Passage of the

Private Renting Housing (Scotland) Bill 2010

SPPB 167
Passage of the

Private Renting Housing (Scotland) Bill 2010

SP Bill 54 (Session 3), subsequently 2011 asp 14

SPPB 167
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The written and oral evidence taken by the Local Government and Communities Committee at Stage 1 was originally published on the web only. This material (Annexes D and E of the Stage 1 Report) is included in full in this volume.

The Scottish Government made a written response to the report of the Subordinate Legislation Committee at Stage 1, in addition to the Government’s general response to the Stage 1 Report of the Local Government and Communities Committee. At its meeting on 8 February 2011, the Subordinate Legislation Committee noted the response without debate. No extracts from the minutes or the Official Report of that meeting are, therefore, included in this volume. Relevant papers for that meeting, including the Scottish Government’s response, are, however, included.
Private Rented Housing (Scotland) Bill
[AS INTRODUCED]

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Private Rented Housing (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about private rented housing.

PART 1

REGISTRATION OF PRIVATE LANDLORDS

1 Fit and proper person: considerations

(1) In section 85 of the 2004 Act (section 84: considerations)—

(a) in subsection (2)—

(i) in paragraph (a), after sub-paragraph (i) insert—

“(ia) firearms (within the meaning of section 57(1) of the Firearms Act 1968 (c. 27));”,

(ii) after that paragraph, insert—

“(aa) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c. 46));”,

(b) after subsection (5) insert—

“(6) Examples of material which falls within subsection (2) (as mentioned in paragraph (c)(i) or (ii)) are (without prejudice to the generality of that provision)—

(a) an offence or disqualification under—

(i) this Part;

(ii) Part 5 of the Housing (Scotland) Act 2006 (asp 1);

(b) a repairing standard enforcement order made under section 24(2) of that Act.

(7) Examples of material which falls within subsection (3) are (without prejudice to the generality of that provision)—

(a) an antisocial behaviour order (or any interim order) within the meaning of Part 2;

(b) an antisocial behaviour notice within the meaning of Part 7.

(8) Examples of material which falls within subsection (4) are (without prejudice to the generality of that provision)—
Part 1—Registration of private landlords

(a) complaints and other information which come to the attention of the local authority concerning the relevant person or, as the case may be the person, in relation to the fulfilment of any financial obligation in respect of any house which is included in the application;

(b) concerns and other information which come to the attention of the local authority in the exercise of any of its functions in connection with any house which is included in the application;

(c) where section 85A(3)(b) applies, the relevant person fails to provide the certificate within the period the local authority directs.

(9) The Scottish Ministers may by order modify subsection (2).

(2) In section 141(4)(a) of that Act (orders and regulations), after “83(7),” insert “85(9),”.

2 Fit and proper person: criminal record certificate

After section 85 of the 2004 Act insert—

“85A Fit and proper person: criminal record certificate

(1) A local authority may, in deciding for the purposes of section 84(3) or (4) whether a relevant person is, or is no longer, a fit and proper person, require the relevant person to provide the local authority with a criminal record certificate (within the meaning of section 113A of the Police Act 1997 (c. 50)).

(2) A local authority may require a criminal record certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided with an application for entry in the register maintained under section 82(1) in relation to material falling within subsection (2), (3) or (4) of section 85 is, or has become, inaccurate.

(3) Where a local authority has required a criminal record certificate to be provided under subsection (1)—

(a) in the case of an application for entry in the register maintained under section 82(1), a relevant person may not be entered in the register until the certificate has been received by the local authority;

(b) in the case of a relevant person entered in the register, the relevant person must provide the certificate within such reasonable period as the local authority directs.”.

3 Landlord registration number

(1) In section 84 of the 2004 Act (registration), after subsection (5) insert—

“(5A) An entry in a register under subsection (2)(a) shall state, in relation to the relevant person, a registration number (to be known as the “landlord registration number”).”.

(2) In section 86 of that Act (notification of registration or refusal to register), after subsection (1) insert—

“(1A) Where a local authority gives notice of the fact of registration under subsection (1)(a) it must, in doing so, give notice of the landlord registration number.”.

(3) In section 101 of that Act (interpretation of Part 8), after the definition of “landlord” insert—
““landlord registration number” has the meaning given by section 84(5A);”.

4 Appointment of agents

In section 88 of the 2004 Act (registered person: appointment of agent)—

(a) after subsection (2) insert—

“(2A) Subject to subsections (2B) and (2C), the notice shall be accompanied by such fee as the local authority may determine.

(2B) No fee shall be payable under subsection (2A) if, when the notice is given—

(a) the person appointed is entered in the register as a relevant person; or

(b) another relevant person’s entry in the register states that the person appointed acts for the other relevant person.

(2C) The Scottish Ministers may by regulations prescribe for the purposes of subsection (2A)—

(a) fees;

(b) how fees are to be arrived at;

(c) other cases in which no fee shall be payable.”,

(b) after subsection (8) insert—

“(9) A registered person is guilty of an offence who, without reasonable excuse—

(a) in giving notice under subsection (2), specifies information which is false in a material particular; or

(b) fails to comply with subsection (2).

(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

5 Access to register: additional information

(1) In section 88A(1) of the 2004 Act (access to register)—

(a) in paragraph (a), before sub-paragraph (i) insert—

“(zi) confirmation of whether any application relating to the house has been made in accordance with section 83 but has not yet been determined,”;

(b) in paragraph (a)(i), for “the owner” substitute “any owner of the house”,

(c) in paragraph (b)—

(i) after “applicant” insert “—

(i)”,

(ii) after “register” insert “; and

(ii) whether its register includes a note under section 92ZA of a decision to refuse that other person’s entry in, or to remove that other person from, the register.”.

(2) After section 92 of the 2004 Act insert—
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Part 1—Registration of private landlords

“92ZA Duty to note refusals and removals

(1) Subsection (4) applies where—
(a) a local authority decides to—
(i) refuse to enter a person in its register under section 84(2)(b) or (7); or
(ii) remove a person from its register under section 88(8) or 89(1) or (4); and
(b) either—
(i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or
(ii) such application is refused by the sheriff and—
(A) the period for appealing against the sheriff’s decision expires without an appeal being made; or
(B) such an appeal is refused by the sheriff principal.

(2) Subsection (4) applies where—
(a) a local authority refuses to enter a person in its register under section 84(8); and
(b) either—
(i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or
(ii) such application is refused by the sheriff and—
(A) the period for appealing against the sheriff’s decision expires without an appeal being made; or
(B) such an appeal is refused by the sheriff principal.

(3) Subsection (4) applies where a local authority removes a person from its register under section 89(5).

(4) Where this subsection applies, the local authority must note the fact in its register that the person has been refused entry to, or removed from, its register.

(5) Where a fact is noted by virtue of subsection (1) it must, subject to subsection (6)—
(a) remain on the register for 12 months from the date on which the local authority is required to note it in its register; and
(b) be removed from the register at the end of that period.

(6) Where a person in respect of whom a local authority notes a fact in its register by virtue of subsection (1) is subsequently entered in the register before the end of the period mentioned in subsection (5)(a), the local authority must remove the fact from the register when the person is so registered.

(7) Where a fact is noted by virtue of subsection (2) or (3) it must—
6 **Duty to include certain information in advertisements**

After section 92A of the 2004 Act insert—

"92B Duty of certain persons to include landlord registration number in advertisements

(1) Where—

(a) a registered person, in relation to a house that the person owns in the area of a local authority with which the person is registered, communicates with another person with a view to entering into a lease or an occupancy arrangement such as is mentioned in section 93(1)(a); and

(b) the communication is by way of an advertisement in writing,

the registered person must ensure the advertisement includes the landlord registration number given by the authority.

(2) Where—

(a) subsections (2) and (5) of section 93 apply; and

(b) the communication referred to in subsection (2)(b) of that section is by way of an advertisement in writing,

the relevant person must ensure the advertisement includes the words “landlord registration pending”.

(3) In subsections (1) and (2), “advertisement”—

(a) includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons; but

(b) does not include a notice board at or near the house concerned.”.

7 **Penalty for acting as unregistered landlord etc.**

In section 93(7) of the 2004 Act (offences), for “level 5 on the standard scale” substitute “£50,000”.

8 **Disqualification orders for unregistered landlords**

After section 93 of the 2004 Act insert—

"93A Disqualification orders etc.

(1) This section applies where a court convicts a person of an offence under section 93(1) or (2).

(2) The court may, in addition to imposing a penalty under section 93(7), by order disqualify the convicted person (and, where the person is not an individual, any director, partner or other person concerned in the management of the house concerned) from being registered by any local authority for such period not exceeding 5 years as may be specified in the order."
(3) A person may appeal against an order under subsection (2) in the same manner as the convicted person may appeal against sentence.

(4) The court may suspend the effect of an order made under subsection (2) pending such an appeal.

(5) The court may, on summary application by a person disqualified by an order under subsection (2), revoke the order with effect from such date as the court may specify.

(6) But no such revocation may be made unless the court is satisfied that there has been a change of circumstances which justifies the revocation of the order.

(7) No application may be made for the purposes of subsection (5) during the first year of a disqualification.

(8) The court may order the applicant to pay the whole or part of the expenses arising from an application made for the purposes of subsection (5).

(9) Within 6 days of the court—

(a) disqualifying a person under subsection (2); or

(b) revoking an order under subsection (5),

the clerk of court must provide an extract of the disqualification or, as the case may be, the revocation to the local authority for the area in which the house concerned is situated.”.

### Power to obtain information

After section 97 of the 2004 Act insert—

“Information

97A Power to obtain information

(1) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (2) to provide the local authority with—

(a) confirmation of the nature of that person’s interest in the house;

(b) the name and address of, and information about that person’s relationship with, any other person whom that person knows to—

(i) own, occupy or have any other interest in the house;

(ii) act in relation to a lease or occupancy arrangement to which that house is subject; or

(iii) act for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house;

(c) such other information relating to the house, or such other person, as the local authority may reasonably request.

(2) A person falls within this subsection if the person—

(a) owns, occupies or has any other interest in the house concerned;

(b) acts in relation to a lease or occupancy arrangement to which that house is subject; or
(c) acts for the person who owns the house with a view to a lease or
occupancy arrangement being entered into in relation to that house.

(3) A local authority may, for the purpose of enabling or assisting it to exercise
any function under this Part, require any person appearing to it to fall within
subsection (4) to provide the local authority with—

(a) confirmation of the nature of that person’s interest in any such house in
relation to which the person acts;

(b) the address of any such house;

(c) the name and address of, and information about that person’s
relationship with, any other person whom that person knows to own any
such house;

(d) such other information relating to any such house, or such other person,
as the local authority may reasonably request.

(4) A person falls within this subsection if the person—

(a) acts in relation to a lease or occupancy arrangement to which any house
within the local authority’s area is subject; or

(b) acts for the person who owns the house with a view to a lease or
occupancy arrangement being entered into in relation to such a house.

(5) A requirement under subsection (1) or (3) is to be made by serving it on the
person concerned in accordance with section 97B.

(6) It is an offence for a person—

(a) without reasonable excuse, to fail to comply with a requirement made
under this section; or

(b) knowingly or recklessly to provide information which is false or
misleading in a material respect to a local authority or any other
person—

(i) in purported compliance with a requirement made under this
section; or

(ii) otherwise if the person knows, or could reasonably be expected to
know, that the information may be used by, or provided to, a local
authority in connection with its functions under this Part.

(7) A person guilty of such an offence is liable on summary conviction to a fine
not exceeding level 2 on the standard scale.

97B  Power to obtain information: service of requirement

(1) A requirement under section 97A(1) or (3) must be in writing.

(2) A requirement under section 97A(1) or (3) is served on a person if it is—

(a) delivered to the person at the place mentioned in subsection (3);

(b) sent, by post in a prepaid registered letter or by the recorded delivery
service, to the person at that place; or
(c) sent to the person in some other manner (including by electronic means) which the local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.

(3) The place referred to in subsection (2) is—

(a) where the person is an individual, that person’s place of business or usual or last known place of abode;

(b) where the person is an incorporated company or body, its registered or principal office.

(4) Subsection (5) applies where service of a requirement by one of the methods described in subsection (2) has been attempted and failed.

(5) Where this subsection applies, a requirement under section 97A(1) or (3) may be served on the person by—

(a) where the person is an individual, leaving a copy of the requirement at that person’s place of business or usual or last known place of abode;

(b) where the person is an incorporated company or body, leaving a copy of the requirement at the person’s registered or principal office.

(6) Subsection (7) applies where the local authority is unable to deliver or send a requirement under section 97A(1) or (3) to the owner or occupier of any house or other premises because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.

(7) Where this subsection applies, a requirement under section 97A(1) or (3) may be served by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the house or other premises.

(8) A requirement which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.”.

10 Part 8 of the 2004 Act: guidance

After section 99 of the 2004 Act, insert—

“Guidance

99A Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers about—

(a) the discharge of its functions under this Part; and

(b) matters arising in connection with the discharge of those functions.

(2) Before issuing any such guidance the Scottish Ministers must consult—

(a) local authorities; and

(b) such other persons as they think fit.”.

11 Information to be given to local authority

After section 22 of the 2006 Act insert—
“22A Information to be given to local authority

(1) On receipt of an application under section 22(1), the private rented housing panel must provide the information mentioned in subsection (2) to the local authority for the area in which the house concerned is situated for the purpose of the local authority maintaining the register under section 82(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(2) The information is—

(a) the address of the house concerned,
(b) the name of the landlord of the house (if known),
(c) the landlord’s address (if known),
(d) the landlord registration number of the landlord (if known), and
(e) the name and address (if known) of any person who acts as agent for the landlord.”.

Minor and consequential amendments

The schedule to this Act (which makes minor modifications and modifications consequential on this Part) has effect.

PART 2
AMENDMENT OF PART 5 OF HOUSING (SCOTLAND) ACT 2006

Amendment of HMO licensing regime

(1) In section 125 of the 2006 Act (meaning of “house in multiple occupation”)—

(a) in subsection (1)—

(i) for the words from “Any” to second “is” substitute ““HMO” means any living accommodation”, and

(ii) after “families” insert “—

(a) which—

(i) falls within subsection (2), and

(ii) is occupied by those 3 or more persons as an only or main residence, or

(b) which is of such type, or which is occupied in such manner, as the Scottish Ministers may by order specify.”,

(b) after subsection (1) insert—

“(1A) Before making an order under subsection (1)(b), the Scottish Ministers must consult—

(a) local authorities, and

(b) such tenants (or tenants’ representatives) and such landlords (or landlords’ representatives) as they think fit.”,

(c) subsection (4)(a) is repealed.

(2) After section 129 of the 2006 Act insert—
129A  Preliminary refusal: breach of planning control

(1) The local authority may, within 21 days of an application for an HMO licence, refuse to consider the application if it considers that occupation of the living accommodation concerned as an HMO would constitute a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997 (c. 8) ("the 1997 Act").

(2) The local authority must, within 7 days of deciding to refuse to consider an HMO application, serve notice of its decision on—
   (a) the applicant,
   (b) the enforcing authority, and
   (c) the chief constable.

(3) The notice must—
   (a) give the local authority’s reason for refusing to consider the HMO application, and
   (b) inform the applicant of the effect of subsection (4).

(4) No fee may be charged in respect of a further application for an HMO licence in relation to the living accommodation concerned made within 28 days of the applicant subsequently obtaining—
   (a) planning permission under Part 3 of the 1997 Act, or
   (b) a certificate of lawfulness of use or development under section 150 or 151 of the 1997 Act,

   in respect of the occupation of the living accommodation as an HMO.

(5) This section applies regardless of whether the local authority is the planning authority for the area in which the living accommodation concerned is situated.”.

(3) In section 132(1) of the 2006 Act (restriction on applications), after first “licence” insert “(otherwise than under section 129A).”.

(4) In section 135 of the 2006 Act (application for new HMO licence: effect on existing HMO licence)—
   (a) in subsection (2)—
      (i) the word “and” immediately following paragraph (a) is repealed,
      (ii) after that paragraph insert—
         “(aa) where the local authority refuses to consider the application for the new HMO licence—
            (i) the date on which the existing HMO licence would expire had an application for a new HMO licence not been made, or
            (ii) such later date as the local authority considers reasonable in the circumstances, and”,
   (b) after subsection (2) insert—
      “(3) The local authority must serve notice of a decision under subsection (2)(aa)(ii) to extend (or further extend) the duration of an existing HMO licence on—
(a) the licence holder,
(b) the enforcing authority, and
(c) the chief constable.”.

(5) In section 158(1)(a) of the 2006 Act (notice of decisions), after “so” insert “(otherwise than under section 129A)”.

(6) In section 191(4)(a) of the 2006 Act (orders and regulations), after “section” insert “125(1)(b),”.

14 Penalty for certain offences in relation to houses in multiple occupation
In section 156(1)(a) of the 2006 Act (penalties etc.), for “£20,000” substitute “£50,000”.

15 Reasons for decisions
(1) In section 158 of the 2006 Act (notice of decisions)—
(a) in subsection (12)(a), for “give” substitute “subject to subsection (17), advise of the right to request”,
(b) after that subsection insert—
“(13) A person on whom a notice of a decision to which this section applies has been served may request the local authority to give its reasons for the decision.
(14) A request under subsection (13) must be made within 14 days of the person receiving notice of the decision.
(15) Where a local authority receives such a request it must notify the person of its reasons for the decision within 14 days of receiving the request.
(16) A local authority must, at the same time as notifying the person under subsection (15), so notify any other person on whom a notice of the decision has been served.
(17) The requirement for the notice to advise of the right to request the local authority’s reasons does not apply where the reasons are included in the notice (or accompany it in writing).”.

(2) In section 159 of the 2006 Act (Part 5 appeals), after subsection (5) insert—
“(5A) For the purposes of an appeal, the sheriff may require the local authority to give reasons for the decision (if the authority has not already done so), and the authority must comply with such a requirement.”.

16 Guidance
In section 163(1) of the 2006 Act (guidance), after “Part” insert “and section 186 (so far as that section relates to this Part)”.

OVERCROWDING STATUTORY NOTICES

17 Overcrowding in private rented housing: statutory notice

(1) A local authority may require the landlord of a house to which subsection (2) applies to take steps to ensure the house is not overcrowded.

(2) This subsection applies to any house in the local authority’s area—

(a) which is overcrowded, and

(b) which the local authority considers, by reason of that overcrowding, is contributing or connected to (or is likely to contribute or be connected to)—

(i) an adverse effect on the health or wellbeing of any person,

(ii) an adverse effect on the amenity of the house or its locality.

(3) A requirement under subsection (1) must be made by serving a notice (an “overcrowding statutory notice”) on the landlord in accordance with section 26.

(4) Where there are joint landlords, the duty under subsection (3) may be satisfied by service on any one of them.

(5) An overcrowding statutory notice—

(a) must specify—

(i) the steps which require to be carried out to ensure the house is no longer overcrowded, and

(ii) the period within which the steps must be completed (being a period not shorter than 28 days),

(b) must state the conditions set out in section 19, and

(c) may specify other steps which require to be carried out for the purposes of section 19(b) or otherwise.

(6) An overcrowding statutory notice may not specify any step which would require the landlord to breach any statutory or contractual obligation.

(7) The Scottish Ministers may by order prescribe—

(a) the form of an overcrowding statutory notice,

(b) other information to be included in the notice,

(c) persons who must be given a copy of the notice by the local authority.

(8) A local authority must have regard to any guidance issued by the Scottish Ministers in relation to overcrowding statutory notices.

18 Tenant information and advice

The local authority may give the occupier of the house in relation to which an overcrowding statutory notice has been served under section 17(3) such information and advice as it considers appropriate in connection with the notice.
Mandatory conditions

The conditions are, where the steps have been taken as specified in the notice to ensure the house is no longer overcrowded, that the landlord must—

(a) not cause the house to become overcrowded,

(b) take reasonable steps to prevent the house becoming overcrowded.

Duration of notice

(1) An overcrowding statutory notice—

(a) has effect from, and

(b) expires 5 years (or such shorter period of not less than one year as may be specified in the notice) after,

the latest of the dates set out in subsection (2).

(2) Those dates are—

(a) the last date on which the notice may be appealed to the sheriff under section 22,

(b) where such an appeal is made, the date on which—

(i) an order is made under section 22(4), or

(ii) the application is abandoned, and

(c) any later date as may be specified in the notice.

(3) An overcrowding statutory notice ceases to have effect in relation to a person if that person ceases to be the landlord of the house.

Representations

(1) A person on whom an overcrowding statutory notice is served may make representations to the local authority concerning the notice within 7 days of the notice being served.

(2) A local authority must consider any representations made under subsection (1) and respond to the person within 7 days of the representations having been made by—

(a) confirming the notice,

(b) varying the notice, or

(c) revoking the notice.

(3) Where the local authority fails to respond in accordance with subsection (2), the overcrowding statutory notice is revoked.

(4) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 23(4)(a), subsection (3) of this section only applies to the variation of the overcrowding statutory notice.

Appeals

(1) The landlord may appeal against an overcrowding statutory notice by summary application to the sheriff.

(2) An application under subsection (1) must be made—
(a) where representations under section 21(1) have been made, before the expiry of the period of 28 days beginning with the service of the notice,

(b) in any other case, before the expiry of the period of 21 days beginning with the service of the notice.

(3) But the sheriff may, on cause shown, hear an appeal made after the deadline set by subsection (2).

(4) The sheriff may determine the appeal by making an order—

(a) confirming the notice,

(b) varying it in such manner as may be specified in the order, or

(c) revoking the notice.

(5) The sheriff’s decision on any such appeal is final.

(6) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 23(4)(b), the sheriff’s powers under subsection (4) of this section are not prejudiced in relation to the overcrowding statutory notice.

23 Variation

(1) The local authority may vary an overcrowding statutory notice (including extending the duration of its effect) at any time.

(2) But a notice may not be so varied so as to shorten the duration of its effect.

(3) The local authority must serve notice of any variation of an overcrowding statutory notice on the landlord in accordance with section 26.

(4) The following sections apply to a notice of variation of an overcrowding statutory notice as they apply to an overcrowding statutory notice—

(a) section 21 (representations),

(b) section 22 (appeals).

(5) A variation of an overcrowding statutory notice has effect from the latest of the dates set out in subsection (6).

