **funding presently routed through Scottish Homes should pass to local authorities** who transfer stock and have in place acceptable arrangements for the production of a local housing strategy along with the capacity to manage the resources in this “strategic budget”. For those local authorities that have not transferred the whole of their stock, Scottish Homes’ funding may transfer to them if, within the context of the local housing strategy process, appropriate checks and balances are in place. This will include evidence that **registered social landlords** and lenders are supportive of the proposed change and that there is otherwise general agreement locally. Again these local authorities will have to demonstrate that they have the capacity to manage the budget.

68. The new grant making powers will also enable Ministers to make payments to local authorities to help with the costs associated with the repayment of housing related debt. These powers will allow for assistance to be provided with the on-going servicing costs or with the repayment of principal and any breakage costs.

69. As part of the Executive’s policy objective to create a new coherent policy and funding framework for delivering housing support services to vulnerable people in different types of accommodation and tenure, section 81 gives responsibility for the funding and provision of support to local authorities. To enable local authorities to undertake this role, this section provides for the Scottish Ministers to give grants for housing support services to local authorities. To ensure that grants given to local authorities are used for providing support, the provisions also allow for Ministers to make regulations prescribing what a grant can be spent on.

70. Section 82 provides local authorities with the necessary powers to provide assistance, financial or otherwise, to registered social landlords and other persons concerned with a range of housing matters, alleviating homelessness or related matters. These powers include the power for local authorities to promote the creation and development of registered social landlords and to give assistance to individuals to build or improve their own houses. Section 83 allows the Scottish Ministers to make regulations governing the terms and conditions upon which financial assistance of this sort can be given.

71. If local authorities transfer ownership of their housing to some other body or bodies, 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. Similarly, the Scottish Ministers would wish to remove the requirement to estimate Housing Support Grant entitlements as specified in sections 191 to 193 of the Housing (Scotland) Act 1987. Section 84 includes provisions to enable the relevant sections of the 1987 Act to be disapplied, by order, in relation to particular authorities.

72. It is also intended that where a local authority sells land formerly held on the HRA the proceeds from such sales should, in general, be used to reduce residual housing debt. Section 84 includes provisions to ensure that authorities must account for such land in a manner determined by Ministers, that such land cannot be disposed of at less than market value without the consent of Ministers, and also that Ministers may direct that any receipt obtained from the sale of the land be used to reduce any outstanding former HRA debt, or for some other housing related function.

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73. Section 95 provides for Direct Labour Organisations (“DLOs”) to undertake works of maintenance on behalf of registered social landlords. This will enable DLOs to compete for work arising from major improvement programmes undertaken by registered social landlords.

Consultation

74. The Scottish Office first consulted on the notion of a strategic role for local authorities, supported by the concept of a single housing budget and a single housing plan (local housing strategy), in its Green Paper, *Investing in Modernisation*, in early 1999. Each of the proposals received a general welcome. These were worked up further and articulated in the Scottish Executive’s Housing Bill Consultation Paper, *Better Homes for Scotland’s Communities*. There were around 110 responses on this subject. The great majority indicated widespread support for the proposals. Respondents agreed that local authorities should be in the lead in the production of the strategies, though some pointed to the need for a considerable level of joint working and consultation with other relevant interests.

75. A Single Housing Plans Group was formed as a sub-group of the Housing Interests Group. Membership of the Single Housing Plans Group provided an opportunity for these individuals to inform and influence the development of policy, and share best practice, in this area. The SHPG was chaired by Professor Duncan Maclennan of the Scottish Executive Policy Unit, with group members drawn from the Scottish Executive, Scottish Homes, COSLA, local authorities, SFHA and CIH. The group produced a report and a series of recommendations which was submitted to the Minister for Communities in July 2000.

76. In addition, there was extensive consultation on the content of section 81. In June 2000 the Scottish Executive issued two consultation papers on Supporting People. The first was a guidance note entitled *Supporting People Towards 2003*. The second was a consultation document called *Managing the Changeover*. The responses to these documents, and that part of *Better Homes for Scotland’s Communities* which dealt with Supporting People, expressed support for the proposals. A dedicated budget for services for people with support needs was also generally welcomed.

Alternative Approaches

77. The main alternative approach to the Executive’s current proposals would be:

- *To maintain the status quo and retain the current provisions whereby local authorities and Scottish Homes produce housing plans that overlap in purpose and content.* This would be unsatisfactory as the Scottish Ministers are committed to a more strategic role for local authorities by giving them responsibility for local housing strategies and a greater say in the allocation of resources to other housing providers in their areas. The clear intention is that local authorities should be responsible for determining the priorities for all funding of housing in their areas to achieve the housing policy objectives of the Executive and of local authorities. The

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provisions in the Bill allow for these policy changes, which have been supported in consultation, to be brought about.