(6) Those dates are—

(a) the last date on which the notice of variation of the overcrowding statutory notice may be appealed to the sheriff under section 22,

(b) where such an appeal is made, the date on which—

(i) an order is made under section 22(4), or

(ii) the application is abandoned, and

(c) any later date as may be specified in the notice of variation of the overcrowding statutory notice.

(7) Any reference to an overcrowding statutory notice in this Part includes, unless the context otherwise requires, any variation which has effect by virtue of this section.

24 Revocation

(1) The local authority may revoke an overcrowding statutory notice at any time.
(2) The local authority must serve any revocation of an overcrowding statutory notice on the landlord by a notice in accordance with section 26.

(3) A revocation of an overcrowding statutory notice has effect from the date on which the notice of revocation is served on the landlord.

5 25  
Offences  
(1) A landlord commits an offence if the landlord fails, without reasonable excuse, to comply with any requirement or condition contained in an overcrowding statutory notice within the period (if any) specified for completion.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

26 Service of notices  
(1) A notice is served on a person if it is—

   (a) delivered to the person at the place mentioned in subsection (2),

   (b) sent, by post in a prepaid registered letter or by the recorded delivery service, to the person at that place, or

   (c) sent to the person in some other manner (including by electronic means) which the local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.

(2) The place referred to in subsection (1) is—

   (a) where the person is an individual, that person’s place of business or usual or last known place of abode,

   (b) where the person is an incorporated company or body, its registered or principal office.

(3) Subsection (4) applies where service of the notice by one of the methods described in subsection (1) has been attempted and failed.

(4) Where this subsection applies, service of the notice may be on the person by—

   (a) where the person is an individual, leaving a copy of the notice at that person’s place of business or usual or last known place of abode,

   (b) where the person is an incorporated company or body, leaving a copy of the notice at the person’s registered or principal office.

(5) Subsection (6) applies where the local authority is unable to deliver or send a notice to the person because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.

(6) Where this subsection applies, service of the notice may be by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the house or other premises.

(7) A notice which is sent by electronic means must be received in a form which is legible and capable of being used for subsequent reference.
27 **Interpretation of Part 3**

(1) In this Part—

“house” means any premises used or intended to be used as a separate dwelling;

“landlord” means a person—

(a) entered in a register maintained by a local authority under section 82(1) of the 2004 Act,

(b) who, if not so registered by an authority, would be guilty of an offence under section 93(1) of that Act.

(2) In this Part references to a house being overcrowded are to be construed according to the definition of overcrowding in section 135 of the Housing (Scotland) Act 1987 (c. 26); but do not include any house to which the matters mentioned in section 139(2)(a) or (b) of that Act apply.

### PART 4

**MISCELANEOUS**

28 **Premiums**

(1) In section 82 of the Rent (Scotland) Act 1984 (c. 58) (prohibition of premiums and loans on grant of protected tenancies)—

(a) in subsection (1), “, in addition to the rent,” is repealed,

(b) in subsection (2), “in addition to the rent” is repealed.

(2) After section 89 of that Act insert—

“89A Premiums: regulations

(1) The Scottish Ministers may by regulations make provision about sums which may be charged in connection with the grant, renewal or continuance of a protected tenancy.

(2) Such regulations may, in particular, specify—

(a) categories of sum which are not to be treated as a premium for the purposes of this Part;

(b) the maximum amount which tenants may be asked to pay in respect of such a sum.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) such persons or bodies as they consider representative of the interests of—

(i) tenants;

(ii) private sector landlords; and

(iii) persons who act as agents for such landlords, as they consider appropriate; and
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Part 4—Miscellaneous

(b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).

(4) The power conferred by subsection (1) on the Scottish Ministers to make regulations—

(a) must be exercised by statutory instrument;

(b) may be exercised so as to make different provision for different purposes.

(5) No regulations are to be made under subsection (1) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

(3) In section 90(1) of that Act (interpretation of Part 8), for the entry for “premium” substitute—

““premium” means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge;”.

(4) In section 115(1) of that Act (interpretation), for the entry for “premium” substitute—

““premium” has the meaning given in section 90;”.

29 Tenant information packs

After section 30 of the 1988 Act insert—

“30A Duty of landlord to provide certain information

(1) A person who is to be the landlord under an assured tenancy (of whatever duration) must provide the person who is to be the tenant of that tenancy with the documents specified by virtue of section 30B(1) (“the standard tenancy documents”).

(2) The standard tenancy documents must be provided no later than the date on which the assured tenancy commences.

(3) Where there are to be joint landlords under the tenancy, the duty under subsection (1) may be satisfied by any one of them.

(4) A person under the duty mentioned in subsection (1) who (without reasonable excuse) does not comply with that duty is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Where an offence under subsection (4) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or similar officer of the body, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished accordingly.

30B Duty of landlord to provide certain information: further provision

(1) The Scottish Ministers may by order—
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(a) specify the documents to be provided under section 30A(1) which may, in particular, include—

(i) documents containing information about the tenancy;
(ii) documents containing information about the house;
(iii) documents containing information about the person who is to be the landlord;
(iv) documents containing information about the rights and responsibilities of tenants and landlords;
(v) copies of documents which the person who is to be the landlord is under a duty to provide by virtue of this Act (other than section 30A(1)) or any other enactment;

(b) make such further provision about the documents as they think fit, including, in particular, provision about the form of, and the information to be included in (or excluded from), any of the documents;

(c) make provision so that the giving of a document (or copy of a document) specified under subsection (1)(a)(v), either in pursuance of the duty under section 30A(1) or by virtue of another provision of this Act or any other enactment, has the effect of satisfying all or any such obligations;

(d) make provision about whether the documents may be provided separately or whether they must all be provided at the same time.

(2) Before making an order under subsection (1), the Scottish Ministers must consult—

(a) such persons and bodies as they consider representative of the interests of—

(i) tenants;
(ii) private sector landlords; and
(iii) persons who act as agents for such landlords,
as they consider appropriate; and

(b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).

Notices required for termination of short assured tenancy

In section 33 of the 1988 Act (recovery of possession on termination of a short assured tenancy), after subsection (4) insert—

“(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”.

Landlord application to private rented housing panel

(1) The 2006 Act is amended as follows.

(2) In section 21 (naming of panel and re-naming of committees)—
(a) in subsection (3), after “panel,” where it first occurs, insert “the members of the panel,”,

(b) in subsection (4)—
   (i) the words from “the exercise” to the end become paragraph (a), and
   (ii) after that paragraph insert—

   “(b) the exercise by members of the panel of the functions conferred on them under sections 28A and 28C.”.

(3) At the beginning of the title of section 22 (application to private rented housing panel) insert “Tenant”.

(4) After section 28 insert—

“28A Landlord application to private rented housing panel

(1) A landlord may apply to the private rented housing panel for assistance under section 28C in exercising the landlord’s right of entry to the house concerned under section 181(4).

(2) The president of the panel must allocate an application under subsection (1) to an individual member of the panel, and may subsequently reallocate it at any time to another individual member of the panel (the member to whom it is, for the time being, allocated being referred to as “the panel member”).

(3) The panel member must decide whether—

   (a) to assist the landlord in exercising the landlord’s right of entry to the house concerned under section 181(4) in accordance with section 28C, or
   (b) to reject the application (and notify the landlord accordingly).

(4) The panel member may require the landlord to produce such further information as the panel member considers necessary to reach a decision on the application.

(5) Where the panel member decides to assist the landlord under subsection (3)(a) the panel member must send the landlord and the tenant a notice—

   (a) indicating that—

      (i) the panel member has decided to assist the landlord, and

      (ii) the panel member will be seeking to arrange a suitable time for the landlord to exercise the landlord’s right of entry under section 181(4), and

   (b) informing the tenant of the tenant’s right under subsection (6).

(6) A tenant may, within the period of 14 days beginning with the date of receipt of a notice under subsection (5) (or such longer period as the panel member considers appropriate in the circumstances), make representations to the panel member as to why it is inappropriate or unnecessary for the landlord to exercise the landlord’s right of entry under section 181(4) at that time.

(7) Where representations are made by the tenant under subsection (6), the panel member—

   (a) may make such further enquiries of the landlord and tenant as the panel member considers appropriate, and
Part 4—Miscellaneous

(8) A decision—

(a) to reject an application under subsection (3),
(b) of the panel member under subsection (7),
(c) by the panel member to stop acting in accordance with section 28C(9),

is final.

(9) No application may be made under subsection (1) where the landlord is—

(a) a local authority landlord (within the meaning of the Housing (Scotland) Act 2001 (asp 10)),
(b) a registered social landlord (being a body registered in the register maintained under section 57 of that Act), or
(c) Scottish Water.

28B Landlord application to private rented housing panel: further provision

(1) The Scottish Ministers may by regulations make further provision about the making or deciding of applications under section 28A.

(2) Those regulations may, in particular, make provision—

(a) about the form and content of applications and notices,
(b) prescribing a fee to accompany applications,
(c) specifying circumstances when the panel member must decide to reject an application or stop assisting a landlord,
(d) about the procedure for—

(i) making decisions under section 28A(3) or (7),
(ii) giving notice under section 28A(5),
(iii) making representations under section 28A(6).

(3) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).

28C Panel member to arrange suitable time for access

(1) Subsection (2) applies where the panel member has decided to assist the landlord under section 28A(3)(a).

(2) The panel member must liaise with the landlord and the tenant with a view to agreeing a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(3) Subsection (4) applies if the tenant (without reasonable excuse) has failed or refused, within a reasonable time, to—

(a) respond to the panel member, or
(b) agree a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(4) The panel member may fix a date and time (or dates and times) for the landlord to exercise the landlord’s right of entry to the house under section 181(4).

(5) Where a date and time has been agreed under subsection (2), the panel member may, on the request of either the landlord or the tenant and where there are reasonable grounds for doing so, liaise with the parties with a view to agreeing a different date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(6) The panel member must as soon as reasonably practicable notify the landlord and tenant of any date and time (or dates and times) agreed or fixed under this section for the landlord to exercise the landlord’s right of entry under section 181(4).

(7) When notifying the parties of the date and time (or dates and times) agreed or fixed under this section, the panel member must also—

(a) provide the tenant with information about the action that the panel member may take under section 182 if the tenant refuses the landlord’s exercise of the landlord’s right of entry to the house under section 181(4), and

(b) inform both parties that the panel member (or a person authorised by the panel member) may be requested to attend when the landlord exercises such right of entry.

(8) The panel member may, at the request of the landlord or the tenant, attend at the house at the time agreed or fixed for the landlord to exercise the landlord’s right of entry under section 181(4).

(9) The panel member may, at any time, stop assisting the landlord under this section if the panel member considers it appropriate to do so.

(10) The panel member may—

(a) authorise a person (other than the landlord or a representative of the landlord) to exercise any function conferred on the panel member under this section, or

(b) arrange for any such function to be carried out by another panel member.

(11) The Scottish Ministers may by regulations make further provision about the action the panel member is to take under this section.

(12) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).”.

(5) In section 29 (annual report)—

(a) in subsection (1), after “panel” where it second occurs insert “, by the members of the panel”,

(b) in subsection (2)—

(i) the words from “the frequency” to the end become paragraph (a), and

(ii) after that paragraph insert—

“(b) the number of—
(i) applications made under section 28A,
(ii) cases in which it has been possible to agree a suitable date and time (or dates and times) under section 28C for the landlord to exercise the landlord’s right of entry under section 181(4),
(iii) houses attended by a member of the private rented housing panel (or a person authorised by such a member) as a result of a request made under section 28C(8), and
(iv) warrants sought to authorise entry under section 182(1) in pursuance of section 181(2A).”.

(6) In section 181 (rights of entry: general), after subsection (2) insert—

“(2A) A member of the private rented housing panel, and any other person authorised by any such member, is entitled to enter any house in respect of which a decision has been made under section 28A(3) to assist the landlord’s exercise of the landlord’s right of entry under subsection (4) of this section for the purpose of enabling the landlord to exercise such right of entry.”.

(7) In section 182(1) (warrants authorising entry), for “or (2)” substitute “, (2) or (2A)”.

**PART 5**

**GENERAL**

**32 Interpretation**

In this Act—

“the 1988 Act” means the Housing (Scotland) Act 1988 (c. 43);

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);

“the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1).

**33 Ancillary provision**

(1) The Scottish Ministers may by order make such consequential, supplementary, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for the purposes of giving full effect to, any provision of this Act.

(2) An order under this section may modify any enactment, instrument or document.

**34 Orders**

(1) Any power conferred by this Act on the Scottish Ministers to make an order—

(a) must be exercised by statutory instrument,

(b) includes power to make different provision for different purposes.

(2) An order under section 33 containing provisions which add to, omit or replace any part of the text of an Act, may be made only if a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

(3) Any other statutory instrument containing an order (other than under section 35(3)) is subject to annulment in pursuance of a resolution of the Parliament.
35 Short title and commencement

(1) This Act may be cited as the Private Rented Housing (Scotland) Act 2010.

(2) This Part comes into force at the beginning of the day following the day on which the Bill for this Act receives Royal Assent.

(3) The remaining provisions of this Act come into force on such day as the Scottish Ministers may appoint by order.

(4) An order under subsection (3) may include transitional, transitory or saving provision.
The 2004 Act is amended as follows.

In section 84 (registration)—

(a) in subsection (2), after “Where” insert “(subject to subsections (7) and (8))”;

(b) after subsection (6) add—

“(7) The local authority may refuse to enter a person in the register maintained by the authority under section 82(1) if the person fails to comply with the duty, if applicable, imposed by section 92B(2).

(8) The local authority must refuse to enter a person in the register maintained by the authority under section 82(1) if the person is disqualified by an order made under section 93A(2).”.

In section 86 (notification of registration or refusal to register)—

(a) in subsection (1)(b), after “section” insert “or subsection (7) or (8) of section 84”,

(b) in subsection (2), after “84(2)(b),” insert “(7) or (8),”.

In section 89 (removal from register), after subsection (3) add—

“(4) Where a registered person, without reasonable excuse, fails to comply with the duty imposed by section 92B(1) the authority may remove the person from the register.

(5) Where—

(a) a person is registered by a local authority; and

(b) the person is disqualified from being registered by virtue of an order under section 93A(2),

the authority shall remove the person from its register.”.

In section 90(1) (notification of removal from register: registered person), after “89(1)” insert “, (4) or (5)”.

In section 91(1) (notification of removal from register: other persons), after “89(1)” insert “, (4) or (5)”.

In section 92(1) (appeal against refusal to register or removal from register)—

(a) in paragraph (a), after “84(2)(b)” insert “, (7) or (8)”,

(b) in paragraph (b), after “89(1)” insert “or (4)”. 

In section 93(5) (offences), after paragraph (aa) insert—

“(aaa)the relevant person is not disqualified from being registered by virtue of an order under section 93A(2),”.
Private Rented Housing (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about private rented housing.

Introduced by: Nicola Sturgeon
On: 4 October 2010
Supported by: Alex Neil
Bill type: Executive Bill
PRIVATE RENTED 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 Private Rented Housing (Scotland) Bill introduced in the Scottish Parliament on 4 October 2010:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 54–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government 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.

THE BILL

4. The purpose of the Private Rented Housing (Scotland) Bill is to support responsible landlords and address more effectively the problems caused by landlords who act unlawfully, by strengthening the regulation of the private rented sector. This involves changes to the operation of the systems for registration of private landlords and licensing of houses in multiple occupation. The Bill also includes provisions intended to deal with problems caused by overcrowding in the private rented sector and to improve the working of the private sector tenancy regime.

5. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

STRUCTURE AND SUMMARY OF THE BILL

6. The Bill is in 5 parts:

Part 1 Registration of Private Landlords amends legislation concerning the registration of private landlords contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. This is in relation to:

- expanding the criteria of the fit and proper person test;
- allowing a local authority to require a criminal record certificate from a landlord in order to verify information;
- fees for certain agents;
- public access to information on applications not yet determined and persons found not to be fit and proper to act as landlords;
- requiring landlord registration numbers in advertisements of properties to let;
- an increase in the maximum fine for offences and the ability of a court to impose a ban of up to five years on a convicted landlord;
These documents relate to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

- powers for a local authority to obtain information to enable or assist it to carry out its landlord registration functions, including requiring a letting agent to provide information on properties managed for a landlord;
- a requirement for a local authority to take account of guidance on the use of its enforcement powers issued by the Scottish Ministers; and,
- requiring the Private Rented Housing Panel to pass information on landlords to local authorities so that their registration status can be checked.

Part 2 Amendment of Part 5 of the Housing (Scotland) Act 2006 makes changes to the legislation concerning HMO licensing in Part 5 of the Housing (Scotland) Act 2006 to:

- give Ministers a power to bring by order additional types of multi-occupancy property within the scope of HMO licensing;
- give a local authority a power to refuse to consider an application for an HMO licence if it considers that there would be a breach of planning control;
- increase the maximum fine for offences;
- remove a requirement for a local authority to issue a statement of reasons for every HMO licensing decision; and,
- require a local authority to take account of guidance issued by the Scottish Ministers on the use of its information gathering powers.

Part 3 Overcrowding Statutory Notices gives a local authority a power to serve an overcrowding statutory notice on the landlord of a house which is overcrowded; where the local authority considers that the overcrowding is contributing to or connected with adverse effects on health or wellbeing, or on amenity.

Part 4 Miscellaneous makes changes to the tenancy regime in the Housing (Scotland) Act 2006, the Rent (Scotland) Act 1984 and the Housing (Scotland) Act 1988 in order to:

- clarify the right to make tenancy charges and the level of such charges;
- require a private landlord to issue specified information to a new tenant;
- clarify the notices to be served when a landlord seeks possession of a house after a short assured tenancy has reached its contractual end; and,
- allow a private landlord to seek the assistance of the Private Rented Housing Panel in gaining access to a house for purposes related to the Repairing Standard.

Part 5 General sets out general provisions, such as for the making of orders. It also contains definitions, the short title and provisions for commencement of the Act.

PART 1 – REGISTRATION OF PRIVATE LANDLORDS

7. The provisions in this Part make amendments to the landlord registration provisions contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 (‘the 2004 Act’).
These documents relate to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

Sections 1 and 2 – Fit and proper person

8. Section 85 of the 2004 Act describes the material that local authorities must have regard to when considering if a landlord is a fit and proper person (or if a person appointed to act for a landlord is a fit and proper person so to act). To improve protection for private tenants, section 1 of the Bill expands the list of offences that have to be considered, to include firearms and sexual offences. Regulations will require these to be declared by an applicant for landlord registration, and section 2 of the Bill makes provision for a local authority to require a criminal record certificate to be produced to it, on application or subsequently.

9. Sections 85(3) and (4) of the 2004 Act require a local authority to take into account any information that it deems relevant to the question of whether the landlord or agent is a fit and proper person. To assist local authorities in determining what is relevant, the Bill specifies certain information that should be considered when applying this test, specifically:

- previous convictions under legislation relating to landlord registration or HMO licensing;
- breaches of the Repairing Standard;
- complaints and information which come to the local authority’s attention (for example from tenants, neighbours and others) where landlords have not paid their share of the cost of communal repairs or payments to property factors;
- antisocial behaviour by the landlord, the tenant, or at the property;
- concerns and other information which come to a local authority’s attention in relation to a property, through its other functions; for example when investigating noise complaints or carrying out environmental health inspections; and,
- failure to produce a criminal record certificate where the local authority requires it.

10. Section 1 also gives Ministers the power to add, amend or remove offences or other unlawful acts that must be taken into account by a local authority in applying the fit and proper test.

11. Section 2 of the Bill adds a new subsection 85A to the 2004 Act which gives a local authority the power to require a criminal record certificate if it deems this is necessary when applying the fit and proper person test. If an applicant for registration fails to provide this he or she will not be placed on the register. A registered landlord who fails to provide it may be removed from the register.

Section 3 – Landlord registration number

12. Landlord Registration numbers are currently provided for administrative reasons when landlords are registered but have no legal status. Section 3 therefore amends section 84 of the 2004 Act to put landlord registration numbers on a statutory footing and outlines that local authorities must provide landlords with their registration number when advising them that their registration has been completed.
Section 4 – Appointment of agents

13. Section 4 introduces a new subsection (2A) to section 88 of the 2004 Act to allow a local authority to charge a registered landlord a fee when the landlord notifies the local authority of the appointment of an agent. There is currently no power for the local authority to charge a fee for such an addition to the landlord’s register entry, although assessing whether the agent is a fit and proper person will involve expense to the local authority. Setting a fee will enable local authorities to recover costs and will be fairer for those landlords and agents who pay fees, because they register at an earlier stage. New subsection (2B) ensures that no fee is payable if the fit and proper test has already been carried out on the agent. New subsection (2C) gives Ministers powers to prescribe by regulations the fees, how fees are to be arrived at, and circumstances in which no fee is payable. The Bill further amends section 88 to make it an offence if landlords do not notify local authorities that they have appointed an agent or provide false information. The penalty is a fine on summary conviction not exceeding level 3 on the standard scale.

Section 5 – Access to register: additional information

14. Information on registered private landlords and their properties is held on a register maintained by the local authority for the area where each property is located. Public access to the register is restricted to prevent misuse. To help protect tenants section 5 of the Bill provides two additional categories of information to be made available to the public. Subsection (1) amends section 88A(1) of the 2004 Act to make available information on whether a registration application has been made but not yet determined; and whether a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord or because the person’s agent was found to be not fit and proper. Subsection (2) inserts a new section 92ZA into the 2004 Act. This requires a local authority to note in its register the fact that a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord, or because the person’s agent was found to be not fit and proper. This note must be made when the appeal procedure has been exhausted and must be removed after 12 months or sooner if the person is subsequently registered.

Section 6 – Duty to include certain information in advertisements

15. To prevent unregistered landlords from advertising their properties, section 6 of the Bill inserts a new section 92B into the 2004 Act which requires all adverts for properties for let to include the landlord registration number or, in the case of landlords whose application is yet to be determined, the phrase “landlord registration pending”. Reusable ‘To Let’ boards are exempt from this due to costs for landlords. For a registered landlord the sanction for failing to include a registration number is that they may be removed from the register. For an applicant for registration the sanction is that the application may be refused.

Sections 7 and 8 – Penalties for unregistered landlords

16. Sections 7 and 8 give powers to the Courts to impose tougher penalties on the most severe cases of bad landlord practice. To reflect the seriousness of the behaviour of some landlords, the Bill increases the maximum fine level in section 93(7) of the 2004 Act, for offences relating to acting as an unregistered landlord, from level 5 on the standard scale to
£50,000 and introduces a new section 93A to allow the court to disqualify a person operating as an unregistered landlord from being registered as a landlord by any local authority in Scotland, for up to five years. These provisions bring landlord registration in line with HMO licensing. The Bill outlines the landlord’s right of appeal and makes provision for revocation of any disqualification order, though no revocation can occur unless there has been a change of circumstances, and even then not within the first year of the order taking effect.

Section 9 – Power to obtain information

17. Section 9 inserts new section 97A into the 2004 Act. Section 97A details powers for a local authority to obtain information to enable or assist it to carry out its functions under Part 8. This information can be obtained from various specified persons. The local authority can serve a notice requiring such a person to provide information on the nature of their interest in the house; specified information about other people with an interest in the house or who act in relation to a lease or occupancy arrangement; and such other information about the house or such a person as can be reasonably requested. To help local authorities identify unregistered landlords, the Bill contains a power for local authorities to require a letting agent to provide information in relation to any house in the area in relation to which the agent acts, including the address of the house and the name and address of the owner.

18. Section 9 also outlines the methods a local authority must use to advise the person that they are required to provide information, which may include electronic service. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale.

Section 10 – Guidance

19. Section 10 of the Bill makes an amendment to the 2004 Act by introducing a new section 99A which requires local authorities to have regard to any guidance issued by Scottish Ministers when carrying out their functions in respect of landlord registration. Ministers are required to consult local authorities and, if they think fit, others before issuing any such guidance.

Section 11 – PRHP: information to be given to a local authority

20. To further help local authorities identify unregistered landlords, section 11 of the Bill amends the 2006 Act by inserting new section 22A which requires the Private Rented Housing Panel to pass onto the local authority details about the landlord and property, which must include the landlord registration number if known and details of any agent the panel knows is acting on the landlord’s behalf. This requirement arises where an application is made to the panel by a tenant relating to the repairing standard.

PART 2 - LICENSING OF HOUSES IN MULTIPLE OCCUPATION

21. The provisions in this Part make amendments to the legislation concerning the licensing of houses in multiple occupation under the Housing (Scotland) Act 2006 (the “2006 Act”).
Section 13 – Amendment of HMO licensing regime

22. Section 125 of the Housing (Scotland) Act 2006 defines a house in multiple occupation (HMO). Section 13 inserts into section 125(1) a new paragraph (b), which allows Ministers to define in secondary legislation additional categories of multi-occupancy accommodation, specified by type or manner of occupation, as licensable HMOs. Any such category must meet the usual requirement of a licensable HMO that there are three or more occupants being members of more than two families. However, it does not necessarily have to be a house or premises in terms of the 2006 Act, nor does it have to be the only or main residence of the occupants. Before making such an order, the Scottish Ministers must consult relevant persons.

23. Section 13 also inserts new section 129A into the 2006 Act to give a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. If the applicant subsequently obtains planning permission or a certificate of lawful use or development and makes a further application for a licence within 28 days, no fee may be charged in relation to that application. If an application is refused before an existing licence for the HMO has expired, the existing licence will expire either on its normal expiry date or on a later date that the local authority considers reasonable, given the circumstances.

Section 14 - Penalties for certain HMO offences

24. In line with the provision outlined above for landlord registration offences, section 14 of the Bill gives powers to the Courts to impose tougher penalties for HMO offences by increasing the maximum fine in section 156(1)(a) of the 2006 Act to £50,000.

Section 15 – Statement of reasons for decisions

25. Under the HMO licensing regime a local authority must provide a statement of reasons for an HMO decision. Local authorities have raised concerns that this may cause significant costs, and be unnecessary in many cases. For example, where a licence is granted without any concerns having been raised or identified, an applicant may neither need nor wish reasons. Section 15 therefore amends Part 5 of the 2006 Act at section 158(12)(a) so that a statement of reasons need only be provided when this is requested by any person who receives the decision. The Bill outlines the time periods for local authorities to issue the statement of reasons and for the person to request that they be provided. Where such a request is made, reasons must be provided.

Section 16 - Guidance

26. Section 186 of the 2006 Act allows a local authority to require certain people to provide information relating to the land or premises to help it carry out its functions under HMO licensing. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale. Section 16 of the Bill amends section 163(1) of the 2006 Act to enable the Scottish Ministers to give guidance over the use of the information gathering powers contained in section 186. Such guidance may be used to
inform local authorities how best to deal with vulnerable persons who are reluctant or unwilling to provide information for fear of reprisals.

PART 3 – OVERCROWDING IN THE PRIVATE RENTED SECTOR

27. This part introduces powers to enable local authorities to deal with overcrowding in the private rented sector.

Section 17 – Overcrowding statutory notice

28. Section 17 gives a local authority the power to serve an overcrowding statutory notice on the landlord of a house which is overcrowded, where the local authority considers that the overcrowding is having an adverse effect on the health or wellbeing of any person or on the amenity of the house or its locality. This will allow enforcement action to be taken in the worst cases of overcrowding in the sector, where it is creating adverse effects for occupants, neighbours and others in the locality. The notice will set out the steps to be taken by the landlord to rectify the situation (that is, to reduce the occupancy level to the maximum permitted by the Housing (Scotland) Act 1987), the period within which the steps must be taken, and any other conditions considered appropriate by the local authority. Section 17(7) allows the Scottish Ministers to prescribe by order the form of an overcrowding statutory notice and such other information to be included in the notice as they see fit, plus the persons who must be given a copy of the notice. Local authorities must have regard to any guidance issued by Ministers relating to notices.

Section 18 – Tenant information and advice

29. Section 18 enables the local authority to provide such advice and assistance to the occupants of a house in relation to which an overcrowding statutory notice has been served as it considers appropriate.

Sections 19 to 26 – Overcrowding: further provisions

30. Sections 19 to 26 of the Bill make further provision about the content and duration of notices and the procedure for making them, outline the appeals procedure and provide that failure by a landlord to comply with a notice will be an offence attracting a fine not exceeding level 3 on the standard scale. They also make provision for variation of notices, though not so as to shorten their duration. A local authority may revoke a notice at any time.

PART 4 – MISCELLANEOUS

31. Part 4 makes a number of miscellaneous amendments to legislation relating to the private sector tenancy regime.

Section 28 - Premiums

32. Section 82 of the Rent (Scotland) Act 1984 makes it an offence to charge or receive any premium or make any loan, in addition to the rent, a condition of the grant, renewal or continuance of a protected tenancy. Despite this, there is evidence that some confusion exists
about what it means in practice and a variety of charges are made to tenants. Section 28 of the Bill clarifies that all charges in connection with the grant, renewal or continuance of a tenancy are illegal apart from certain specified, reasonable charges. It inserts a new section 89A into the 1984 Act, giving Ministers powers to outline in secondary legislation charges that will be allowed in connection with the grant, renewal or continuance of a protected tenancy. The regulations will be able to specify categories of payment that are not to be treated as premiums in terms of section 82 and to set a maximum limit to the amount of any such payment that could be charged. Ministers must, before making regulations, consult representatives of tenants, private landlords and landlords’ agents, as well as such other persons (including tenants, private landlords and landlords’ agents) as they consider appropriate.

33. Any such regulations may also apply to assured tenancies (including short assured tenancies) because new section 89A will constitute part of the sequence of sections 86 to 90 of the 1984 Act referred to in section 27 of the Housing (Scotland) Act 1988.

Section 29 - Tenant information packs

34. To improve knowledge about housing legislation and regulation among private tenants and landlords, section 29 of the Bill places a duty on private landlords to provide new tenants with specified documents by inserting new section 30A into the Housing (Scotland) Act 1988. Failure to do so (without reasonable excuse) is an offence attracting a fine not exceeding level 2.

35. New section 30B gives Ministers the power to specify the documents that must be provided, through secondary legislation. For example, this might include documents containing information about the tenancy (such as a tenancy agreement), about the house (such as the permitted level of occupancy), about the landlord (such as his or her landlord registration number), and about the rights and responsibilities of tenants, landlords and agents. They may include documents that the landlord is already required to provide under other sections of the 1988 Act. An order may make further provision, including about the form of the documents and the information to be included in (or expressly excluded from) any of them. It may provide that supply of a document in accordance with such an order will satisfy another statutory obligation to give a document, the intention of this provision being to remove duplication. It may provide for documents to be provided separately or at the same time.

36. Section 30B(2) requires the Scottish Ministers, before using the order-making power, to consult representatives of tenants, private landlords and landlords’ agents, as well as such other persons (including tenants, private landlords and landlords’ agents) as they consider appropriate.

Section 30 - Notices required for termination of a short assured tenancy

37. Section 19 of the Housing (Scotland) Act 1988 states that a sheriff will not consider proceedings to gain possession of a house let as an assured tenancy (which includes a short assured tenancy) unless the landlord has served a notice of proceedings. There is evidence of some uncertainty as to whether this requirement also applies to section 33 of the Act; section 33 relates to recovery of possession in respect of short assured tenancies which have come to the end of their normal contractual agreement. Section 30 of the Bill is intended to clarify that in such cases a notice of proceedings is not required by explicitly stating that sections 18 and 19 of the 1988 Act do not apply to proceedings under section 33.
These documents relate to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

Section 31 - Landlord applications to the private rented housing panel

38. Section 14 of the Housing (Scotland) Act 2006 places a duty on a landlord in certain tenancies to ensure that the house meets the Repairing Standard (set out in section 13 of the Act) and allows a tenant who considers that the landlord has failed to comply with this duty to apply to the Private Rented Housing Panel for assistance.

39. The Act also gives a landlord, or a person authorised by the landlord, the right to enter the house in respect of carrying out this duty; i.e., to inspect the premises or carry out works. Section 31 of the Bill amends the 2006 Act by introducing a new section 28A to enable a landlord to apply to the Private Rented Housing Panel for assistance in exercising these entry rights in order to comply with the Repairing Standard where the tenant has been uncooperative, without the need for court action or waiting until the end of the tenancy. Such an application will be considered by a single member of the Panel.

40. New section 28B gives Ministers power to make by regulations further provision about applications made under section 28A. Such provision may relate to the form and content of applications, the prescription of a fee to accompany applications, the procedure to be followed by applicants and the Panel, the time limits for making decisions and the determination of applications and action following determination, amongst other things.

41. New section 28C outlines the arrangements that the panel member must make and the procedure that must be followed for a suitable time for access. This procedure commences where the panel member decides to offer assistance, at which point a notice is served under section 28A(5) and the member liaises with the landlord and tenant with a view to agreeing a date and time for access (section 28C(2)). If the tenant makes representations to the panel member that entry is inappropriate or unnecessary (for example, when the panel member calls to try to agree a date for access) the member has to decide whether to continue to assist the landlord, and may contact the landlord before reaching that decision (section 28A(7)). If the tenant fails to respond, or refuses to agree a date and time, the panel member may fix them (section 28C(4)). Either the landlord or tenant can request that the panel member attend at the property at the time fixed. Section 31(5) of the Bill amends section 29 of the 2006 Act to provide for the recording and reporting of instances where landlord applications are made, houses attended to by a member following a request for attendance, and instances where a warrant for entry is sought.

PART 5 – GENERAL

Section 32 - Interpretation

42. Section 32 defines various expressions used in the Bill.

Section 33 - Ancillary provision

43. Section 33 confers on Ministers a power to make by order such consequential supplementary, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for the purposes of giving full effect to, any provision of the Bill. Such an order may modify any enactment.
Section 34 - Orders

44. Section 34 provides procedural requirements for orders and regulations made under the Bill.

Section 35 - Short title and Commencement

45. Section 35 gives the short title of the Bill and provides that the provisions of the Bill (except sections 32 to 35, which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on a date or dates determined by order, made by Ministers.
FINANCIAL MEMORANDUM

INTRODUCTION

46. The purpose of the Private Rented Housing (Scotland) Bill is to improve the quality of service experienced by all consumers in the private rented sector by making improvements to the operation of the systems for registration of private landlords and licensing of houses in multiple occupation (HMOs). The Bill also includes provisions to deal with problems caused by overcrowding in the private rented sector and makes improvements to the private sector tenancy regime and related matters. This Memorandum only comments on those provisions that involve financial costs or savings.

BILL CONTENT

47. This Financial Memorandum sets out the costs and savings associated with the Bill under the following headings:

- landlord registration;
- licensing of houses in multiple occupation (HMOs);
- overcrowding; and
- miscellaneous (the private sector tenancy regime and related matters).

Landlord registration

48. Changes to the landlord registration system have been introduced with a view to supporting and assisting local authorities in exercising their landlord registration functions under the Antisocial Behaviour etc. (Scotland) Act 2004. The landlord registration provisions in the Bill will, in particular, offer additional support to local authorities to help them deal with landlords who are not committed to the highest standards of service for tenants, are unregistered or are providing sub-standard accommodation.

Licensing of houses in multiple occupation (HMOs)

49. The Bill improves the effectiveness of HMO licensing by increasing maximum fines and improving local authority capacity by removing the need for an automatic statement of reasons for HMO licensing decisions. The Bill will also give Scottish Ministers a power to designate by order specified categories of accommodation as licensable HMOs and give local authorities a discretionary power to refuse to consider an application for an HMO licence if they considered that use as an HMO would be a breach of planning control.
Overcrowding and miscellaneous (the private sector tenancy regime and related matters)

50. The Bill will give a local authority power to address problems of overcrowding in the private rented sector by serving an overcrowding statutory notice on the landlord of a privately rented house where overcrowding is linked to an adverse effect on the health or wellbeing of the occupants, neighbours or others or on the amenity of the locality. The Bill clarifies rights and responsibilities for tenants, landlords and agents in the private rented housing sector. It allows landlords to seek from the Private Rented Housing Panel (PRHP) assistance to exercise the right of entry in relation to the Repairing Standard.

COSTS ON THE SCOTTISH ADMINISTRATION

Guidance in all Parts of the Bill

51. The production of guidance on aspects of the Bill (such as local authorities’ use of the power to issue overcrowding statutory notices or the application of section 186 of the Housing Act (Scotland) 2006) would be met from within existing budgets.

Landlord registration

Changes to the landlord register

52. Changes to the declaration of offences will impact on the landlord registration IT system which is controlled by the Scottish Government. An IT upgrade to include the additional offences will be required. Although these costs cannot be quantified exactly until the IT company is clear on the detail and time involved, based on previous experience they would be expected to be a one-off amount in the region of £3,000 to £5,000. This could be met from within the current budget as the current contractual arrangements with the IT provider includes a budget for system changes.

53. The landlord registration database does not currently offer a search option based on the input of the landlord registration number. As elements within the Bill will require increased search activity to be undertaken by local authorities (such as checking registration numbers from advertisements), the Scottish Government will add this facility to the registration database to support local authorities and to avoid imposing an additional burden on them. These costs are expected to be in the region of £2,000 and could be met from within the current budget as outlined above.

Providing public access to more information on the landlord registration database

54. Changes to the landlord register would require minor alterations to the landlord registration IT system. Until it is seen how this would work in practice, it is not possible to quantify exactly any such costs, which would be met from within the existing budget, but, based on previous experience, they would be expected to be in the region of £3,000 to £5,000.
Miscellaneous (Private Sector Tenancy Regime and related matters)

55. The Scottish Government funds the Private Rented Housing Panel. Additional costs on the Panel related to the proposals in the Bill are addressed in later paragraphs. These costs would be borne by the Scottish Government.

Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy

56. The Scottish Government will be responsible for designing the form that the information and documents should take, making it available to landlords and agents (which is expected to be done online) and updating it. The costs will therefore fall on the Scottish Government. It is estimated that initial set-up costs would be less than £20,000. In addition, there would be minimal costs (less than £5,000) for updating, which would seldom occur (for example, when there were relevant legislative changes). A more detailed Business and Regulatory Impact Assessment (BRIA) will be produced before the order-making power specifying the details of the information and documents is used.

COSTS ON LOCAL AUTHORITIES

Landlord registration

Expanding the list of offences to be declared by an applicant for landlord registration as part of the fit and proper test

57. In relation to the “fit and proper” criteria for landlord registration, the legislation will require landlords to make additional declarations to include firearms and sexual offences. The Scottish Government asked a sample of local authorities for views on the financial implications of the provision. They stated that consideration of the additional factors for declaration (sexual offences and firearms convictions) was already normal working practice and would therefore not incur any additional cost.

58. Additionally, to assist local authorities in determining what is relevant to the question of whether the landlord is a fit and proper person, the Bill specifies certain information that should be considered when applying this test such as breaches of the Repairing Standard and antisocial behaviour by the landlord, the tenant or at the property. However, instead of imposing a duty on local authorities to carry out additional checks, the Bill offers additional elements for consideration as good practice or examples that they should have regard to if they come to the attention of the local authority as part of their landlord registration functions. This will support local authorities in targeting the very worst elements of the sector.

59. The Scottish Government obtained information from a number of local authorities in relation to the possible additional costs to expanding the list of offences. Some local authorities had varying thoughts on cost implications depending on the element for policing and increased enforcement activity required, with larger authorities relating costs to the volume of applications they process and therefore anticipating relatively higher additional costs than smaller authorities. For example, increasing the convictions which must be declared could increase the number of disclosure checks requested by the local authority (which could impact on staff processing time if further action is required, especially in dealing with a refused application). However, even
estimating an additional 10 refused applications, as estimated by a large authority, and the related staff costs in compiling reports and obtaining extracts from court, this would amount to no more than £500 per case.

60. From the local authorities who provided them, the figures for additional annual costs ranged from an estimated upper bound of £8,000 to suggestions that the additional work was so minimal as to have no impact on costs. It was highlighted that where intensive enforcement activity is required with complex cases, there is an impact on resource costs. Although the expansion of convictions to be declared is unlikely to create more complex cases, for some larger local authorities there could be an increase in the numbers as outlined in paragraph 59. Due to the variation in figures provided by local authorities, it is difficult to estimate the overall numbers of cases and therefore costs to all local authorities per annum.

61. Landlord registration is financed by fees. Therefore if changes to the system involved substantial additional costs for local authorities, it would be possible to adjust the level of fees accordingly. An evaluation of landlord registration will be carried out this year, one of the aims being to review the impact of the policy and legislative framework. An element of this will be the suitability of the fee structure to support the self-funding ambitions for the regime.

**Ability of the local authority to require a criminal record certificate to verify information**

62. Costs associated with sourcing a criminal record certificate will be the responsibility of the party seeking registration. There are also negligible to low administration costs for local authorities. One of the largest local authorities provided an estimate of these costs as a local authority who already conducts disclosure checks on landlords believed to have undeclared convictions (and also those who have declared relevant convictions and whose application therefore requires further scrutiny). Overall, the local authority thought the costs to be not significant and highlighted the benefits of identifying landlords who are not ‘fit and proper’ who could be removed from the market by this process. Estimates were provided of the time taken to request the disclosure, receive and process it and deal with the response. In a majority of cases, it was thought that this would not lead to refusal of the landlord’s application but would cost around £50 in staff time to deal with each case. In the minority of cases (perhaps one or two a year for this large local authority) which may lead to a report recommending refusal, there was thought to be an increased cost due to extra staff work which includes obtaining extracts from court which generally cost £35 per item. Overall, in these minority of cases, the costs were thought to be between £300 - £500 per case. In terms of overall cost per annum for all local authorities, the Scottish Government would not expect each local authority to process the same numbers of cases as this large local authority (estimated at 25 – 30 cases per annum). Consequently, the cases for all local authorities per annum are estimated to be in the region of 150 cases of which perhaps only 10 would lead to a refusal (leading an overall estimated cost for all local authorities of £12,000 per annum).

**Requiring the Private Rented Housing Panel (PRHP) to pass details of landlords to local authorities so that their registration status can be checked**

63. It is at the discretion of a local authority whether to check information supplied by the PRHP, so costs will only be incurred when and if local authorities choose to do this. Local authorities will carry out the additional checks against the landlord registration database. There might be some administrative costs to check the validity of the information supplied by the
PRHP. However, based on the current number of applications to the PRHP, the Scottish Government believes the numbers involved will be low so costs will be negligible.

64. The upgrade to the landlord registration database will help local authorities carry out the search where the PRHP have the landlord registration number. On this basis, the Scottish Government considers that the additional administration time undertaken by local authorities in carrying out checks against the database will be offset by the additional fee income generated in identifying and registering previously unregistered landlords.

**Requiring landlord registration numbers in advertisements of properties to let**

65. In a sample of local authorities, those who responded anticipated negligible additional costs. The fact that the registration number will be included in advertisements will make the task of trying to identify unregistered landlords easier and therefore less resource intensive as the checks required can be carried out against the landlord registration database. This will be further supported by the addition of the improved search facility on the database. As outlined above, there will be the additional benefit of the fee income generated from registering previously unregistered landlords. Therefore although it is recognised that on occasion there will be subsequent enforcement action required which may incur some additional costs, this would be offset by the increased income generated.

**Provision of information to a local authority to enable it to carry out its landlord registration functions**

66. The ability of a local authority to require persons connected to premises, such as owners, landlords, tenants and agents, to provide information in order to help it to carry out its landlord registration functions would alter the way in which it would be able to collect information. This should allow it to exercise its functions more efficiently and therefore may lead to savings, but it is not possible to quantify these because they will depend on the use that is made of the power.

**Allowing a local authority to require an agent to provide a list of properties managed**

67. In relation to local authorities, the negligible cost implications are similar to that of identifying unregistered landlords from advertisements and notification by the PRHP. Local authorities will carry out the same search on the landlord registration database to check that the properties managed belong to a registered landlord.

**Giving Ministers a power to issue guidance on the standards of management in relation to local authorities exercising their registration and enforcement activities, to which local authorities must have regard**

68. Before Ministers issue guidance, there will be a duty to consult with local authorities and other appropriate organisations. Coupled with the fact that the guidance will be drawn up following the evaluation of landlord registration, this will enable elements of the guidance to be devised based on areas of good practice evidenced as working effectively. The Scottish Government therefore believe that any additional enforcement costs would be offset by increased efficiency.
Inclusion of additional information in the landlord register and database

69. There may be a small amount of extra work for local authority officials as a result of the inclusion of additional information in the landlord register and database. This could arise from dealing with an increase in enquiries from the public about the additional information available.