78. In addition, retaining the existing approach to the production of housing plans would create problems of duplication and overlapping. There would not be the level of standardisation that local housing strategies would introduce, nor the benefits this would entail. Furthermore, since local housing strategies are intended to inform investment decisions, it is important that there is uniformity in the strategies, something that would not be achieved by maintaining the status quo.

GRANTS FOR IMPROVEMENT, REPAIRS ETC. (PART 6, SECTIONS 85 TO 94)

Policy objectives

79. Sections 85 to 94 set out the Scottish Executive's legislative proposals for modernising the improvement and repairs grants system. The grant system applies mainly to private sector houses. The proposals are intended to extend the scope of the grant system and make it possible for local authorities to offer grant for works providing health and safety related improvements. They will also be able to give grant for works of energy efficiency. The proposals will also make minor amendments to the Tolerable Standard. They increase the maximum grant level and introduce a test of resources for grant applicants to ensure that the best use is made of the limited resources available. The test will provide for payment of grant up to 100% of the approved cost of works, for those on low incomes in homes in the worst condition. The Executive recognises the importance of providing grant support for certain types of work, such as those carried out on the common parts of houses in buildings in common ownership and adaptations to make houses suitable for a disabled person. There is therefore a proposal for setting a fixed level of grant in certain prescribed cases which will be paid, regardless of owners' resources. The proposals should make the system easier for applicants to understand.

80. The proposed changes to the grant system which the Scottish Executive are proposing would be brought into operation by a series of amendments, mainly to Part XIII of the Housing (Scotland) Act 1987. The effect of the amendments is described more fully in the following paragraphs.

81. Section 85 sets out the Scottish Executive's proposals to enable local authorities to give grant for works to provide heating systems and insulation and for health and safety matters including replacing unsafe electrical wiring and installing mains smoke detectors. Where houses are in buildings in common ownership, grant may also be made available for fire-retardant front doors for each house and for main door entryphone systems. The Scottish Executive believes that these measures will provide an effective opportunity to enhance the safety and comfort of houses in the private sector. The section also includes provision for grant to be paid to private sector tenants in situations where they, rather than their landlord, have responsibility under their lease for carrying out works to the property.

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82. Section 87 regularises the current arrangement under which grant is normally only available for houses provided 10 years or more prior to the date of the application. This reflects the Executive's belief that houses built or converted more recently should normally be covered by a housebuilders' guarantee, but it will still be possible, as at present, for local authorities to seek permission to pay grant where a house falls within the 10 year time limit.

83. Sections 86 and 88 to 89 set out the Scottish Executive's proposals requiring local authorities to assess an applicant's ability to contribute to the costs of the necessary work. The Executive's intention is that the procedure will allow applicants on low incomes to receive 100% grants. In other cases, the grant payable will take account of the householders' income and circumstances. These sections also provide for the necessary amendments to the grant application form, for appeals by an applicant against an authority's decision on the amount which they should contribute to the costs and for statutory offences relating to an application.

84. Through sections 90 and 92, the Scottish Executive propose to give local authorities greater direct control over the support they can give to private householders by raising the current limits placed on authorities' discretion to award grant for improvement and repairs grant. A single limit of £20,000 will now apply. This limit can be amended, if necessary, by secondary legislation in the future. There will be provision for this amount to be increased in exceptional cases. Section 90 also gives effect to the Executive's proposal that for certain types of work, or in certain circumstances, an owner will be entitled to receive grant at a prescribed minimum percentage. The policy intention here is that the improvement of buildings, such as tenements, which are in mixed ownership will be encouraged by ensuring that all owners receive at least a set proportion of the cost of the necessary works. Those on low incomes will be able to receive more assistance, subject to a test of resources showing that they are entitled to a higher amount. Where an application for grant is made less than 10 years after an earlier award, section 90 also proposes arrangements to take account of previous awards of grant. In certain circumstances the first grant will be deducted in calculating the amount that an applicant may receive as a successive award. Some grants are exempt from this calculation, including works to adapt a house for a disabled person, or for the installation of standard amenities such as a toilet, bath or sink.

85. Section 91 extends the tolerable standard to include such items as a suitably located shower or bath, and wash-hand basin. These items are currently defined under Schedule 18 to the Housing (Scotland) Act 1987 as "standard amenities". The Executive's policy here is that there should be no question of these basic amenities not being part of the tolerable standard.