70. The Scottish Government obtained information from a number of local authorities about these possible extra costs. One local authority estimated that there would be additional annual costs of a maximum of £5,000. The others thought that the additional work was so minimal that it would not add to staff costs. In fact, one stated that the costs of dealing with telephone calls from the public might decrease, since they would be able to obtain more information about applications, refusals and deregistrations online.

71. On the basis of this sample, the Scottish Government considers that any additional costs would be negligible. Landlord registration is financed by fees. Therefore, if changes to the system involved substantial additional costs for local authorities, it would be possible to adjust the level of fees accordingly if necessary. The evaluation of landlord registration to be carried out during 2010 - 2011 will examine the suitability of the fee structure to support the self funding ambitions for the regime as mentioned in paragraph 61.

Licensing of houses in multiple occupation (HMOs)

Power to designate a specific category of accommodation as a licensable HMO

72. If a category of accommodation that is not currently covered by the HMO licensing regime were deemed by order to be a licensable HMO, there would be additional costs for local authorities for processing applications and for enforcement, although local authorities would also receive additional fees from the owners of such properties. However, it is not known at the moment what types of property would be brought into HMO licensing by use of the order-making power, nor the numbers of such properties. Additional costs and income for local authorities would therefore depend on the use that was made of the order-making power. The Scottish Government is required to consult with stakeholders before using this power and a BRIA would be produced for any such order.

Linking planning permission and HMO licensing

73. This is a discretionary power which has been requested by local authorities who will have the flexibility to decide whether to use it. The discretionary nature of this provision means that it is difficult to estimate the number of cases per annum where it may be used and therefore the costs to local authorities. Empowering a local authority to refuse to consider an application for an HMO licence if it considers that use of the accommodation as an HMO would be a breach of planning control should not involve a local authority in significant additional work. Co-operation between licensing and planning sections should establish the planning position in any case. Local authorities would have to take into account any possible increase in the resources required when deciding whether to use the power, particularly as there is no legal mechanism for recovery of costs incurred in investigating whether or not a planning application would be required.
Replacing the requirement for a local authority to provide a statement of reasons for HMO licensing decisions

74. This amendment responds to local authorities’ concerns that when the HMO licensing provisions in Part 5 of the Housing (Scotland) Act 2006 come into effect on 31 August 2011, there will be a new burden on local authorities to automatically provide a detailed statement of reasons for all of their decisions. The provision requires local authorities to provide reasons on request only, thus avoiding unnecessary future expenditure by local authorities.

75. Local authorities were concerned that complex statements of reasons could take a qualified solicitor several hours to prepare. One of the authorities estimated that the main impact would be when applications are granted in the face of neighbours raising objections. Information from local authorities suggested a wide difference in estimated savings with estimates of £11,000 and £20,000 being provided by two of the largest local authorities. A third local authority estimating a larger sum of £200,000 per annum due to the perceived need for further solicitors. Although all local authorities will avoid unnecessary expenditure when Part 5 comes into effect, these three local authorities have the largest number of HMO decisions and consequently will make the largest savings. It is difficult to provide an overall estimate of these savings for all authorities due to the difference in estimations provided by local authorities.

Overcrowding

Overcrowding statutory notice

76. Whether to issue an overcrowding statutory notice will be at the discretion of a local authority. If a local authority chose to do so, it would incur some administrative costs. There would also be costs if information and advice were provided to occupants. However, it is likely that few notices would be required to be issued, since the overcrowding would have to be serious enough to be adversely affecting the health or wellbeing of the occupants, neighbours or others or the amenity of the house or its locality. Costs would therefore be very low. Ministers will be able to issue guidance in relation to notices, to which local authorities must have regard, and it is intended that this will include taking into account possible effects on homelessness from issuing a notice. In addition, dealing directly with a serious case of overcrowding could lead to savings in not having to deal with other problems that could develop as a result, such as noise and other nuisance.

Miscellaneous (Private sector tenancy regime and related matters)

Premiums

77. Local authorities currently have a role in reporting for prosecution breaches of the law on the charging of premiums in relation to private tenancies. Clarifying that all pre-tenancy charges are illegal, apart from reasonable charges that are exempted, should make it easier for prosecutions to take place where agents do not comply with the law, although the changes could also make it easier for some agents to work within the law. Additional costs for local authorities will depend on how many cases they decide to take forward. The costs associated with this measure will be considered in more detail when a Business and Regulatory Impact Assessment (BRIA) is prepared for the regulations on reasonable charges.
These documents relate to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy

78. It is envisaged that local authorities would have a role in bringing the requirement to issue the information and documents to the attention of landlords. However, this should involve minimal costs since it should be part of the normal process of communicating with landlords registered in each local authority’s area. The Scottish Government asked a sample of local authorities for their views on this provision and two of the largest authorities agreed that costs to local authorities would be minimal as the Scottish Government would take responsibility for the costs associated with design, availability and updates.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Landlord registration

Private landlords

Ability of the local authority to require a criminal record certificate to verify information

79. It is proposed that the landlord bear the cost of applying for a criminal record certificate. The cost of Standard Disclosure (termed as a “criminal record certificate” under Part V of the Police Act 1997) is £23 for each application. The Scottish Government recognises that this is an additional burden on landlords, but it is relatively modest compared to the average rent of £2,400 accrued from a six month tenancy in the private rented sector (especially as many landlords have more than one property). This is envisaged as a one-off cost and the local authority would need to have reasonable grounds for wanting the information relating to a particular landlord. This power could not be used to require a disclosure check for every applicant.

80. Some local authorities already request a Basic Disclosure from landlord applicants at the landlords’ expense, and indeed the process as outlined in the Bill is already used on an ad hoc basis by some local authorities where there is evidence of undeclared conviction or to further scrutinise an application where the applicant has declared a conviction. The Scottish Government asked a sample of local authorities and COSLA what the anticipated numbers might be to calculate the number of cases expected nationally. As mentioned in paragraph 62, a response was received from one of the largest local authorities who already conducts such checks who stated that it would carry out 25 to 30 Disclosure Scotland checks on landlords in these circumstances per annum on average. The Scottish Government estimates a total of 150 cases per annum which would mean a total approximate cost of £3,500 spread amongst the relevant landlords.

Requiring landlord registration numbers in advertisements of properties to let

81. There would be modest additional costs incurred by landlords seeking to advertise their properties through the addition of the landlord registration number or the phrase “landlord registration pending”. However the Scottish Government notes that only a small percentage of tenants find their property via newspapers (where the landlords may incur costs if they pay for their advertisements by the line or word) and expects this percentage to drop, because of the increasing use of the Internet. Feedback from one of the largest local authorities concurs with this view, stating that the majority of properties are advertised on line via an agent and that newspaper advertisements are in the minority. Other means of advertising properties for rent would be less likely to incur a significant additional expense as a result of an increased word-
count. The Scottish Government sought further information on expected costs from local authorities and the PRS Strategy Group. Stakeholders did not offer any information further to the Scottish Government’s assumptions.

82. There is an exemption for reusable To Let signs from the requirement to include the landlord registration number or “landlord registration pending” phrase.

Allowing a local authority to charge a fee when a registered landlord subsequently nominates an unregistered agent

83. At the moment there is no charge for a landlord who subsequently adds an unregistered agent to the registration (unless the agent then registers, in which case the fee of £55 has to be paid). If a local authority exercised its new power to make a charge for carrying out the fit and proper test for an agent who declines to register, the landlord would have to pay a fee. For the purposes of these calculations, the Scottish Government assumes that this fee will also be £55.

84. Based on information from a sample of local authorities, the Scottish Government estimates that there may be about 100 cases per annum nationally in which a registered landlord nominates an unregistered agent. In many of these cases, the agent will register voluntarily, so the local authority will already receive the £55 fee. All of the local authorities that supplied the Scottish Government with information said that all such agents did register, but this may not be the case everywhere. Assuming that the maximum percentage of cases across Scotland in which the agent does not choose to register is 10%, there would be up to about 10 cases annually in which a local authority will be able to apply the new charge of £55 to a registered landlord for adding an unregistered agent to a registration. This suggests the total additional annual cost to landlords would be nil or negligible.

Provision of information to a local authority to enable it to carry out its landlord registration functions

85. The requirement to provide information to a local authority in order to help it to carry out its landlord registration functions would apply to persons connected to the relevant premises, such as owners, landlords, tenants and agents. Responsible landlords and agents already currently provide much of the information requested by local authorities. The Scottish Government considers that any additional costs of complying with this requirement, where this would otherwise not have been done voluntarily, would be negligible.

Allowing a local authority to require an agent to provide a list of properties managed

86. This specific power exists in addition to the general power above (Provision of information to a local authority to enable it to carry out its landlord registration functions). There would be negligible administrative costs to agents in supplying the details to local authorities as the information required by the local authority will already be held by the agent.
Private Rented Housing Panel

Requiring the Private Rented Housing Panel (PRHP) to pass details of landlords to local authorities so that their registration status can be checked

87. It is unlikely that there will be any additional administrative costs for the PRHP, which is funded by the Scottish Government, as they will be passing the details of landlords to the local authority to carry out the check that the landlord is registered. The negligible amount of time that this will take will easily be accommodated within existing budgets. The PRHP already passes on other information so the systems are in place and will not incur setting up costs. It is likely that the requirement to provide pre-tenancy information and documents to tenants will include the landlord’s registration number so the tenant could provide it to the PRHP, which would reduce the administrative task even further.

Licensing of houses in multiple occupation (HMOs)

Private landlords and agents

Power to designate a specific category of accommodation as a licensable HMO

88. If a category of accommodation that is not currently covered by the HMO licensing regime were brought by order within the scope of licensing, there would be additional costs for owners of such properties, particularly the costs of obtaining a licence and possibly of carrying out any work required to meet licensing conditions.

89. It is very difficult to estimate either of these costs. Every local authority has a different level of application fees. Licences may last for one year or three years. There are often different rates for applications for new licences and for renewals and some local authorities charge a flat fee, while others use a sliding scale, depending on the number of occupants in the HMO. For example, the City of Edinburgh Council, which has the largest number of licensed HMOs, charges up to £585 for an application for a new one year licence and up to £410 for a renewal. The amount of work required for an HMO to meet licensing standards will also vary considerably, but could cost up to several thousands of pounds in some cases.

90. It is not known at the moment what types of property would be brought into HMO licensing by use of the order-making power, nor what their numbers would be. Additional costs for owners would depend on the use that was made of the power. As previously mentioned, the Scottish Government is required to consult with stakeholders before using this power and a BRIA would be produced for any such order.

Linking planning permission and HMO licensing

91. Where landlords are already legally required to obtain planning permission for an HMO, or where they are required to obtain certification that planning permission is no longer required because the premises have been in use for a sufficiently long period, the Scottish Government does not consider that it is an additional cost on them to comply with existing planning requirements in order to obtain an HMO licence.
Overcrowding

**Private landlords and agents**

**Overcrowding statutory notice**

92. Where an overcrowding statutory notice was issued, landlords would have to take steps to reduce the occupancy of the house. The local authority would set a timetable that would allow the occupants to leave in an orderly manner. In some cases the landlord would serve the usual notices on the occupants. There could be a very few cases in which it would be necessary for the landlord to take eviction action through the courts, which were estimated to be £700 to £800 per undefended case by landlord representatives. If the tenant chose to defend the case, the costs would be higher but would be very difficult to quantify as there are many factors affecting the nature of the case and how it might be considered in the courts. In cases where landlords were permitting or causing overcrowding any costs would equate to the cost of complying with the statutory occupation level and therefore would not be seen as additional. The Scottish Government consulted the ScottishPRS Strategy Group as to specific costs and savings that might arise from this provision. Landlord representatives raised the issue that a landlord could be unfairly financially penalised where overcrowding had occurred due to actions by the tenant of which the landlord did not have knowledge. However, reasonable excuse could be a defence for the landlord in cases where overcrowding is caused by the occupants and the landlord lacks legal powers to comply with the overcrowding notice as in this example.

Miscellaneous (Private Sector Tenancy Regime and related matters)

**Private Rented Housing Panel**

**Allowing a private landlord to apply to the PRHP for assistance in exercising the right of access in relation to the repairing standard**

93. There will be costs incurred by the PRHP in undertaking this additional work. Based on the number of cases brought by tenants that are heard by Private Rented Housing Committees, the Scottish Government estimates that there would be a maximum of about 150 cases brought by landlords each year.

94. The Scottish Government expects that a case of this type would be heard by a Housing Member of the PRHP. The minimum cost would be a half day’s fee of £81.50. The Scottish Government assumes that, as with complaints by tenants to the PRHP, the making of an application will prompt the tenant in many cases to allow access so that there will be no further costs. Where the Member had to attend at the property (perhaps half of cases), the additional cost would probably be a day’s fee of £163 plus travelling costs (estimated at an average of £50).

95. The Scottish Government estimates that only about 10 cases a year would require a warrant to be obtained. Although there is no fee paid to a sheriff, Justice of the Peace or court in order to obtain a warrant, an additional fee would be payable to the Member (estimated at £81.50). The cost of the initial notification and execution of service by the sheriff officer would be in the region of £60. The Scottish Government expects that perhaps one case every five years would require the execution of the warrant, with supervision by a sheriff officer and possibly a forced entry by a joiner. This would involve additional costs of approximately £100 for the sheriff officer to attend at a property with a view to executing a warrant (although this may be
less if there was a fee arrangement depending on the number of cases) and approximately £75 if a joiner is required to force the lock (up to £90 for replacing the lock if that is damaged). This estimation is based on the fact that the PRHP have not had to apply for a warrant in relation to any case brought by a tenant.

96. These figures give indicative maximum additional costs of about £30,000 per annum, or an average of £200 per case. It is expected that these costs will be passed onto landlords, the beneficiaries of the new procedure, in the form of application fees.

97. It is expected that additional administrative costs would be absorbed within the PRHP’s existing budget. There would be additional training costs for the members of the PRHP who deal with these cases. Start up costs would be approximately £2,500 for an estimated 6 members initially in the first year, followed by negligible costs in the following years. There would be further new members in later years who would require similar training but it is difficult to estimate how many members and in what years the training would be required.

**Private Landlords and Agents**

**Premiums**

98. Some agents and landlords will be allowed to make only charges that are lower than their current charges, possibly leading to a loss of income. However, by definition the excess will be unreasonable and the whole of the current charge may not be legally justified at the moment. The clarification of pre-tenancy charges will help responsible agents and landlords to be in a better position to know what they can legally charge. A more detailed BRIA will be produced before the order-making power specifying permitted charges is used.

**Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy**

99. Landlords and agents will be able to obtain the additional elements of the information and documents for free from the Scottish Government. There may be a small additional cost of provision of this material to tenants, but this will be minimal given that landlords and agents already have to provide some of the documents that are likely to be included, such as the tenancy agreement, the Energy Performance Certificate and the Repairing Standard letter. In fact, bringing all of the documents together may make it easier for the landlord or agent. Also, given the widespread lack of awareness of housing law among landlords that was identified by the Scottish Government’s “Review of the Private Rented Sector”, this provision will assist to ensure that more landlords are aware of their legal responsibilities. The Scottish Government asked the Scottish PRS Strategy Group for more information on the costs associated with this provision. Group members did not highlight any costs beyond the minimal amounts already indicated. A more detailed BRIA will be produced before the order-making power specifying the details of the information and documents is used.

**Allowing a private landlord to apply to the PRHP for assistance in exercising the right of access in relation to the repairing standard**

100. It will be at the discretion of private landlords whether they choose to seek assistance in exercising the right of access to carry out work or inspections relating to the Repairing Standard through the PRHP. They will still be able to apply to the sheriff or simply to wait until the end
of the tenancy. As explained above, the Scottish Government estimates that up to 150 landlords each year would apply to the PRHP. It is estimated that this would cost an average of £200 per case, totalling up to £30,000 per annum. It is expected that these costs will be passed onto landlords, the beneficiaries of the new procedure, in the form of application fees.

101. Set against the cost of these fees would be possible savings on taking court action (which can cost hundreds of pounds) and the protection of the value of a landlord’s property by possibly being able to carry out repair work faster than would otherwise be the case. The Scottish Government consulted the Scottish PRS Strategy Group regarding the costs for this provision. Group members did not specify any further cost implications than those already indicated.

**Summary table of additional costs**

<table>
<thead>
<tr>
<th>Paragraph reference</th>
<th>Additional costs</th>
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<tbody>
<tr>
<td><strong>Scottish Government</strong></td>
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<tr>
<td>Changes to the landlord register.</td>
<td>Paragraphs 52 – 53</td>
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<tr>
<td>Providing public access to more information on the landlord registration database</td>
<td>Paragraph 54</td>
</tr>
<tr>
<td>Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy</td>
<td>Paragraph 56</td>
</tr>
<tr>
<td><strong>Local authorities</strong></td>
<td></td>
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<tr>
<td>Expanding the list of offences to be declared by an applicant for landlord registration as part of the fit and proper test</td>
<td>Paragraphs 57 – 61</td>
</tr>
<tr>
<td><strong>Action</strong></td>
<td><strong>Paragraphs</strong></td>
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<tr>
<td>Ability of the local authority to require a criminal record certificate to verify information</td>
<td>Paragraph 62</td>
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<tr>
<td>Requiring the Private Rented Housing Panel (PRHP) to pass details of landlords to local authorities so that their registration status can be checked</td>
<td>Paragraphs 63 - 64</td>
</tr>
<tr>
<td>Requiring landlord registration numbers in advertisements of</td>
<td>Paragraph 65</td>
</tr>
</tbody>
</table>
These documents relate to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

| Properties to let | additional costs. The benefit of the fee income generated from identifying and registering previously unregistered landlords should assist in offsetting the possibility of increased enforcement activity. |
| Provision of information to a local authority to enable it to carry out its landlord registration functions | Paragraph 66 | This provision will encourage greater efficiency and therefore may lead to savings, but it is not possible to quantify these because they will depend on the use that is made of the power. |
| Allowing a local authority to require an agent to provide a list of properties managed | Paragraph 67 | Negligible costs for staff checking the landlord registration database. The income derived from this provision should offset the costs involved. |
| Giving Ministers a power to issue guidance on the standards of management in relation to local authorities exercising their registration and enforcement activities, to which local authorities must have regard | Paragraph 68 | The Scottish Government believe that any additional enforcement costs would be offset by increased efficiency. |
| Inclusion of additional information in the landlord register and database | Paragraphs 69 – 71 | Costs negligible based on the majority of the local authority views obtained. |
| Power to designate a specific category of accommodation as a licensable HMO | Paragraph 72 | Costs depend on use made of order-making power which is difficult to estimate as it is not known what types of property would be licensed or in what numbers. Fees charged would be set against costs. |
| Linking planning permission and HMO licensing | Paragraph 73 | Costs depend on use made of the power. It is difficult to estimate how many cases there |
These documents relate to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

<table>
<thead>
<tr>
<th>Change</th>
<th>Paragraph(s)</th>
<th>Details</th>
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<tbody>
<tr>
<td>Replacing the requirement for a local authority to provide a statement of reasons for HMO licensing decisions.</td>
<td>Paragraphs 74 – 75</td>
<td>An estimate from the three local authorities with the largest number of HMO licensing decisions on average suggested savings of either £11,000, £20,000 or £200,000 per annum per local authority. It is difficult to provide an overall estimate of savings for all authorities due to the difference in estimations provided by local authorities.</td>
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<td>This is a discretionary power which would incur some administrative costs if a local authority chose to use it. There would also be costs if information and advice were provided to occupants. However, it is likely that few notices would be required to be issued, since the overcrowding would have to be serious enough to be adversely affecting the health or wellbeing of the occupants, neighbours or others or the amenity of the house or its locality. Costs are therefore likely to be very low.</td>
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<td>Premiums</td>
<td>Paragraph 77</td>
<td>Costs for local authorities will depend on the number of cases they decide to take forward. Costs will be considered in more detail in a BRIA that will be prepared for the regulations on reasonable charges.</td>
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<table>
<thead>
<tr>
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<th>Costs</th>
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<tbody>
<tr>
<td>with specified documents and information at the start of the tenancy</td>
<td></td>
<td>minimal costs for local authorities.</td>
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<td>Private Rented Housing Panel – funded by the Scottish Government.</td>
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<tr>
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<td>Allowing a private landlord to apply to the PRHP for assistance in exercising the right of access in relation to the repairing standard</td>
<td>Paragraphs 93 – 97</td>
<td>£30,000 per annum or an average of £200 per case which the Scottish Government expects to be passed on to landlords as the beneficiaries of the new procedure. Negligible additional training costs for the members of the PRHP who deal with these cases. Start up costs would be approximately £2,500 for an estimated 6 members initially in the first year, followed by negligible costs in the following years. There would be further new members in later years who would require similar training but it is difficult to gauge how many members and in what years the training would be required.</td>
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| Ability of the local authority to require a criminal record certificate to verify information | Paragraphs 79 - 80                      | A one off cost of £23 to a landlord where local authority had reasonable grounds for wanting the information relating to that landlord. The Scottish Government estimates a total of 150 cases per annum which would mean a total approximate cost of
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<th>Cost</th>
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<td>Requiring landlord registration numbers in advertisements of properties to let</td>
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<tr>
<td>Paragraphs 83 - 84</td>
<td></td>
<td>Total additional annual cost to landlords would be nil or negligible.</td>
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<tr>
<td>Paragraph 85</td>
<td></td>
<td>Negligible costs to landlords and agents.</td>
</tr>
<tr>
<td>Paragraph 86</td>
<td></td>
<td>Negligible administrative costs to agents.</td>
</tr>
<tr>
<td>Paragraphs 88 – 90</td>
<td></td>
<td>Costs of obtaining licences and possibly of carrying out work depending on use made of order-making power.</td>
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<tr>
<td>Paragraph 91</td>
<td></td>
<td>Costs of complying with existing law not seen as additional.</td>
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<td>Paragraph 98</td>
<td>May lead to some agents and landlords making a lower charge and thus less income. However, by definition, higher charges that have been made previously are unreasonable and may not be legally justified.</td>
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| Allowing a private landlord to apply to the PRHP for assistance in exercising the right of access in relation to the repairing standard | Paragraphs 100 – 101 | The Scottish Government estimates that up to 150 landlords each year would apply to the PRHP. It is estimated that this would cost £200 per case, a total of up to £30,000 per annum. It is expected that these costs will be passed onto landlords, the beneficiaries of the new procedure, in the form of application fees. Set against the cost of these fees would be possible savings on taking court action and the protection of the value of a landlord’s property by possibly being able to carry out repair work faster than would otherwise be the case. |

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

102. On 4 October, the Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon MSP) made the following statement:

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

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

103. On 1 October, the Presiding Officer (Rt Hon Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Private Rented Housing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRIVATE RENTED HOUSING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Private Rented Housing (Scotland) Bill introduced in the Scottish Parliament on 4 October 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 54-EN.

POLICY OBJECTIVES OF THE BILL

2. The principal policy objectives of this Bill are to improve standards of service for consumers in private rented housing and enable continued sustainable growth in the sector. This will be achieved by measures to: strengthen the regulation of the private rented sector; improve the working of the private sector tenancy regime and related matters; address more effectively the problems caused by rogue landlords; and deal with the worst effects of overcrowding. Achieving these objectives will contribute to the Government’s productivity and solidarity purpose targets and towards achievement of the strategic objective to create a Safer and Stronger Scotland – helping local communities to flourish, becoming stronger, safer, healthier places to live, offering improved opportunities and a better quality of life. It will support delivery of the following national outcomes:

- We live in well-designed, sustainable places where we are able to access the amenities and services we need.
- We tackle the significant inequalities in Scottish society - by safeguarding and improving the supply, quality and access to housing.
- We will live our lives safe from crime, disorder and danger.
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

3. The Bill will achieve its policy objectives as described below.

Landlord registration

4. Changes to the landlord registration system have been introduced with a view to supporting and assisting local authorities in exercising their landlord registration functions under the Antisocial Behaviour etc. (Scotland) Act 2004. The landlord registration provisions in the
Bill will, in particular, offer additional support to local authorities to help them deal with landlords who are not committed to the highest standards of service for tenants, are unregistered or who are providing substandard accommodation.

**Licensing of houses in multiple occupation (HMOs)**

5. The Bill improves the effectiveness of HMO licensing by increasing maximum fines and improving local authority capacity by removing the need for an automatic statement of reasons for HMO licensing decisions. The Bill will also give Scottish Ministers a power to designate by order specified categories of accommodation as licensable HMOs, and will give local authorities a discretionary power to refuse to consider an application for an HMO licence if they consider that use as an HMO would be a breach of planning control.

**Overcrowding, the private sector tenancy regime and related matters**

6. The Bill will give a local authority power to address problems of overcrowding in the private rented sector by serving an overcrowding statutory notice on the landlord of a privately rented house where overcrowding is linked to an adverse effect on the health or wellbeing of the occupants, neighbours or others or on the amenity of the locality. The Bill clarifies rights and responsibilities for tenants, landlords and agents in the private rented housing sector. It also allows landlords to seek from the Private Rented Housing Panel assistance to exercise the right of entry in relation to the Repairing Standard.

**BACKGROUND**

7. The provisions of this Bill are designed to be complementary with the Scottish Government’s overall strategic approach to housing, and should be seen as part of an overall package of measures to meet housing need and improve standards of housing.

8. The Scottish Government believes that the private rented sector has a key role to play within the range of Scottish housing options. The sector provides flexibility and choice to a varied range of tenants including homeless people, and supports a higher level of labour mobility than other housing. As was explained in the recent discussion document, Housing: Fresh Thinking, New Ideas¹, the Government wants to see the role of the sector strengthened as likely future cuts in public spending will make the private rented sector even more important in meeting housing need.

9. In March 2009 the Scottish Government published its Review of the Private Rented Sector², which includes externally commissioned research and analysis and a range of analytical work carried out internally. The review also set out the policy implications arising from this extensive evidence on the sector. Among other findings, the Review identified the key problems and concerns of many tenants and landlords covering such areas as dealing with repairs, enforcement of standards, regaining possession of properties and knowledge of rights and responsibilities.

10. In order to help take forward the issues raised in the Review, Ministers established the Scottish Private Rented Sector (PRS) Strategy Group in October 2009. The Group has an independent chairperson and consists of a range of leading organisations with expertise in the sector, covering the interests of tenants, landlords, agents, local authorities and voluntary groups. The remit of the Group is to advise the Scottish Government on how it can support tenants, landlords and others to grow a professional, high quality private rented sector equipped to provide sustainable housing solutions for Scotland in the 21st century.

11. In the first phase of its work, the PRS Strategy Group considered a range of proposals for primary legislation that arose from the review or were put forward by a number of stakeholders. Its recommendations to Ministers on the proposals that should be the subject of consultation with a view to inclusion in a possible Private Housing Bill were published in January 2010, following agreement by all members of the Group.

12. A public consultation on these proposals followed and the majority of the measures in the Bill arose from this process. These relate to changes that could: help the landlord registration system to operate more effectively; improve the enforcement of the house in multiple occupation (HMO) licensing system; address overcrowding in the sector; and amend laws relating to aspects of the tenancy regime and related matters in order to facilitate the exercise of some landlord rights, clarify processes and improve tenants’ knowledge of their rights and responsibilities.

13. The Housing (Scotland) Bill introduced on 13 January 2010 included some measures on the regulation of the private rented sector. The intention was to take forward some relatively straightforward proposals as quickly as possible, while more complex measures were developed in discussion with the PRS Strategy Group. However, the Local Government and Communities Committee expressed the view in its Stage 1 report that it would be better, since a further bill dealing with the private rented sector was proposed by the Scottish Government, to have all the private rented sector provisions in one bill. The Private Rented Housing (Scotland) Bill therefore incorporates the four provisions on landlord registration (with amendments) and the two on HMO licensing that were included in the previous Bill.

14. Additionally, during Stage 1 evidence and the Stage 1 debate on the Housing (Scotland) Bill on 23 June 2010, stakeholders and MSPs pointed to the continuing problems with unregistered rogue landlords and agents and called for further action to be taken to deal with them. It has become increasingly clear that a minority of rogue private landlords in Scotland are providing very poor levels of service to their tenants and letting out accommodation which is in an unacceptable condition. This contributes to serious social problems, damages the cohesion of communities in some localities, and can have wider repercussions for neighbouring areas.

15. Rogue landlords and unscrupulous agents who act on their behalf bring the reputation of the private rented sector into disrepute and undermine the work done by the many good landlords in the sector who provide good quality, flexible housing. They create misery amongst tenants who often are afraid to challenge bad practice for fear of bullying, harassment or eviction. Scottish Ministers are determined to take effective action to address these problems and their

causes, and to ensure that local authorities have the powers that they need to tackle the problem, protect vulnerable tenants such as migrant workers, and address antisocial behaviour.

16. The measures consulted on and included in the Bill will considerably strengthen the regulation of the private rented sector and, in response to the concern over the impact of rogue landlords and agents, Ministers decided that the Bill should include additional measures to strengthen the enforcement of HMO licensing and landlord registration further and introduce tougher penalties.

17. Thus, the Bill’s provisions will give landlords, agents and local authorities greater confidence in administering and managing homes in the private rented sector. For those landlords who are not committed to the highest standards of service for tenants, the provisions in the Bill will make it clear that the Scottish Government will not tolerate poor standards of service and enforcement in the sector.

18. As outlined above, Ministers are keen that the Bill addresses the problems caused by rogue landlords who let substandard properties or do not comply with registration requirements. However, it should be acknowledged that there are specific problems with a small minority of landlords engaged in criminal activities which need a multi-agency approach to tackle, for example through Glasgow Council’s Hub.

19. The Scottish Government expects that further consideration by the PRS Strategy Group and the evaluation of landlord registration planned to complete in March 2011 may bring forward future measures aimed at removing rogue landlords and agents from the sector, making private renting more efficient, safeguarding the interests of both responsible landlords and tenants, and helping to develop the sector’s role in meeting housing need, including homeless households. However, Ministers believe that it is appropriate to bring forward the measures in the Bill without further delay so that local authorities have these powers to deal with bad landlords.

CONSULTATION

20. A consultation on private sector housing issues for possible inclusion in the Housing (Scotland) Bill took place between 6 July and 27 September 2009. The consultation paper was published on the Scottish Government website, with links sent to more than 200 stakeholders, including local authorities, professional and representative bodies and voluntary organisations. The consultation paper included questions relating to landlord registration, licensing of houses in multiple occupation, and local authority powers to deal with disrepair in private houses. The Government received 117 responses from individuals as well as a range of organisations. There was a majority (on many questions large) in favour of all the proposals. A detailed report on the consultation responses has been published on the Scottish Government website.

21. A further consultation on the Strategy Group’s recommendations for a proposed housing bill was carried out between 8 March and 19 April 2010. As well as proposals for legislation on

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the private rented sector (covering landlord registration, HMO licensing, overcrowding and the tenancy regime), this consultation included issues relating to the 20 year rules on standard securities and residential leases, which the Scottish Government will seek to progress by introducing a Stage 2 amendment to the Housing (Scotland) Bill. The consultation also covered the licensing of mobile homes sites; however the consultation findings highlighted that it is necessary to consider the options for change in more detail before taking forward primary legislation. In the meantime, the Government will develop secondary legislation updating the implied terms in the written contractual agreements between site owners and residents. Seventy-two respondents answered all or some of the questions relating to the private rented sector. An analysis report has been published\(^5\), which shows that there was wide support for most of the proposals.

22. As explained above, following the conclusion of the latter consultation, Ministers decided that, in addition to the existing proposals, further measures were needed to address the serious problems caused by rogue landlords and unscrupulous agents, such as those identified during Stage 1 of the Housing (Scotland) Bill. Some of these proposals had been raised by stakeholders, such as encouraging better joint working within some local authorities. There was not sufficient time for a public consultation on the small number of new proposals, but the PRS Strategy Group was asked to consider and provide comments on them.

**EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

23. Information on these issues is provided in relation to each Part of the Bill. The Bill as a whole is expected to have a positive effect on the wellbeing of communities generally, including island communities. Its provisions do not have any adverse effect on human rights or sustainable development.

**BILL CONTENT**

24. The Bill is structured in the following Parts:

- Part 1 – Amends the system of registration of private landlords by:
  - Expanding the list of offences to be declared by an applicant for landlord registration.
  - Strengthening guidance and procedures for the fit and proper person test.
  - Allowing a local authority to require a criminal record certificate to verify information.
  - Allowing a local authority to charge a fee when a registered landlord subsequently nominates an unregistered agent.
  - Increasing the information available to the public through the landlord register database.

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Requiring landlord registration numbers in advertisements of properties to let.
Increasing the maximum fine for landlord registration offences to £50,000.
Giving a court power to ban a landlord convicted of registration offences for up to five years.
Allowing a local authority to require a person associated with a house to provide information relating to landlord registration.
Allowing a local authority to require an agent to provide a list of properties managed.
Requiring a local authority to take account of guidance on its landlord registration functions issued by the Scottish Ministers.
Requiring the Private Rented Housing Panel to pass details of landlords to local authorities so their registration status can be checked.

• Part 2 – Amends the system of licensing of houses in multiple occupation (HMOs) by:
  Giving Ministers power to designate by order additional categories of multi-occupancy accommodation as licensable HMOs.
  Enabling a local authority to refuse to consider an application for an HMO licence if it considers any requisite planning permission has not been obtained.
  Increasing the maximum fine for HMO licensing offences to £50,000.
  Replacing a requirement for a local authority to issue a statement of reasons for every HMO licensing decision it makes so that the statement need only be issued in response to a request.
  Requiring a local authority, in exercising its power to require persons associated with a property to provide information relating to HMO licensing, to take account of guidance issued by Scottish Ministers.

• Part 3 – Gives a local authority power to address problems of overcrowding in the private rented sector by serving an overcrowding statutory notice on the landlord of a privately rented house where overcrowding is linked to an adverse effect on the health or wellbeing of the occupants, neighbours or others or on the amenity of the locality.

• Part 4 – Amends the legislation relating to the private sector tenancy regime and related matters by:
  Giving power to allow specified, reasonable pre-tenancy charges.
  Requiring a private landlord to issue specified documents and information to a tenant at the start of the tenancy.
  Clarifying the notices required to be issued to gain possession of a property subject to a short assured tenancy that has reached its normal end date.
  Allowing a private landlord to apply to the Private Rented Housing Panel for assistance in exercising the right of access in relation to the Repairing Standard.

• Part 5 – Makes supplementary and final provisions.
PART 1 - REGISTRATION OF PRIVATE LANDLORDS

Policy objectives

25. The system of landlord registration was established by Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. Registration is designed to protect tenants by ensuring that only people who are fit and proper to let out residential property can operate legally as private landlords. The operation of landlord registration is the responsibility of local authorities. In addition to increasing the penalties for landlords acting unlawfully, the measures in the Bill will support local authorities by enabling them to improve their functions and mechanisms in operating and managing enforcement of the regime effectively.

26. In 2008 the consultants Arneil Johnston carried out a review of the legislative framework of landlord registration for the Scottish Government, following an earlier review of good practice. This led to the identification of possible amendments to the 2004 Act to strengthen existing powers and clarify the legislation, which are included in this Bill. A full evaluation of the impact of the landlord registration system on standards in the private rented sector, planned to complete in March 2011, will amongst other things assess the impact of landlord registration on standards of service provided by landlords in the private rented sector.

27. The Review of the Private Rented Sector published in 2009 made suggestions for further legislative change including improvements to landlord registration. Ministers established the Scottish PRS Strategy Group to take forward the review’s conclusions. The Group considered a range of proposals put forward by stakeholders and made recommendations on what the Scottish Government should consult on for the Bill. In addition to these proposals, further measures have been included in the Bill specifically to support activity aimed at tackling rogue landlords.

28. When a landlord or agent breaches the terms of the 2004 Act, authorities can apply sanctions which can lead to criminal prosecution or a cessation of the rent payable. These sanctions effectively act as a bar on a landlord’s ability to be personally involved in the let of a house. The use of enforcement powers varies among local authorities.

29. There are a significant number of landlords whose applications or status under the landlord registration system are under review because of a local authority’s concerns. However, some local authorities have stated that they are reluctant to use the powers they have to refuse applications for registration because they expect difficulty in achieving a successful prosecution should that step be necessary. There have as yet been no reports to the procurator fiscal as a result of landlord registration. Some local authorities have said that one reason for this is because of difficulties in gathering evidence to ensure that robust cases against landlords can be developed. The Bill contains provisions to make it easier for local authorities to gather this evidence, including powers to require information.

30. In order to improve protection for private tenants the Bill expands the list of offences to be declared by an applicant for landlord registration. Regulations require an applicant to declare spent or unspent convictions for a variety of offences, and court or tribunal judgements under discrimination legislation. The majority of applicants for registration use the on-line application form, although in some instances paper applications are also used. The application forms ask for declaration only of the categories of offence mentioned at section 85(2) of the 2004 Act, i.e.
spent or unspent convictions for offences involving fraud or dishonesty, violence, drugs, discrimination or contravention of housing law, and court or tribunal judgements under discrimination legislation. Although the local authority may have regard to other offences if it considers them relevant, it is not told about them in the application. It is proposed to add firearms and sexual offences to the list of offences that must be declared due to the serious nature of these offences. The addition of these offences to the categories at section 85(2) of the 2004 Act would ensure local authorities knew about convictions for these offences when considering whether a potential landlord is fit and proper. Applicants would be under a duty to declare them. Combined with the proposed ability for a local authority to require a disclosure check, as outlined below, this will significantly improve the ability of local authorities to consider whether a potential landlord is fit and proper.

31. In addition to the inclusion of firearms and sexual offences, which were originally consulted on, the Scottish Government is proposing to further enhance the consideration of whether a person is fit and proper to act as a private landlord to help address landlords who are damaging the reputation of the sector. In order to offer additional support to make it easier for local authorities to gather evidence and make an informed decision about someone being fit and proper, without imposing unnecessary additional duties on local authorities, the Bill gives specific examples of the information that should be considered as a matter of good practice. Drawing the following elements to local authorities’ attention by including them on the face of the Bill will support stronger links between the fit and proper test and the quality and management of accommodation:

- Antisocial behaviour: whether an antisocial behaviour order has been served on the landlord or a tenant, or an antisocial behaviour notice has been served on the landlord, in relation to a house where the applicant is or was the landlord or agent. This will also be added to schedule 1 to the Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005 which outlines the prescribed information required from a person making an application for landlord registration.
- Convictions and disqualifications relating to landlord registration and HMO licensing: including these on the face of the Bill highlights their relevance and supports information gathering.
- Breaches of the Repairing Standard, in relation to which the Private Rented Housing Panel has issued a Repairing Standard enforcement notice.
- Complaints and information from tenants, neighbours and others in relation to financial obligations, such as that the landlord has not paid his or her share of the cost of communal repairs, which have been properly agreed, or has not made payments due to property managers, all with regard to property let by the landlord.
- In order to encourage local authorities to give consideration to additional information which comes to their attention in the exercise of other local authority functions, for example health or the environment, in respect of the property included in the registration, the Private Rented Housing (Scotland) Bill gives Ministers power to issue statutory guidance on the discharge of these functions. Local authorities must have regard to the guidance issued, the development of which will benefit from the outcome of the review of landlord registration.
As touched on above, it is also the intention to re-cast schedule 1 to the Private Landlord Registration (Information and Fees) (Scotland) Regulations 2005. Within this the Scottish Government proposes to add a specific reference to an applicant making a declaration of any offences under the Gas Safety (Installation & Use) Regulations 1998. When progressing amendments to the 2005 Regulations the Scottish Government in conjunction with stakeholders will also give consideration to re-writing paragraph 3(b) of schedule 1 to clarify and specify particular convictions to be declared by applicants.

In offering additional protection for tenants the Bill gives the local authority the power to require a criminal record certificate. Currently a local authority cannot insist that an applicant for registration provides a disclosure check. The Bill adds a provision to the 2004 Act, so that if a local authority considers that a criminal record certificate in terms of Part 5 of the Police Act 1997 is required in order to verify information in relation to the fit and proper person test, the local authority may ask that person to provide a certificate. Refusal could be used as evidence that the person is not fit and proper. Therefore in the case of new applications (where the certificate is requested) the applicant cannot be registered until the certificate has been received by the local authority. In the case of a landlord already approved they will be deemed not fit and proper if the certificate is not provided within a timescale considered reasonable by the local authority. This will support the enforcement of the regime by significantly improving the ability of local authorities to consider whether a potential landlord is fit and proper, thus improving protection for private tenants.

Although the position of agents in the private rented sector is of great importance, as a significant proportion of landlords entrust the management of their properties to them, there is no requirement for agents to register in their own right (although an agent may do so voluntarily). However, a landlord must include any agent in an application for registration and a fee is paid for this. Where a landlord has been registered and then subsequently adds an agent, there is currently no power for the local authority to charge a fee for this addition. This does not matter if the agent is already registered, which many professional agents are. However, if the landlord nominates an unregistered agent (such as a friend or relative) the agent will have to be assessed as fit and proper, which will involve expense for the local authority.

The Bill therefore amends the 2004 Act to allow a local authority to charge a fee, to be prescribed by regulations, in this situation. This will be fairer for local authorities, who will be able to recover their costs, and for those landlords and agents who pay fees because they register at an earlier stage. In addition, and also to bring the situation in line with landlords at the point of registration, it will be an offence if a landlord appoints an agent during the registration period without notifying the local authority.

Local authorities are required to maintain a register of landlords (and their agents) who are considered fit and proper persons to let a house under a lease or occupancy arrangement. Information on registered persons and their residential properties is held on the register. The release of information to members of the public is restricted to ensure that the information is not used for malicious or commercial marketing purposes or does not result in an unacceptable intrusion into a registered person’s private life.
37. Public access to the register in a local authority’s area is in legal terms, by application to the local authority. In the great majority of cases this is done by accessing the landlord registration website. A member of the public can request information with respect to a particular residential property or a particular person.

38. Local authorities advise that there are circumstances where it would be helpful to give out additional information regarding an application for registration. This is supported by the Arneil Johnston review. Most stakeholders at the legislative focus groups established to support the review agreed that additional information on applications submitted but not yet decided would be useful. Information should however be limited to this and should not indicate whether, for example, the local authority had decided to investigate aspects of the application. Stakeholders also felt that it would help meet one of the principal aims of the scheme - removing the worst landlords from the sector - if members of the public were made aware that registration had been refused. The main landlord bodies, the local authorities represented and COSLA all supported these changes as long as the information is worded carefully.

39. The Bill therefore provides for two additional categories of information to be available to the public. The first is where an application has been received but has not yet been decided. This will be helpful if there are concerns that a landlord may be unregistered, since a landlord may legally rent a property if he or she has submitted an application for registration which has not yet been decided. It will also be useful for landlords in that position to have this information publicly available, as proof that they are operating legally despite not yet being registered.

40. The second type of additional information to be included in the register is where a landlord has been refused registration or has been de-registered because of failure to meet the legal requirements. This information will alert tenants and members of the public where someone has been found to be not fit and proper to be a landlord yet is attempting to let a property, thus increasing the protection provided by the registration system.

41. Local authorities constantly strive to identify unregistered landlords. One means of doing this is through checking advertisements for properties for let, but this is often impractical as full addresses are not given. The Bill will require all advertisements for properties to let to be accompanied by the landlord registration number of the owner of the property. There will be an exception for ‘To Let’ boards which are reused due to concerns raised over costs to landlords. If an application for landlord registration has still to be determined with no number having been allocated, the advertisements will be required to include the words “landlord registration pending.”

42. This measure will support local authorities in the identification of landlords operating without being registered and enable them to progress enforcement activity as appropriate. If it is discovered that the landlord is not registered then they could be prosecuted for the existing offence of letting a property without being registered and on conviction could be subject under the new measure described below to a disqualification in any local authority area for up to five years. However, where an unregistered landlord is capable of meeting the fit and proper person test, the local authority will be expected to work with them to achieve registration in the first instance in order to prevent the loss of accommodation in the sector.
43. The sanction for registered landlords failing to include their registration number in advertisements is removal from the register. In such cases, local authorities can offer the landlord the opportunity to rectify the situation before applying the sanction.

44. Local authorities have suggested that the sanctions available to the sheriff on disposal of landlord registration cases are not sufficiently high. The current maximum fine for failing to register as a landlord or communicating with another person with a view to entering into a lease or occupancy arrangement without being registered is level 5 or £5,000. Taking local authorities’ concerns into account, the Housing (Scotland) Bill set out proposals to increase this to £20,000. This would be in line with the maximum fine for operating an HMO without a licence, which is set to increase from £5,000 to £20,000 when Part 5 of the 2006 Act comes into effect in August 2011.