86. Section 93 provides a series of amendments related 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.

87. Section 94 sets out the details of the Scottish Executive's proposal to allow local authorities to offer grant applicants the opportunity of having additional work carried out to provide thermal insulation and, in the case of buildings in common ownership, a main door entry-phone system, the installation of fire-retardant doors at the entry to each house and a mains linked fire detector within each property. As noted earlier, these items are for the health and

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safety of householders in such buildings. Grant for these additional items will depend upon the house being in a good state of repair and meeting the tolerable standard and will be offered at the discretion of the local authority. Applicants will not however be obliged to accept the offer. The additional works will bring additional grant.

Consultation

88. Views on the key principles underpinning these changes were originally sought in *Investing in Modernisation* and more detailed proposals, taking account of these views, were set out in *Better Homes for Scotland's Communities*. In addition, officials from the Scottish Executive have met with COSLA, Age Concern and the SFHA on the specific provisions relating to improvement and repairs grants.

89. Most of the 105 respondents who commented upon the proposals in the Housing Bill consultation paper were in favour of reforming the improvement and repairs grant system. Many respondents argued that there should be a higher general expense limited per dwelling and that resources should be ring-fenced. With regard to the main reform proposed – that there should be a test of resources – there was a variety of opinion offered: some recognised the need to target resources effectively, while others believed any test of resources should be either scrapped, or devolved to local authorities. A number of respondents argued that any test of resources should be cushioned by generous minimum percentage grants. The proposals to widen the scope of the system to make specific provision for home insulation, space and water heating and safety and security measures were generally welcomed. The Executive recognises the need to consider the wider issues relating to the encouragement of repair and improvement in the private sector and these will be considered by the new Task Force as part of its review of general housing quality issues.

Alternative approaches

90. The core of the reform proposals is the introduction of a test of resources to award grant according to need. The two main alternative approaches are:

- *That there should be no test of resources.* The current system (under which most grants are 50%) prevents low-income households from carrying out works. A test of resources will provide grants at up to 100% and will help resolve the problem of works in mixed-ownership buildings. Unless everyone receives 100% grants there will always be different rates within tenements. A system based on a test of resources may be more difficult for local authorities to administer but a computer-guided approach will be introduced by the Scottish Executive to minimise the effort.
- *That any test of resources should be set by each local authority without any central interference.* The point of a standardised test of resources is to ensure equality of treatment. A system of localised tests would also make it difficult to have common priorities for improvement and repairs in the private sector.

EFFECTS ON EQUAL OPPORTUNITIES

91. The Bill proposes a number of institutional reforms to the provision of Scottish housing which will be beneficial to those individuals and groups that have traditionally been at risk of social exclusion, discrimination, prejudice and harassment.

92. The principle of equality of opportunity for all underpins the new strategic framework for housing and related services which the Bill introduces. The Bill provides a legal right for everyone aged sixteen or over to be admitted to a housing list. In addition, in drawing up their local housing strategies, local authorities will be specifically required to address the equal opportunities needs within their area and to report on how these have been taken into account within their local housing strategies. This new statutory duty is in addition to existing legislation on equal opportunities and children's rights to which local authorities and other housing providers are already subject.

93. The provisions of the new single regulatory framework will enable Scottish Ministers to give guidance to local authorities and to registered social landlords on equal opportunities issues and to monitor the application of equal opportunity principles. The Bill also makes specific provision for the regulation of sites provided for Travellers.

94. The Bill also includes a number of specific provisions which will promote equality of opportunity in housing in Scotland. Those people who give up their homes to care for others will have a new right to succeed under the Scottish secure tenancy. The terms upon which the Scottish secure tenancy is based recognise same sex relationships. They also explicitly acknowledge the position within the family of children who are adopted or treated as a child of the family.

95. In modernising the right to buy, the Bill extends this right to all tenants of local authorities and registered social landlords without discrimination. The Bill does, however, include some suspensions and exemptions, for example in relation to areas of housing pressure, which will help to safeguard the provision of social housing for groups which are especially reliant on this sector. Houses provided for those with particular needs will continue to be exempt but only where they form part of a group and it is impractical to offer an individual right to buy. This approach seeks to ensure that disabled people should not be denied the right to buy their own home which is otherwise offered to able-bodied people, while also recognising the need to provide for future generations of disabled people.

96. The need for this balance between the requirements of current and future tenants is reflected elsewhere in the Scottish secure tenancy. The Bill therefore introduces a second right of succession for all tenants in the social rented sector, but recognises concerns that houses which are particularly suitable for certain tenants should not be passed on to family members who would not otherwise require this type of specialist housing. The Bill therefore enables landlords to offer alternative accommodation instead of honouring a succession right to a specially adapted house to a successor who does not require the specialist facilities. This will not

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however be the case for spouses and co-habitees as the Executive believes that their right to remain should be preserved.

97. As part of the package of enhanced tenancy rights, the Bill includes provision for a short Scottish secure tenancy. The principle is that the full Scottish secure tenancy should be offered wherever possible. However, the Bill recognises that there will be some circumstances pertinent to the accommodation or the tenant which will make this impractical and allows for the use of the short tenancy in these cases to move beyond the occupancy agreements or other contractual arrangements which would otherwise have to be used in some specialist housing.

98. The Scottish secure tenancy also reflects the need to protect tenants from racial harassment by neighbours by extending the scope of anti-social behaviour as grounds for repossession. It also seeks to protect interests of individual parties to tenancy agreements, particularly in view of the problems some people face in the case of relationship breakdown. The Bill provides a right to a joint tenancy for the first time and this will enable partners to enjoy equal protection and entitlement.

EFFECTS ON RURAL AND ISLAND COMMUNITIES

99. The Bill promotes a framework for housing strategies in Scotland which recognise explicitly the different needs of different communities within Scotland. It recognises that there are wide variations in local circumstances across Scotland and provides local authorities with both the responsibility and the tools to address the specific needs within their communities. The needs of remote rural and island communities will differ in certain respects from other communities, but the legislative framework in the Bill is intended to be broad enough to address the needs of all Scotland's communities.

100. The costs involved in building and managing housing stock are frequently much greater in island communities and remote rural areas. In addition, in some rural areas there is an acknowledged shortage of social rented housing. As such, the operation of the right to buy can have a different impact in these communities than elsewhere in Scotland. It is envisaged by the Executive that the reforms to the levels of discount offered under the new proposals, coupled with the system of pressured areas, will address the specific requirements of these areas in relation to the right to buy.

EFFECTS ON HUMAN RIGHTS

101. The Scottish Executive considers that the provisions of the Bill are consistent with the European Convention on Human Rights.

EFFECTS ON LOCAL GOVERNMENT

102. Local authorities are central to the main changes the Bill makes in providing a new strategic and institutional framework for Scottish housing. The ways in which local authorities provide houses and manage housing services are altering rapidly and the legislative proposals

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contained within the Bill bring forward significant changes to the rights and responsibilities of local authorities.

103. Enhancing local authorities' strategic role is one of the key objectives of the Bill. The Bill therefore places new duties on authorities in relation to assessing and tackling the housing needs of their area. It makes provision for them to take on lead responsibility in allocating funds from a delegated strategic housing budget to housing providers in their area. It also places new responsibilities on local authorities with respect to the promotion and alleviation of homelessness and in funding housing support services under the Supporting People measures which are being taken forward across the UK.

104. These changes to the strategic functions of local authorities are complemented by changes that will affect them in the day to day provision of services to their tenants. Thus under the new Scottish secure tenancy, local authorities as landlords will have new duties towards their tenants, for example in respect of their tenants' rights to information, consultation and participation. The proposed tenancy arrangements are based on those currently applied to council tenants and on existing good practice. This should minimise the implications of the new tenancy for those councils who are already consistently undertaking good practice. The Executive will also be offering a model tenancy and associated guidance to assist with implementation. The legislation recognises that time will be needed to prepare for implementation of the new tenancy arrangements.

105. Local authorities will also be affected by the changing nature and role of Scottish Homes and the establishment of a new single regulatory framework. The regulatory powers which will be vested in the Scottish Ministers and exercised by the executive agency will not extend to local authorities' strategic functions, which will continue to be subject to a Best Value regime, but their landlord functions will be brought within the scope of the new regulatory framework. This will have implications for the way in which local authorities plan and provide housing management and related services to their tenants.

EFFECTS ON SUSTAINABLE DEVELOPMENT

106. The provision of good quality and appropriate housing, and of high quality related services, can play an important part in promoting sustainable development. The quality of individual houses, and the neighbourhoods in which they are located, impact on the health, personal security and educational and employment opportunities of individuals, and on the strength of our communities. An efficient housing system can also contribute to ensuring economic growth and prosperity. The proposals in this Bill are intended to promote a more strategic approach to the provision of housing and housing services throughout Scotland, to promote social cohesion, and to facilitate economic growth and the protection of the environment. In doing so, they contribute in both the short and longer terms to the development of sustainable housing policies for Scotland.

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HOUSING (SCOTLAND) BILL

POLICY MEMORANDUM

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Printed in the United Kingdom by The Stationery Office Limited

£3.70

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