45. However, given increasing concern about unregistered landlords, and to reflect the seriousness of the behaviour of some of the landlords involved, Ministers have decided that the maximum fine for these offences should be raised to £50,000. Ministers consider that a maximum fine of this size is justified because some unregistered landlords, with large numbers of properties and tenants, are making large amounts of money from their illegal activities. Furthermore, unregistered landlords’ properties are more likely to be substandard and therefore a threat to public health. In addition, unregistered landlords are more likely to have tenants who indulge in antisocial behaviour and may themselves be involved in other criminal activity, causing serious damage to their communities and therefore constituting a serious public nuisance.

46. A substantially higher maximum fine level for landlord registration offences (and also HMO licensing offences, as explained below) is significant in comparison with the income from letting and should act as a more effective deterrent. Emphasising the gravity of the offence may encourage courts to impose higher fines than they would otherwise have done.

47. It is important that appropriate sanctions are available to deal with the very worst criminal landlord element and to act as a deterrent against those operating as an unregistered landlord. Ministers consider that, in the most serious cases, a court that convicts a person of operating as an unregistered landlord should be allowed to make a disqualification order banning the person from acting as a registrable landlord in any local authority area for up to five years. A similar power is given to a court by the 2006 Act in relation to HMO licensing offences. The Bill contains such a provision in relation to landlord registration.

48. The Arneil Johnston review of landlord registration recommended that the Scottish Government should consider local authorities’ ability to obtain information. One of the key issues for local authorities is proving that a tenancy is in place. It has been suggested that provisions similar to those in section 186 of the Housing (Scotland) Act 2006 (“the 2006 Act”) could assist. These require persons associated with a property to provide information to a local authority to enable or assist it to exercise functions contained within the Act (including those relating to HMO licensing).

49. The Bill contains similar provisions for the purposes of landlord registration, in order to make it easier for local authorities to gather evidence. This covers persons who own, occupy or
have an interest in the house concerned or who act for the owner. On request, they must confirm
to the local authority the nature of their interest in the house, provide details of others with an
interest and also provide the local authority with any other information and documentation about
the land, premises and nature of the tenancy that it may reasonably request. As with section 186
of the 2006 Act, failure to provide information without reasonable excuse or providing false
information are criminal offences, subject to a fine not exceeding level 2.

50. This proposal is one of those included in the Housing (Scotland) Bill. During Stage 1 of
that Bill, concerns were expressed that vulnerable tenants who declined to provide information
due to fears of retaliation from abusive landlords could be fined. The Private Rented Housing
(Scotland) Bill gives Ministers power to issue statutory guidance on the discharge of local
authorities’ landlord registration functions, to which local authorities must have regard. This
will allow Ministers to take account of these concerns about local authorities requiring
information from tenants when issuing guidance.

51. As mentioned above, the Bill will allow a local authority to require people associated
with a property to provide information to enable or assist it to carry out its landlord registration
functions. However, local authorities have said that they would find a further power to require an
agent to provide details of all the properties they manage extremely useful. This could be of
particular use in areas where unscrupulous agents act on behalf of rogue or unregistered
landlords. Often in such circumstances – particularly where there are vulnerable tenants such as
migrant workers – the tenant does not know who their landlord is. The Bill therefore contains a
power for a local authority to require an agent or a prospective agent to provide a list of all
properties they manage along with the owners’ contact details, registration numbers, the numbers
of tenants and nature of the tenancies. This will significantly assist local authorities in
identifying landlords who have failed to register for landlord registration and provide another
useful tool to support enforcement, increasing protection for tenants and improving management
of the regime. Failure of an agent to provide the information requested under the new power
would be an offence liable to a fine not exceeding level 2.

52. The management of non-compliance with landlord registration requirements varies
immensely across local authority areas. This is due in part to the volumes of private rented
properties and the high level of enforcement activity required in some larger authority areas. The
location of landlord registration staff within a local authority can also be relevant, with areas of
good practice developing for example where landlord registration and environmental health work
in liaison. However this is not replicated across Scotland and local authorities have varying
commitment to the landlord registration regime. The Bill therefore gives Ministers a general
power to issue statutory guidance in relation to local authorities’ functions under Part 8 of the
2004 Act which local authorities must have regard to. This could include guidance in relation to
a local authority taking proactive enforcement action including steps to tackle non-registration
while carrying out its functions in relation to private rented property. The advantage of
introducing this as a statutory guidance power is that it will enable Ministers to take account of
the landlord registration evaluation which it is anticipated will be completed by March 2011. In
doing so it can be ensured that any guidance issued, to which local authorities must have regard,
will be based on evidence and examples of good practice.

53. Whilst the Private Rented Housing Panel (PRHP) receives referrals from tenants and
landlords it does not check whether a landlord is registered when it receives an application
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relating to the Repairing Standard. The detection of unregistered landlords is one of the biggest challenges local authorities face in relation to enforcement. The Bill therefore requires the PRHP to pass on details of the landlord and property, any agent acting on their behalf, and the landlord registration number if available, to the relevant local authority. This will assist local authorities in identifying unregistered landlords (by allowing the local authority to search the register for the address and the landlord) and enable them to progress enforcement action if appropriate. If these landlords subsequently fail to register or are refused registration, they will have to cease operating or face prosecution. This proposal will benefit landlords who have already registered for landlord registration, by increasing the credibility of the system, and will increase protection for tenants. Increasing the coverage of landlord registration and removing bad landlords will improve management standards across the sector.

Alternative approaches

54. No effective alternative methods of dealing with these specific issues have been identified. The option of ‘doing nothing’ was rejected, because that would mean not addressing the problems identified by local authorities and other stakeholders with the operation of the registration system, particularly the possibility of improving enforcement and information. The provisions in the Bill will allow the registration system to operate more effectively.

55. In addition, there are increasing concerns around the impact that not tackling the rogue landlord element is having on the sector as a whole and on vulnerable tenants and communities. Ministers consider that the additional measures proposed in the Bill will offer local authorities additional tools to support their current enforcement activity and make the task of gathering necessary evidence easier. It is therefore better to introduce these additional provisions now rather than wait until after the review of landlord registration (which is not expected to be completed until March 2011). However, it is expected that the evaluation will make recommendations for continuous improvement which may include proposals for further legislative change.

Consultation

56. A clear majority (66% of those who responded on this question) was in favour of expanding the list of offences to be declared by an applicant for landlord registration to include firearms and sexual offences. Support often stemmed from public safety concerns. The consultation responses also demonstrated support for consideration of wider issues, such as antisocial behaviour and previous refusals of licences, to be part of the fit and proper person test.

57. The proposal to allow a local authority to require a criminal record certificate was very well supported, particularly by the local authority respondents. There was some concern from the lettings industry respondents that local authorities may take a blanket approach to this. The intention however is that local authorities would be required to have reasonable grounds for wanting to verify information.

58. A clear majority (62% of those responding) supported giving a local authority the power to charge a registered landlord a fee for subsequently nominating an unregistered agent. Some organisations were concerned that such a charge could discourage landlords from using agents;
however, this charge would relate only to unregistered agents, whereas professional agents are likely to be already registered.

59. The proposal to include in the landlord register information on applications that have not yet been processed and on landlords who have been refused registration or de-registered gained strong support. There was a feeling among a number of respondents that the additional information would be valuable to tenants. There were some concerns about how the information will be available online; such issues will be addressed when the database system is amended.

60. The proposal requiring landlord registration numbers in advertisements of properties to let had considerable support from the respondents as it would help raise public awareness that a potential landlord requires to be registered and guide tenants away from potentially rogue landlords who are flouting the law. There was some opposition, mainly from those in the industry itself, focussed around the cost of advertisements and the fact that landlords could be prevented from advertising their properties whilst awaiting determination of their application and issue of a registration number. This concern has been covered by advertisements being required to include the words ‘landlord registration pending’ where appropriate.

61. In the first consultation, a clear majority (73% of those who responded on this question) was in favour of increasing the maximum fine for landlord registration offences to £20,000. Most group respondents agreed that it was appropriate to bring the maximum fine in line with that for operating an HMO without a licence. Some respondents commented that the current level of fines may discourage local authorities from taking legal action.

62. A number of other respondents felt that, rather than increase the level of fine, local authorities should use their existing powers to take enforcement action. The Scottish Government encourages local authorities to use their powers, but believes that a higher fine will better reflect the seriousness of the offences and act as a deterrent. It also disagrees with the respondents (including some groups and the majority of individuals) who felt that a maximum of £20,000 is excessive and, as explained above, Ministers have decided to increase the maximum fine further to £50,000 which will act as a stronger deterrent. This will allow the courts to impose a more severe penalty in the worst cases, and means that average fine levels are less likely to be regarded as an acceptable business cost.

63. The proposal to empower local authorities to require persons associated with a property to provide information to help it to carry out its landlord registration functions gained strong support. Some respondents expressed concerns about requiring tenants to provide information, since the landlord might for example, threaten to end the tenancy. As with section 186 of the 2006 Act the intention is to protect tenants, in this case from landlords who are not fit and proper to let property. However, the Bill gives Ministers the power to issue guidance, to which local authorities must have regard, on their landlord registration functions, including the use of the power to require information in relation to tenants.

64. The proposal to allow local authorities to require an agent to provide a list of all properties they manage was generally strongly supported (88% of those responding). While the great majority of agents are keen to work with local authorities to ensure that their clients are operating within the law, there are exceptions including unprincipled agents who knowingly act
on behalf of unregistered landlords. It is important that local authorities are able to identify landlords who are avoiding their responsibilities.

65. Overall there was considerable support for the proposal requiring the PRHP to obtain and check landlord registration numbers, with a strong consensus that publicly funded bodies such as the PRHP have a clear role to play in ensuring that landlords who are reported to them are appropriately registered. Only three local authorities felt that requesting a number at the application stage to the PRHP was unnecessary. The Scottish Government believes that every opportunity should be taken to inform local authorities, at the earliest opportunity, to allow them to check that the landlord is registered and progress appropriate enforcement action if they are not.

66. Since the consultation, in order to make the PRHP’s duty more practicable, the Bill has been worded to require the PRHP to pass landlord information to the local authority, with the authority then checking the landlord’s registration status rather than the PRHP. The additional value in this is the ease with which local authorities can check the IT system for registration, since they have full administrative access. This will also avoid any difficulties the PRHP might have had in checking registration where the tenant does not have their landlord’s registration number.

67. Following the second consultation and wider feedback from stakeholders, including concerns raised during Stage 1 of the preceding Housing (Scotland) Bill, Ministers considered that a more radical approach to tackling the problem of rogue landlords and unscrupulous agents was required. Although in the minority, landlords and agents who operate illegally are having a detrimental impact in some areas and damaging the overarching reputation of the private rented sector and the many good landlords who operate within the law. After further discussion with officials, additional measures were developed with a clear focus on an approach which would crack down on bad landlords. The Bill timetable did not allow enough time to go out to wider public consultation on these additional provisions; however stakeholders in the PRS Strategy Group were asked to consider the revised approach to the Bill and provided helpful feedback which helped shape the additional provisions.

68. In general terms the Group expressed some concern about the change in emphasis to the Bill on tackling rogue landlords and was unsupportive of some of the additional measures proposed. In particular, landlord representatives were resistant to some of the proposals which they saw as creating an additional burden for good landlords when the rogue element was in the minority. Concern was expressed that, even with the additional measures, dealing with the very worst criminal element of landlords who deliberately avoid registration would not be addressed. Local authority representatives were concerned that the additional measures may impose an increased burden on resource and have the effect of diverting resource from some enforcement activity.

69. The Group expressed the following views on the proposal to add to the list of factors a local authority should take into account when assessing whether a person is fit and proper:

- Breaches of repairing standard: This was generally accepted as a good way of strengthening communication between the PRHP and landlord registration teams
within local authorities. Whilst not ideal to link with the fit and proper test, it was felt that, as awareness of the PRHP is relatively low amongst tenants, linking to breaches of the repairing standard would act as a further check.

- Previous convictions or disqualifications relating to landlord registration or HMO licensing: This was generally agreed, but with concerns that discretion should be exercised by the local authority as to the reasons for any previous ban, particularly its seriousness and whether actions have since been taken by the landlord to remedy the situation.

- Outstanding environmental health reports: This was generally accepted; however, concerns were raised that caution should be taken if the report applies to communal repairs, where the lack of agreement by other owners or factors is the reason for the outstanding report. As this provision will be progressed under the power to issue guidance, concerns will be addressed as part of the required consultation.

- Non-payment of communal repairs: Support for this addition was also split; however most agreed that caution should be exercised and discretion applied as disagreements with regards to communal repairs and with factors are often not straightforward.

- Outstanding Antisocial Behaviour Orders or Anti-social Behaviour Notices in respect of the property or landlord: There were mixed reactions to this proposal with some members raising concerns that a landlord could be held to account for the actions of tenants despite good management practices. However, section 85(3) of the 2004 Act makes clear that it is the behaviour of the landlord or agent that is relevant.

70. Whilst some stakeholders saw the proposal to disqualify unregistered landlords for up to five years as disproportionate to the offence committed, there was agreement that the potential five year ban could act as an effective deterrent.

71. In considering the subsequent proposal to increase the maximum fine for landlord registration offences to £50,000, the majority of stakeholders in the Strategy Group were of the opinion that the proposed level was disproportionate to other criminal activities and would not be effective. There was however some support for the proposal as a deterrent.

72. Full consideration was given to the Strategy Group’s feedback. This resulted in some amendments to the original proposals, as outlined in the detailed policy objectives. In particular the Scottish Government considers that both the disqualification provision and the maximum fine will act as a significant deterrent for rogue landlords. Both are maximum penalties which it is expected the courts would apply only to the most unscrupulous criminal landlords, with lower penalties an option as circumstances dictate.

73. While Ministers appreciate that the rogue landlord element is in the minority, the impact of not dealing with these landlords and the related implications is having a detrimental effect on housing and communities where the problems are prevalent. In wider terms it is still expected that local authorities will continue to work with landlords as appropriate. It remains the view of Ministers that, in most instances, it is better to work with landlords to encourage them to improve their practice and approach to letting so as to meet the fit and proper criteria with a view
to improving standards within the sector and retaining the property in the available stock for letting.

74. In addition, the inclusion of a power to allow Ministers to issue guidance which local authorities must have regard to in relation to taking proactive enforcement action will enable Ministers to help local authorities to use their powers effectively and capitalise on the outcome of the landlord registration evaluation by devising guidance which can build on good practice.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

75. The provisions on the private landlord registration system are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The amendments do not raise any human rights issues. They have no specific implications for island communities or sustainable development. Many local authorities have welcomed the changes to the system which they administer and COSLA has welcomed the intentions of the Bill and in particular provisions which provide local authorities with additional powers.

PART 2 – AMENDMENT OF PART 5 OF HOUSING (SCOTLAND) ACT 2006 (LICENSING OF HOUSES IN MULTIPLE OCCUPATION)

Policy objectives

76. Houses in multiple occupation (HMOs) are currently required to be licensed by the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000, as amended. This legislation will be replaced by Part 5 of the Housing (Scotland) Act 2006 when it is brought into force on 31 August 2011. Licensing of HMOs was introduced to protect their occupants. It sets reasonable standards for physical conditions, safety and tenancy management.

77. An HMO is a house that is occupied by three or more people, who are members of more than two families. Under the 2006 Act, the house has to be the only or main residence of occupants for them to count towards the occupation level. A house that would otherwise be a licensable HMO is not one if a sufficient number of residents have a main residence elsewhere, possibly including people based outside Scotland who are working here for an extended period.

78. Some local authorities have expressed concern that some landlords are avoiding HMO licensing because – or because they are claiming – occupants are living in the premises for only a short time and have a principal residence elsewhere. There are particular concerns that this could be the case where migrant workers are living in substandard and overcrowded conditions, with landlords who may frequently move them about among different premises, each being described as a ‘short-term let’. The length of a let is however irrelevant to whether a property is a licensable HMO. For example, a homeless hostel could be licensable if the residents stay for a single night, given that they have no other residence.

79. The Scottish Government consulted on changing the definition of an HMO, removing the main residence requirement (with an exemption for holiday lets, which provide accommodation for tourists, rather than living accommodation). However, it became clear that this would widen
the scope of licensing too far. For example, since there is no requirement for rent to be charged in an HMO, if a householder had three unrelated friends to stay for a short time, the house would have become a licensable HMO.

80. The Bill therefore amends the 2006 Act to provide for an order-making power, allowing Ministers to designate specified additional categories of multi-occupancy accommodation as licensable HMOs. This could include, for example, portacabins and other premises used by seasonal workers. This will allow Ministers to extend the benefits of HMO licensing – which can set requirements for physical conditions, safety and tenancy management – to types of multi-occupancy property that fall outside the current definition of a licensable HMO, but which demonstrate problems in relation to these features. It will be possible to focus on situations that present a particular problem that can be addressed by licensing, including those that may arise in the future, without bringing types of accommodation that are not considered to require regulation within the scope of licensing. This power may only be used after consultation with stakeholders.

81. A planning authority may decide that some HMOs in its area require planning permission. Some local authorities have stated that some HMOs which meet licensing requirements and have licences do not have planning permission and are operating in breach of planning law. They have either been refused planning permission, or would have been refused planning permission had an application been made, because of their effect on the local amenity. It is clearly anomalous that a local authority has to grant a licence to premises that are operating in breach of planning control. HMOs operating without planning permission can adversely affect neighbours and their owners have an unfair advantage as compared to landlords who comply with planning requirements.

82. The Bill therefore amends the 2006 Act to empower a local authority to refuse to consider an application for an HMO licence if it considers that any requisite planning permission has not been obtained. This means that a local authority will be able to decide whether to adopt this approach, depending on whether it has a problem with HMOs operating without planning permission. The Scottish Government expects that, if a local authority decided to exercise this power, the licensing section of the local authority would liaise with planning colleagues before dealing with a licence application (which is already good practice followed by some local authorities). If there were no planning concerns, the application would be dealt with through the normal process. If there were planning concerns, the applicant would have to go through the planning process. Having obtained either planning permission or a certificate stating that planning permission is not needed, the applicant would reapply for an HMO licence and the application would then be dealt with in the normal way.

83. This process would filter out the significant proportion of cases where an HMO is not a matter of planning concern, without the additional cost and burden for landlords and planning authorities of a formal certification process to confirm that this is the case. This approach would allow a local authority to deal with cases where HMOs are operating in active breach of a planning decision and with the anomaly that a person can obtain an HMO licence without having gone through any form of planning process.

84. Local authorities have repeatedly raised concerns about their difficulties in enforcing HMO licensing. Although cases are successfully brought before the sheriff, the fines imposed are
frequently small, often less than a month’s rent or the licence fee that has been evaded. Fines of a few hundred pounds fail to reflect the effort of the local authority in bringing a case and fail to offer a credible deterrent to landlords. The Scottish Government has therefore reviewed the maximum fine awarded in these cases.

85. Within the current regime the maximum fine is £5,000. Section 156(1)(a) of the 2006 Act would increase to £20,000 the maximum fine for the offences of owning an unlicensed HMO or acting as an agent in relation to an unlicensed HMO or in relation to a licensed HMO while not authorised. Given the increasing concerns about unlicensed HMOs, and to reflect the seriousness of the behaviour of some of the landlords involved, Ministers have decided that the 2006 Act should be amended to raise the maximum fine in these cases (as with landlord registration offences) to £50,000.

86. As with landlord registration offences, Ministers consider that a maximum fine of this size is justified because some owners of unlicensed HMOs are making large amounts of money from their illegal activities. Furthermore, such properties are more likely to be substandard and therefore a threat to public health. In addition, landlords of unlicensed HMOs are more likely to have tenants who indulge in antisocial behaviour and may themselves be involved in other criminal activity, causing serious damage to certain communities and therefore constituting a serious public nuisance.

87. A substantially higher maximum fine level for landlord registration and HMO licensing offences should act as more of a deterrent and, by emphasising the gravity of the offence, may encourage courts to impose higher fines than they would otherwise have done. It should also encourage local authorities to take enforcement action.

88. The Scottish Government is committed to strengthening the HMO licensing system, particularly local authority powers to take enforcement action against rogue HMO landlords. The Scottish Government has therefore worked closely with local authorities and agreed that the enhanced HMO licensing regime within Part 5 of the Housing (Scotland) Act 2006 will come into force on 31 August 2011.

89. Some local authorities raised concerns that section 158(12)(a) of the Act would require them to provide a detailed statement of reasons for a wide range of decisions on HMO licensing whether the applicant requests reasons or not. Producing such statements could require detailed input from a solicitor, with landlords of HMOs ultimately paying these costs through increased HMO licence fees. Under the current licensing regime, a local authority is only required to provide reasons for decisions within ten days of being requested to do so by an applicant or objector. Local authorities advise that as the bulk of decisions are straightforward they are seldom called upon to provide a statement of reasons. Where a licence is granted without any issues having been raised or identified, and with no request for reasons, the automatic provision of a statement of reasons seems unnecessary.

90. The Bill therefore amends section 158 of the 2006 Act so that, when a local authority makes a decision, it will not need automatically to provide the reasons. Instead it will advise recipients of the notice of decision that they can request reasons within 14 days of receiving that notice. If a request were made, reasons would then be issued to every recipient of the notice of
decision. It will also be open to a local authority to provide reasons for a decision without any request having been made where it considers this would be justified. In the case of an appeal, the sheriff will be able to require the local authority to provide reasons if it has not already done so.

91. This will allow more local authority resources to be used on enforcement action, rather than on an unnecessary and resource-intensive bureaucratic procedure. The interests of landlords and other recipients of a notice of decision are fully protected as they are able to request reasons for any decision, but local authorities and landlords will not bear the resource cost of these being prepared in every instance.

92. Section 186 of the 2006 Act empowers a local authority to require certain people associated with land or premises to provide information relating to the land or premises, in order to enable or assist the local authority to exercise its functions under the Act, including HMO licensing. Refusal or failure to provide the information, without reasonable excuse, is an offence subject to a fine not exceeding level 2 (currently £500).

93. Section 136 of the Housing (Scotland) Bill, which was based on section 186 of the 2006 Act (and is now included in the Private Rented Housing (Scotland) Bill), provides a similar power in relation to landlord registration functions. In Stage 1 evidence for the former Bill some stakeholders expressed concerns that vulnerable tenants who refused to provide information, particularly about their landlords, due to fears of retaliation such as eviction or violence, might be fined. These concerns were reflected in the Local Government and Communities Committee’s Stage 1 report, which extended them to the operation of section 186 of the 2006 Act as it affects tenants in HMOs and recommended that protection should be provided for such tenants.

94. Although it is unlikely that a local authority would in such circumstances report a vulnerable tenant for prosecution and that he or she would then be prosecuted and convicted, Ministers appreciate the concerns expressed by stakeholders and the Committee. The Bill therefore provides for protection for tenants by amending section 163(1) of the 2006 Act to have regard to guidance issued by Ministers on the exercise of its functions under Part 5 is extended to include the application of section 186 in relation to HMO licensing. This will include the use of the section to obtain information from tenants in HMOs and guidance could set out how a local authority will be expected to take account of the circumstances of a tenant. The Scottish Ministers will consult local authorities and such other persons as they see fit prior to issuing such guidance.

95. Section 130(3) of the 2006 Act draws, for the purposes of HMO licensing, upon the definition of ‘fit and proper’ in the 2004 Act. However, the changes to the fit and proper test for landlord registration described above are unlikely to have much impact on the new HMO licensing regime as it will continue to rely on information provided by the police, who are statutory consultees. Many local authorities already take a wide range of issues into account in their application of HMO licensing.
Alternative approaches

96. The Scottish Government considered including all short-term lets apart from holiday lets in HMO licensing. This would, for example, bring houses occupied by people visiting an area for a short time to work or carry out research within the scope of licensing, whether or not they had a main residence elsewhere. However, in order to avoid an anomalous situation regarding properties on long-term lets occupied by people who have a main residence elsewhere, this option would have meant scrapping the main residence qualification altogether, not just for short-term lets. The result would have been that, for example, a house occupied by people on a long-term contract to work in the area, who returned to their main homes at weekends and during holidays, would become a licensable HMO.

97. Another option would have been to add the words ‘in the UK’ to the term ‘only or main residence.’ This would have meant that an HMO, whether on a short-term or long-term let, would count as the only or main residence of any occupant whose only or main residence was outside the UK (apart from people on holiday). It would thus have brought HMOs occupied by foreign migrant workers within the scope of licensing, but also those occupied by people from outside the UK who were visiting for short periods for purposes such as short-term study. However, people with a main residence within the UK would have continued not to count for HMO licensing purposes.

98. As explained above, it became clear that either of these changes would have unnecessarily brought a wide range of types of accommodation within the scope of HMO licensing. Other examples of situations that would have been affected include accommodation provided for people attending sporting or artistic events as participants or officials (such as a hotel accommodating an orchestra or a flat rented to a theatre group).

99. The Scottish Government considered making the obtaining of planning permission (where it is required), or formal confirmation that planning permission is not required, a requirement for the granting of an HMO licence, with the onus on all applicants to produce evidence in the form of planning permission or a certificate of lawful use. However, this would have placed an undue stress on local authority planning departments (including local authorities that do not have a problem with HMOs and planning), which would have had to process thousands of applications every year, and caused unnecessary delay and expense to the many HMO owners (evidently the majority) who do not require planning permission. The delays in opening HMOs could have reduced the supply available to people seeking this sort of accommodation, many of whom will have low incomes, with possible consequences for the level of homelessness.

100. The Scottish Government considered the possibility that, instead of increasing the maximum level of fine for HMO offences, local authorities could retain the fines to fund their enforcement work. Fines for criminal offences currently go to the Crown and any proposals to the contrary would require fundamental changes to the process of criminal law. If HMO offences were dealt with by civil penalties rather than fines, then the local authority would retain the money. However, civil penalties are used for issues that are straightforward and rarely contested such as parking tickets, whereas HMO offences are far less straightforward. If a civil penalty were levied for an HMO offence then the landlord would discharge their liability through payment of it and the matter might not be considered as relevant in relation to the fit and proper
101. There are also issues of equity where an authority both enforces penalties and benefits from payments from a landlord. This creates a clear conflict of interest for the local authority. Finally, local authorities already set their HMO fees to fully recover their costs for the HMO licensing regime. The HMO licensing regime is therefore fully funded.

Consultation

102. There was a majority in favour of expanding the definition of a licensable HMO in some way, particularly for removing the main residence qualification. However, a number of respondents expressed concerns about particular types of property being brought into HMO licensing, such as accommodation for participants in cultural and sporting events, and one local authority considered that legislation should address specific problems. As explained above, the Scottish Government recognises the force of these arguments and therefore considers that the best way to expand the scope of HMO licensing would be by the use of an order-making power that can specify the types of property that are presenting problems. This would also reduce the amount of resources required by local authorities to process additional licence applications, a concern expressed by some respondents.

103. Although the majority of respondents felt that there was a problem with licensed HMOs operating without planning permission, a small majority of local authorities (12 out of the 23 responding) considered that there was not. A clear majority, including 21 local authorities, considered that having planning permission, where it is required, should be a requirement for the granting of an HMO licence. Some respondents expressed concerns that such a requirement could restrict the supply of accommodation. The majority of respondents considered that any such requirement should relate to renewals as well as new applications.

104. A clear majority favoured a mandatory requirement. However, for the reasons explained above, and in view of the fact that the problem is not universal, the Bill gives local authorities a discretionary power to refuse to consider an application for an HMO licence if it considers that any requisite planning permission has not been obtained. This will prevent landlords and local authorities from being burdened unnecessarily and will allow local authorities to decide whether and how to use the power.

105. The views of the PRS Strategy Group and some local authorities on the proposed increase of the maximum fine to £50,000 were sought. Opinions were mixed, with some arguing that it was disproportionate and would not improve compliance as long as some local authorities failed to give this issue priority and courts failed to set appropriate fines. Others considered that the higher fine could be a useful deterrent and welcomed this proposal as sending a clear signal to courts and communities that the Scottish Government views these offences as serious ones that cause real harm to individual tenants and communities. The proposed increase is part of a package of measures.

106. Comments on lack of enforcement action mainly applied to landlord registration rather than HMO licensing, with, for example, Glasgow City Council obtaining 60 HMO prosecutions,
with fines imposed of up to £4,000. However, local authorities do consistently report that the fines imposed by courts are not proportionate to the seriousness of these offences and are often below the level of the HMO licence or monthly rentals. The Scottish Government believes that raising the maximum fine will improve compliance.

107. The amendment in relation to guidance on section 186 of the 2006 Act addresses a recommendation of the Local Government and Communities Committee’s Stage 1 report on the Housing (Scotland) Bill, which reflects concerns expressed to the Committee by some stakeholders. Before issuing guidance under section 163 of the 2006 Act, the Scottish Ministers must consult local authorities and such other persons as they see fit.

108. There has not been a formal consultation on amending the requirement for provision of a statement of reasons within a local authority’s notice of decision. However, this amendment arose from engagement with local authority stakeholders who pinpointed this as an area that would create considerable resource issues for them and entail needless expenditure which would ultimately be borne by landlords. Removing this unnecessary requirement allows local authorities to better focus their resources on rogue landlords while those affected by local authority decisions can still, as at present, request a statement of reasons.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

109. The provisions on HMO licensing are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The provisions do not raise any human rights issues or issues relating to island communities or sustainable development. All of the provisions relate to local authority powers and have largely been welcomed by local authorities.

PART 3 - OVERCROWDING STATUTORY NOTICES

Policy objectives

110. Overcrowding is a problem in some parts of the private rented sector. The Scottish Government’s Review of the Private Rented Sector quoted studies showing that there are particular problems of overcrowding among migrant workers. In some cases there is exploitation by rogue landlords. The landlord focus groups who participated in the Review highlighted that, in other cases, the overcrowding is not due to the landlord, but to the tenants bringing in additional occupants, often to save money.

111. There are a number of problems associated with overcrowding. As well as deleterious effects on the health and wellbeing of the occupants, overcrowding can relate to adverse effects on neighbours and social problems in the wider community. Local authorities have pointed to the damage that overcrowding in the private rented sector can cause in some areas, such as Govanhill.

112. Local authorities have some powers and duties in relation to overcrowded houses and their occupants, including carrying out inspections to identify overcrowded houses and taking
levels of overcrowding into account in the preparation of local housing strategies. The HMO licensing system allows local authorities to address overcrowding by specifying the maximum number of occupants permitted in a licensed HMO. Breach of this or any other licensing condition is a criminal offence. One of the uses of HMO licensing is thus the prevention of overcrowding. However, it can be difficult for a local authority to identify that a dwelling is an HMO if the occupants claim to be members of the same family.

113. Overcrowding in private rented sector accommodation in general terms falls within the provisions of Part VII of the Housing (Scotland) Act 1987, which relate to overcrowding in all housing tenures. Part VII provides the legal definition of overcrowding (sections 135 to 137). A house is regarded as overcrowded if it fails either of two tests – the room standard and the space standard.

114. The room standard (section 136) is contravened when two people of opposite sexes, who are not living as husband and wife, have to sleep in the same room. This does not apply to children under 10. The rooms regarded as sleeping accommodation are defined as being ‘of a type normally used in the locality either as a bedroom or as a living room.’

115. The space standard (section 137) sets limits on the number of people who can occupy a house, relative to both the number and floor area of the rooms available as sleeping accommodation. For this purpose, children aged at least one but less than 10 count as half of a person, while children under the age of one do not count at all. Rooms of less than 50 square feet are not taken into account. The prescribed numbers are set out in tables. For example, four rooms may be occupied by no more than 7.5 persons, but that number could be lower depending on the size of the rooms.

116. However, the enforcement provisions in Part VII were only ever brought into effect in two localities and are now inoperable and archaic. The Review recognised that there are currently very limited means for local authorities to take action to address overcrowding in properties that are not HMOs and stated that the Scottish Government would consider ways of dealing with this. The Bill therefore gives a local authority a power to serve an overcrowding statutory notice in certain circumstances.

**Overcrowding Statutory Notice**

117. The intention of the overcrowding statutory notice is to enable a local authority to compel the landlord to take steps to reduce the occupancy of the house to the statutory level in a case where overcrowding in a privately rented house is causing harm – which could be affecting occupants, neighbours or other people in the locality. This will allow local authorities to address the worst effects of overcrowding. The power will be discretionary, with no obligation on a local authority to use it in any particular case.

118. A local authority will be able to serve an overcrowding statutory notice where a privately rented house in its area is overcrowded in terms of section 135 of the 1987 Act and the local authority considers that the overcrowding is contributing or connected to (or likely to contribute or be connected to) an adverse effect on the health or wellbeing of any person or on the amenity of the house or its locality.
119. The notice will be served on the landlord, setting out the steps to be taken to reduce occupancy and specifying the period within which this action must be taken. The ability of the local authority to specify a time period within which the statutory occupancy level is to be achieved would enable re-housing issues to be handled sensitively (for example, allowing occupants to obtain new tenancies). The notice will be in force for a period of between one and five years. During that period, after the overcrowding has been ended, the landlord must not cause the house to become overcrowded again and must take reasonable steps to prevent this happening.

120. The notice may not require the landlord to breach any statutory or contractual obligation (for example, where a tenant must be given a period of notice). Failure by a landlord to comply with a notice will be an offence subject to a fine not exceeding level 3 (currently £1,000). This is considered to be a suitable maximum penalty considering the effects that overcrowding may have. Reasonable excuse will be a defence. This could apply, for example, where the overcrowding is caused by the occupants and the landlord lacks legal powers to comply with the notice.

121. The local authority will be able to give such information and advice to the occupants as it considers appropriate. The local authority will have to have regard to guidance issued by Ministers on the use of the power to serve a notice. It is intended that such guidance will provide that local authorities should seek tenants’ views before serving a notice and consider the wider implications of taking action, including potential homelessness.

122. Although local authorities have specific powers to deal with overcrowding in HMOs, it would be possible to use overcrowding statutory notices as another way of dealing with difficulties in HMO enforcement, where the HMOs are overcrowded.

123. It is possible that the mandatory tenant information pack (see paragraph 140) will include information on occupancy limits. This means that the landlord and occupants should be aware of how many occupants are permitted in the dwelling, which may lead to fewer cases of overcrowding.

Alternative approaches

124. No effective alternative methods of dealing with the specific issue of reducing the occupancy level of an overcrowded privately rented house have been identified. The option of ‘doing nothing’ was rejected, because that would mean not addressing the problems caused to occupants of some such houses and other local residents.

Consultation

125. There was relatively strong support among respondents to the consultation for giving a local authority the power to serve an overcrowding notice, although almost a quarter of the majority respondents qualified their support. Most respondents felt that an additional enforcement power is necessary to tackle the significant overcrowding issues in some areas, including the effect it has on the health and wellbeing of occupants and others and the nuisance
caused in the community. Some local authorities stressed the importance of the power being discretionary, so that it can be used only in the most severe cases.

126. Landlord representatives were concerned that a landlord could be penalised where overcrowding had occurred due to actions by the tenant of which the landlord has no knowledge. As mentioned previously, reasonable excuse will be a defence for the landlord where, as in this example, overcrowding is caused by the occupants and the landlord may lack legal powers to comply with the overcrowding notice.

127. A minority expressed concerns about a possible increase in homelessness arising from the use of overcrowding notices. There are particular difficulties when dealing with overcrowding in communities of migrant workers such as language and communication barriers, sensitive community relations and cultural differences. The statutory guidance that will be issued on the use of notices, including taking tenants’ views and the effect of action into account, combined with the local authority’s power to provide appropriate information and advice to occupants and sensitive setting of the time limit for compliance, will help counter these difficulties and reduce the risk of homelessness. The suggestion made in consultation responses that a comprehensive review of overcrowding is carried out before legislation is introduced was considered but the Scottish Government believes that, given the nature of the problem and the detrimental effect it can have on vulnerable tenants, it should not delay. Stakeholders’ suggestions that additional requirements should be placed on local authorities prior to using the power were also considered but rejected as this can be picked up in statutory guidance.

128. There was relatively strong support for making failure by a landlord to comply with an overcrowding notice an offence. Respondents suggested a very wide range of penalties.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

129. The local authority power to deal with problems relating to overcrowding in privately rented houses is not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The Review highlighted that overcrowding can be a particular issue amongst migrant workers, acknowledging that many migrant workers choose, initiate or accept overcrowding in the knowledge that it is temporary and saves them money. The Bill gives Ministers powers to issue guidance to which all local authorities must have regard when considering the issue of an overcrowding statutory notice and can ensure that guidance outlines that issues for certain ethnic groups are handled sensitively. The provisions do not raise any human rights issues or issues relating to island communities or sustainable development. The provisions relate to local authority powers and have been largely welcomed by local authorities although COSLA has highlighted some concern over the application of the overcrowding notice and its potential financial implications in terms of re-housing tenants made homeless as a consequence. However, as highlighted previously, the powers are discretionary and will enable local authorities to work with landlords to reduce overcrowding whilst minimising the impact on homelessness.
PART 4 – MISCELLANEOUS (PRIVATE SECTOR TENANCY REGIME AND RELATED MATTERS)

Policy objectives

130. The Scottish Government’s Review of the Private Rented Sector in Scotland constitutes a very extensive study of the sector and includes major surveys of private tenants and landlords. One aspect of the private rented sector that was examined was the tenancy regime. The Review concluded that the regime seems to be operating satisfactorily as regards the short assured tenancy (by far the most common rental contract in the private rented sector). Findings that supported this view included:

- The great majority of tenants have a written tenancy agreement
- The flexibility of the short assured tenancy makes it popular with landlords and tenants
- A minority of tenants would prefer a longer minimum tenancy
- Most tenancies are ended by tenants and many tenants who want to stay beyond the initial six month tenancy are able to do so
- The survey found high levels of satisfaction among tenants as regards landlords, agents, accommodation and its location
- Landlords demonstrated a largely positive view of their experiences.

131. The main problems for tenants were getting repairs done and unfair retention of tenancy deposits (the latter issue is being addressed separately by the Scottish Government). Landlords were worried about rent arrears, gaining access to carry out repairs and the lack of clarity in the procedures allowing them to regain possession of their properties, including difficulties if tenants refuse to leave or may have abandoned the property. The Review recommended that policy development should focus on issues of tenancy sustainment, helping to prevent tenancies breaking down by addressing these problems rather than on the length of the tenancy offered.

132. The Review also found that there is a lack of knowledge of rights and responsibilities among many tenants and landlords. It identified this as a major problem which reduces the benefits of legislative and other improvements in the sector and which could be addressed in primary legislation, as well as in other ways.

133. The measures in the Bill dealt with below are intended by Ministers to address some of these issues. It should be remembered that a short assured tenancy can be for more than six months. Landlords are more likely to offer longer tenancies to those who want them if they are reassured that they can regain possession of their property if necessary. Improving the ability to exercise rights of access could also assist landlords to address problems with repairs. Clarification of processes and more information for tenants will help the sector to operate more effectively. In the longer term, the Private Rented Sector Strategy Group will consider other possible changes to the tenancy regime.
134. There are concerns about a lack of clarity regarding charges made to tenants for setting up a tenancy by agents or landlords. Currently, the law prohibits charges for drawing up a tenancy agreement or placing a name on an accommodation list. Furthermore, under section 82 of the Rent (Scotland) Act 1984 (imported into the Housing (Scotland) Act 1988 in respect of assured tenancies by section 27 of that Act) it is an offence to require any premium as a condition of the grant or continuance of a tenancy. According to section 90, a premium includes any fine or other like sum and ‘any other pecuniary consideration’ in addition to rent.

135. Although it should be clear that this legislation prevents the making of any charge apart from rent and a refundable tenancy deposit (not exceeding two months’ rent), there appears to be considerable confusion. Some agents interpret the law as meaning that it is illegal only for a letting agent to charge a fee specifically to grant the tenancy, whereas others take the view that any fee (other than rent or a refundable tenancy deposit) charged by an agent is illegal. Many agents charge an administration fee to cover overheads, costs of background checks and references, etc. Good practice sets out that other administration charges must reflect actual costs incurred. However, it seems that some agents are charging tenants unjustifiably large administration fees. Other charges may be to cover the cost of carrying out credit checks or obtaining references. Tenants have very little awareness of what is legal or reasonable to pay. Some local authorities consider that rogue agents are exploiting vulnerable tenants, and the Review suggests that persons born outside the UK experience greater problems in accessing housing and are more likely to be charged fees to do so. The confusion about the legal position results in a lack of enforcement.

136. Various stakeholders, including members of the Private Rented Sector Strategy Group, have called for the position to be regularised and clarified. There is a widespread feeling that it is legitimate for agents and landlords to make certain reasonable charges to tenants, although views on what these should be vary. Suggestions have included charges for credit checks and reasonable administrative charges.

137. In order to clarify the situation, and to take account of the possibility that some charges may be reasonable, the Bill gives Ministers power to make provision by regulations about charges connected with the grant, renewal or continuance of a tenancy. Such regulations would set out types of charges that are permitted and could set maximum levels for such charges. Regulations would be made following consultation with stakeholders in the sector. This consultation will allow an informed view to be taken of which charges should be allowed and maximum limits. The change will enable greater clarity and better regulation, by making clear the reasonable charges that agents and landlords could apply. It will make it easier to take action against rogue agents and landlords.

138. Regulations will apply to protected tenancies under the 1984 Act and also assured tenancies (including short assured tenancies) because new section 89A will constitute part of the sequence of sections 86 to 90 of the 1984 Act referred to in section 27 of the 1988 Act.

139. The Review found that there is a low level of tenant awareness of the law governing the private rented sector and of the key initiatives to improve the sector. About 20% of private tenants said that they did not understand their rights. Only about 10% had heard of the Repairing Standard and the PRHP, 30% were aware of landlord registration (but many of these tenants did
not know whether their landlord was registered) and more than a third of tenants in HMOs did not know whether the premises were licensed. Consumer awareness among tenants is a key element of the new regulatory regime and the Repairing Standard provisions, which rely on tenants to pursue their right to have repairs done with the PRHP and to report poor management to their local authority. It is also important that tenants are aware of their own responsibilities. Pre-tenancy arrangements have been identified as a key area in which tenants’ knowledge of their rights and responsibilities could be promoted.

140. The Bill places a statutory duty on a landlord to provide specified documents and information (a tenant information pack) to a tenant at the beginning of an assured tenancy. Failure to do so will be an offence with a maximum fine of level 2 (currently £500). Ministers are given a power to prescribe the information and documents to be provided in the pack by order. The documents and information will help to inform tenants of their rights and responsibilities.

141. This requirement might pull together all the mandatory documents, as well as details of legal provisions relating to the sector. It could, for example, include documents containing information about the tenancy (such as a tenancy agreement), about the house (such as the permitted level of occupancy), about the landlord (such as his or her landlord registration number) and about the rights and responsibilities of tenants, landlords and agents (including the Repairing Standard and protection of deposits). An order may make provision about the form of the documents and the information to be included in them. It may provide for documents to be provided separately or at the same time.

142. Before using the order-making power, Ministers will be required to consult representatives of tenants, private landlords and landlords’ agents, as well as such other persons as they consider appropriate. This will ensure that leading stakeholders in the sector have a say in the documents and information considered necessary. The Scottish Government may make some of the documents available online.

143. Giving more information to tenants will help them to distinguish responsible landlords from rogue landlords, so that they can seek tenancies from the former and take action against the latter, for example by applying to the PRHP or making complaints to local authorities. The information pack could also increase knowledge of rights and responsibilities among landlords, which the Review found to be lacking among a large minority.

144. The tenant survey shows that a significant proportion of tenants (20%) said they did not understand the legal processes that a landlord would have to go through to end their tenancy. The landlord survey showed that many landlords have concerns about regaining possession of their properties. A particular problem in this connection is that some doubts have been raised about the circumstances in which Notices of Proceedings are required to be issued to tenants with a short assured tenancy.

145. The specific issue is that section 19 of the Housing (Scotland) Act 1988 states that the sheriff will not consider proceedings to gain possession of a house let on an assured tenancy (which includes a house let on a short assured tenancy) unless the landlord has served a Notice of
Proceedings on the tenant. However, section 33 of the Act states that the sheriff will grant possession of a house let on a short assured tenancy if certain conditions are met:

- The short assured tenancy has reached its ish (i.e., the end date of the tenancy agreement)
- Tacit relocation is not operating (i.e., the tenancy is not renewing on the same conditions as before because notice of termination has not been given)
- No further contractual tenancy is in existence, and
- The landlord has given the tenant notice that possession is required.

146. Some people consider that the section 19 requirement also applies to section 33 proceedings, despite the apparently clear wording of the latter section. Nonetheless, most legal opinion considers that section 19 only applies to a short assured tenancy when possession is being sought on any of the grounds in schedule 5 to the Act, which does not apply in the case of section 33 proceedings.

147. It is evident that section 33 was deliberately designed to apply only to short assured tenancies that had come to their normal contractual end. Seeking possession in such cases was intended to be – and should be – easier for landlords than when other grounds of possession are involved. Furthermore, the wording of the Notice of Proceedings is explicitly linked to schedule 5 as requiring the form in relation to section 33 proceedings could cause further confusion.

148. The Bill therefore makes the situation absolutely clear by stating that sections 18 and 19 do not apply to proceedings under section 33. It is explicitly stated that this amendment is for the avoidance of doubt, since it does not change the current legal position.

149. Responsible landlords ensure that their properties are kept in good condition, in accordance with the statutory Repairing Standard and contractual obligations. However, landlords often express concern about their inability to gain access to their property in certain circumstances, particularly to carry out repairs or inspections to check whether repairs are necessary. Results from the landlord survey suggest that 7% of landlords (or those working for them, such as an agent or a builder doing repairs) had been refused access to a property by a tenant in the previous two years (affecting approximately 16,000 households).

150. Although landlords usually have a contractual right of access included in leases and they can take legal action to force a tenant to implement the terms of the lease, one of the main issues is the length of time it takes to get a court order to enforce the right of access.

151. The Housing (Scotland) Act 2006 gives a landlord a statutory right of entry to check whether the property meets the requirements of the Repairing Standard and to carry out work to meet these requirements. Again, if the tenant refuses to grant access, the landlord may seek a court order requiring the tenant to permit access, but some landlords advise that this can take months to obtain. Many landlords consider it unfair that a tenant can apply to the Private Rented Housing Panel to enforce the landlord’s duty to ensure that the house meets the Repairing Standard and that a Private Rented Housing Committee has the ability to obtain and enforce a
warrant authorising entry to a house to which such an application relates, but that a landlord who is seeking to comply with the Repairing Standard duty, but is unable to obtain access, has no such rights.

152. The 2006 Act gives landlords a defence as to why they have not carried out necessary repairs on the grounds that access was unreasonably denied. However, this does not help in getting repairs done. While repairs go undone, the damage to the property may be worsening. Strengthening a landlord’s ability to gain access in relation to the Repairing Standard could help to improve physical standards in the private rented sector, one of the 2006 Act’s aims, as well as increasing landlords’ confidence in the system.

153. The Bill therefore gives a landlord the right to apply to the PRHP for assistance in exercising the right of entry in relation to the Repairing Standard when they are unable to gain access to the property and gives the PRHP powers to help landlords to gain access. There does not necessarily have to be a dispute with the tenant for an application to be made. It may be, for example, that the tenant is not responding to requests for access.

154. In order to deal with such applications efficiently, economically and relatively informally, consideration of them will not involve a full hearing by a Private Rented Housing Committee. One member of the PRHP will consider an application from a landlord. If the panel member accepts the application, he or she would contact the tenant and landlord and try to arrange a suitable date for access. It is expected that access could be arranged at this point in most cases, but the tenant would have the opportunity to make representations as to why the right of access should not be exercised. The panel member would then make appropriate enquiries of both parties, before deciding whether to continue assisting the landlord.

155. If the tenant fails, without reasonable excuse, to respond to the panel member or to agree a suitable date or time for entry, the member may fix these. When access is arranged, the panel member (or a person authorised by him or her) may, at the request of the landlord or tenant, accompany the landlord to the property to ensure that the necessary work or inspection is carried out. If the tenant still refused access or did not respond, the panel member would be able to obtain a warrant to enforce entry. The panel member may stop assisting the landlord at any time if this is considered appropriate in the circumstances.

156. Ministers will have power to make regulations about the making or deciding of applications. These could, for example, require that an application includes evidence that access has not been granted despite requests to the tenant. Ministers will also have power to make regulations dealing with the action to be taken by a panel member.

157. Given the present economic situation, Ministers may consider it appropriate that landlords, who will be saved the time and cost involved in court action, should pay a fee for access to the PRHP. Ministers are given a power to prescribe a fee to accompany an application. It is likely that any such fee would be set at the average additional cost to the PRHP of dealing with applications from landlords.

158. This change to the law will encourage and assist good landlords to maintain and repair the houses they let out.
Alternative approaches

159. The Scottish Government considered giving local authorities a power to activate section 144 of the Housing (Scotland) Act 1987 in specified localities, and included this in the consultation. This would have required a private landlord in such a locality to give a tenant a statement of the statutorily permitted occupancy level of the house, obtain a written acknowledgement from the tenant and produce the acknowledgement to the local authority on request. This would ensure that the landlord and tenant knew the maximum number of people allowed to live in the house, but would not allow overcrowding to be addressed directly. It would also have placed an administrative burden on local authorities. The Scottish Government therefore decided that, since the Bill includes provision to require a landlord to provide a tenant with prescribed documents, it was unnecessary to proceed with the proposal on section 144 since a statement of occupancy could be included, if appropriate, among the prescribed documents.

160. The Scottish Government considered the possibility of merging the forms and other documents issued to a tenant at the beginning of a short assured tenancy as a method of simplifying the process of entering into a tenancy. Questions on this were included in the consultation. However, there are limits to the extent to which it would be legally possible or practicable to merge forms and documents, and Ministers consider that the introduction of the prescribed documents and information for new tenants, which could include these forms and documents, makes it unnecessary to merge any forms. However, this issue could be revisited in the future, after it has been seen how the prescribed information requirement works in practice.

Consultation

161. There was very strong support for making it clear that all pre-tenancy charges by agents and landlords are illegal apart from reasonable charges, which would be specified in secondary legislation. Some respondents gave examples of excessive charges that have been made to tenants.

162. There was a wide range of suggestions on how the making of illegal pre-tenancy charges should be dealt with, including the use of fixed penalty notices and inclusion in the fit and proper person test for landlord registration (which, in fact, already includes breaches of housing law and landlord and tenant law). Seven respondents suggested that the offence should be reported to the Procurator Fiscal for prosecution and nine suggested that a repayment should be made to the tenant. Ministers decided that the present penalty for requiring or receiving an illegal premium—a fine not exceeding level 3, with the court having the option of ordering the repayment of the premium to the person by whom it was paid—should be retained.

163. 85% of respondents supported the introduction of pre-tenancy information packs, which are to be supplied to tenants by landlords and agents. There was a general consensus that the Scottish Government should take the lead in developing the pack, in conjunction with other stakeholders. There was also a general feeling that there should be some standard content available online.

164. Making it an offence to fail to comply with the requirement to issue the pack was supported by 63% of respondents. A wide range of penalties was proposed.
165. The consultation asked whether it should be made clear in legislation that a Notice of
Proceedings is required to be issued to a tenant in a short assured tenancy. A large majority said
yes to this. However, the question may have caused some confusion, since a Notice of
Proceedings is already required to be issued to a tenant in a short assured tenancy when
possession is being sought on any of the grounds in schedule 5 to the 1988 Act. The point at
issue related to possession being sought under section 33 of the Act.

166. The basis for the support for change was a widespread feeling among respondents that
there is a lack of clarity over the situation. The consultation did not give the option of
disapplying sections 18 and 19 in relation to section 33 but, having considered the minority view
in the consultation (which actually represents the majority of legal opinion) Ministers consider
that taking this course would clarify the matter, while not altering the current legal position.

167. There was strong support for giving a landlord a right to apply to the PRHP when in
dispute with a tenant about gaining access to the property in relation to the Repairing Standard,
with the PRHP having powers to enforce access. A number of respondents said that landlords
should be required to take steps to try to get access before applying to the PRHP. The power to
make regulations will be able to cover this. Some who opposed the proposals considered that an
alternative to the courts is unnecessary, but the experience of landlords suggests that a quicker
route is required.

168. Among those who replied on the issue, there was majority support for the PRHP to be
able to enforce the right of entry by means of a warrant. There was broad support for the tenant
being able to request that a member of the PRHP accompany the landlord or a person authorised
by the landlord when entering the property. There was fragmentation of opinion on how the
additional work for the PRHP should be funded, with the largest group – eight respondents –
suggesting that the landlord should pay a fee. Landlord representatives do not support that view
on the basis that the intervention is required because the tenant has been uncooperative; however
the fee payable is expected to be lower than full court action and the process is likely to be
speedier thus preventing further material damage to the property which could be costly in the
long run.

Effects on equal opportunities, human rights, island communities, local government,
sustainable development etc.

169. The provisions on the private sector tenancy regime and related matters are not
discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or
religion. The amendments do not raise any human rights issues. They have no specific
implications for island communities or sustainable development. Local authorities and COSLA
have welcomed the proposed changes to the system.
PRIVATE RENTED HOUSING (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Private Rented Housing (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The purpose of the Private Rented Housing (Scotland) Bill is to address more effectively the problems caused by rogue landlords, and to support responsible landlords, by strengthening the regulation of the private rented sector. This involves improvements to the operation of the systems for registration of private landlords and licensing of houses in multiple occupation (HMOs). The Bill also includes provisions to deal with problems caused by overcrowding in the private rented sector and to improve the working of the private sector tenancy regime and related matters, so that the sector can continue to grow and improve.

OUTLINE OF BILL PROVISIONS

4. The Bill is structured in the following Parts:

   - Part 1 amends the system of registration of private landlords contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. This is in relation to expanding the criteria of the fit and proper person test; allowing a local authority to require a criminal record certificate to verify information; fees for certain agents; public access to information on applications not yet determined and persons found not to be fit and proper to act as landlords; requiring landlord registration numbers in advertisements of properties to let; an increase in the maximum fine for offences and the power of a court to impose a ban of up to five years; powers for a local authority to obtain information to enable or assist it to carry out its landlord registration functions, including requiring an agent to provide details of properties managed; a requirement for a local authority to take account of guidance on its registration functions; and
This document relates to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

requiring the Private Rented Housing Panel to pass information on landlords to local authorities so that their registration status can be checked.

- **Part 2** makes changes to the system of HMO licensing in Part 5 of the Housing (Scotland) Act 2006 to give Ministers a power to bring by order additional types of multi-occupancy property within the scope of HMO licensing; to give a local authority power to refuse to consider an application for an HMO licence if it considers any requisite planning permission has not been obtained; to increase the maximum fine for offences; and to remove a requirement for a local authority to issue a statement of reasons for every HMO licensing decision.

- **Part 3** gives a local authority power to serve an overcrowding statutory notice on the landlord of a privately rented house which is statutorily overcrowded, where the local authority considers that the overcrowding is linked to an adverse effect on the health or wellbeing of any person or on the amenity of the house or its locality.

- **Part 4** makes changes to the tenancy regime and related matters in the Housing (Scotland) Act 2006, the Rent (Scotland) Act 1984 and the Housing (Scotland) Act 1988 in order to clarify the right to make pre-tenancy charges and the level of such charges; to require a private landlord to issue specified documents to a new tenant; to clarify the notices to be served when a landlord seeks possession of a house after a short assured tenancy has reached its contractual end; and to allow a private landlord to seek the assistance of the Private Rented Housing Panel in gaining entry to a house for purposes related to the Repairing Standard.

- **Part 5** sets out supplementary and final provisions.

**APPROACH TO USE OF DELEGATED POWERS**

5. When deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, the Scottish Government has had regard to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- the need to make proper use of valuable Parliamentary time; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

**DELEGATED POWERS**

6. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.
PART 1 - REGISTRATION OF PRIVATE LANDLORDS

Section 1 (inserts section 85(9) into the Antisocial Behaviour etc. (Scotland) Act 2004) - Fit and proper person

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

7. Section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004 specifies the material which must be taken into account by the local authority in assessing whether or not a person is fit and proper, including any material showing that a person has committed a listed offence or contravened provisions of the law relating to specified matters. The offences and relevant contraventions are listed in subsection (2) and regulations made under section 83 of the 2004 Act require the declaration of relevant listed offences and contraventions to be included in any application for landlord registration. The new provision in the Bill has extended the list of offences in subsection (2) to include any offence involving firearms (within the meaning of section 57(1) of the Firearms Act 1968) and sexual offences (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995). The new section 85(9) gives Ministers power to modify section 85(2) by order.

Reason for taking power

8. Following analysis of the consultation responses it was apparent from some stakeholders that there were a number of other offences which could also be considered relevant in relation to the fit and proper person test. Although there was no overarching consensus on any single specific offence at this time, it is recognised that there may be future circumstances where other types of offences or contraventions of the law may give cause for concern, especially if there happened to be an incident involving an offence or contravention which was not specified in the provision. The order-making power that has therefore been inserted will allow Scottish Ministers to modify subsection (2), for example by adding, amending or removing offences or specifying other relevant contraventions of the law should they consider it necessary. This would update the list of offences and contraventions to which the local authority must have regard.

Choice of procedure

9. As the alterations to subsection (2) would modify primary legislation, it is considered that any order proposed to be made under this power should be subject to affirmative resolution procedure.
Section 4 (inserts section 88(2C) into the Antisocial Behaviour etc. (Scotland) Act 2004) – Appointment of agents

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

10. Section 4 amends section 88 of the Antisocial Behaviour etc. (Scotland) Act 2004 by means of new subsection (2A) to make provision for a local authority to charge a registered landlord a fee when the landlord subsequently nominates an unregistered agent. There is currently no power for the local authority to charge a fee for such an addition to the landlord’s register entry, although assessing whether the agent is a fit and proper person will involve expense to the local authority. Setting a fee will be fairer for local authorities, who will be able to recover costs, and for those landlords and agents who pay fees because they register at an earlier stage. New subsection (2B) ensures that no fee is payable if the fit and proper test has already been carried out on the agent. Section 88(2C) gives Ministers powers to prescribe by regulations the fees, how fees are to be arrived at, and circumstances in which no fee is payable.

Reason for taking power

11. The power that is being taken matches the existing power at section 83(3) of the 2004 Act to set fees for applications for registration in the system. It will allow Ministers to set fees, which may be set at the same level as those set in regulations under section 83(3), as appropriate; to vary them if circumstances change, so that, for example, they remain at an appropriate level; and to make further provision, if necessary, on how fees are calculated and situations in which a fee will not be charged. It would not be suitable to make such provision by means of primary legislation, given the anticipated need to update the fees from time to time, in response to changing circumstances.

Choice of procedure

12. It is considered appropriate that this power is subject to negative resolution procedure because it would be used to provide details of fees in order to add administrative detail. There will be no impact on the policy or the provisions of the Bill such as would mean that a higher level of scrutiny would be necessary or appropriate. The Scottish Government would draw the Committee’s attention to the similar power at section 83(3) of the 2004 Act, which also attracts negative resolution procedure.

Section 10 (inserts section 99A into the Antisocial Behaviour etc. (Scotland) Act 2004) – Guidance

Power conferred on: The Scottish Ministers
Power exercisable by: Issue of guidance
Parliamentary procedure: None

Provision

13. Section 10 inserts section 99A into the Antisocial Behaviour etc. (Scotland) Act 2004 to make provision for a local authority to have regard to any guidance issued by the Scottish
This document relates to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

Ministers on the discharge of its functions under Part 8 of that Act, and on matters arising in connection with those functions. There is currently no such requirement for a local authority to have regard to such guidance (the Scottish Ministers could, of course, issue guidance if they wished, and it is only the requirement to have regard to it that attracts the need for legislation).

**Reason for taking power**

14. The power that is being taken is broadly similar to powers at sections 1, 16, 23, 39, 52, 62, 115, 119 and 139 of the 2004 Act. Only section 23 requires guidance to be laid before the Parliament; it relates to dispersal of groups. A similar power exists in relation to HMO licensing, at section 163 of the Housing (Scotland) Act 2006 (which comes into force next year), again with no Parliamentary procedure attached to it. It is considered that the power will be especially useful in relation to the encouragement of best practice with regard to enforcement of the landlord registration requirements, as well as a consistent approach across local authority areas, though the power has been drafted more generally as it may have broader uses.

**Choice of procedure**

15. Before issuing any guidance the Scottish Ministers must consult with local authorities and such other persons as they think fit. Given the limited effects of any guidance, which has no binding effects on any local authority or person, it is not considered that there is a need for any more formal requirement or for Parliamentary procedure.

**PART 2 – AMENDMENT OF PART 5 OF HOUSING (SCOTLAND) ACT 2006**

Section 13 (inserts paragraph (b) into section 125(1) of the Housing (Scotland) Act 2006) – Amendment of HMO licensing regime

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order made by statutory instrument
- **Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

**Provision**

16. Section 125 of the Housing (Scotland) Act 2006 defines a house in multiple occupation (HMO). Section 13 inserts into section 125(1) a new paragraph (b), which confers on Ministers a power to designate by order additional categories of multi-occupancy accommodation, specified by type or manner of occupation, as licensable HMOs. Any such category must meet the usual requirement of a licensable HMO that there are three or more occupants being members of more than two families. However, it does not necessarily have to be a house or premises in terms of the 2006 Act, nor does it have to be the only or main residence of the occupants.

17. Section 13 also inserts into the 2006 Act subsection 125(1A), which requires Ministers, before using this power, to consult local authorities and also such tenants (or their representatives) and landlords (or their representatives) as they think fit.
Reason for taking power

18. Concerns have been raised by some local authorities and other stakeholders that some categories of multi-occupancy accommodation are not covered by HMO licensing, either by definition or because of difficulties in establishing their status. This power would enable Ministers to bring additional categories of multi-occupancy accommodation, where physical, safety or management standards were giving rise to concern, within the protection of HMO licensing, which sets conditions in relation to these standards. This could be done in a focussed way, to avoid bringing within the scope of licensing types of accommodation that were operating satisfactorily and were not considered to require regulation. A focussed approach will also minimise the need for exemptions, which could provide loopholes for unscrupulous landlords.

19. Examples of the kind of situations that could be addressed include some substandard properties occupied by migrant workers. Local authorities have identified the problem of migrant workers being moved from house to house before action can be taken to establish whether each house is a licensable HMO. An order could designate houses used for this purpose as licensable HMOs, without the need to prove the usual only or main residence requirement, which can be particularly difficult when occupants may have other residences outside the UK.

20. A number of local authorities have also called for HMO licensing to be extended to situations of multi-occupancy beyond those contained in buildings, such as mobile homes and caravans, in order to regulate them, and the Gangmasters Licensing Authority has indicated that many migrant workers are accommodated in Portacabins and similar structures. The order-making power could be used to extend HMO licensing to multi-occupancy accommodation that is not in buildings, but is presenting problems relating to physical standards, safety, or management.

21. Some of the problems identified have resulted from the increase in migrant workers in recent years. The order-making power will allow Ministers the flexibility to address other issues that arise in the future in relation to multi-occupancy properties that fall outside the HMO licensing system, because of difficulties with either definitions or effective enforcement, or because of attempts by landlords at the lower end of the market to evade licensing. Primary legislation would not give this flexibility.

Choice of procedure

22. The use of the order-making power is subject to a statutory duty to consult, which will ensure that the views of stakeholders are taken into account in its application. Furthermore, since the use of this power could have a significant impact on the sectors affected and involves a change in the effect of primary legislation, it is considered appropriate that it is subject to affirmative procedure.
Section 16 (extends section 163(1) of the Housing (Scotland) Act 2006) – HMO guidance

Power conferred on: The Scottish Ministers
Power exercisable by: Issue of guidance
Parliamentary procedure: None

Provision

23. Section 16 inserts a reference to section 186 of the Housing (Scotland) Act 2006 into section 163 of that Act. The effect is to enable guidance to be issued by the Scottish Ministers regarding the local authority’s power to require information in relation to HMO licensing matters to be provided by certain people connected with land or premises. The current power in section 163 is limited to the functions contained in Part 5 of the Act, and the power to require information is located in Part 10, as it relates to other more general matters as well as to HMO licensing. Local authorities must have regard to guidance issued under section 163, but are not required to follow it if they consider that the circumstances merit a different approach.

Reason for taking power

24. The power is being taken to remove a lacuna in what may be covered by HMO guidance. A possible use of it relates to tenants living in HMOs. At Stage 1 of the Housing (Scotland) Bill, some stakeholders expressed concerns about the position of vulnerable tenants who might refuse to provide information relating to landlord registration, because of fears of retaliation from their landlords, and therefore might be subject to prosecution. These concerns were reflected in the Local Government and Communities Committee’s Stage 1 report on that Bill, which extended them to the operation of section 186 of the 2006 Act as it affects tenants in HMOs and recommended that protection should be provided for such tenants. The power being taken will allow Ministers, among other things, to provide guidance on the use of the section 186 power to obtain information from tenants in HMOs, which could set out how a local authority would be expected to take account of the circumstances of a tenant.

Choice of procedure

25. Before issuing any guidance the Scottish Ministers must consult with local authorities and such other persons as they think fit. Given the limited effects of any guidance, which does not require that a local authority or person adopt a particular approach, it is not considered that there is a need for the extension of the provision to observe any more formal requirements than the current provision or for Parliamentary procedure to be involved.
PART 3 – OVERCROWDING STATUTORY NOTICES

Section 17(7) – Overcrowding in private rented housing: statutory notice

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

26. Local authorities currently have very limited powers to deal with overcrowding in the private rented sector other than licensable HMOs. The statutory definition of overcrowding is contained in sections 135 to 137 of the Housing (Scotland) Act 1987.

27. Section 17 of the Bill gives a local authority the power to serve an overcrowding statutory notice on the landlord of a house which is statutorily overcrowded, where the local authority considers that the overcrowding is contributing or connected to an adverse effect on the health or wellbeing of any person, or on the amenity of the house or its locality. This will allow enforcement action to be taken in the worst cases of overcrowding in the sector, where it is creating severe problems for occupants, neighbours and others in the locality. The notice will set out the steps to be taken by the landlord to rectify the situation (that is, to reduce the occupancy level to the maximum permitted by the 1987 Act), the period within which the steps must be taken, and any other conditions considered appropriate by the local authority. Section 18 allows the local authority to provide such advice and assistance to the occupants of the house as it considers appropriate.

28. Section 17(7) allows the Scottish Ministers to prescribe by order the form of an overcrowding statutory notice, such other information to be included in the notice as they see fit, and the persons who must be given a copy of the notice by the local authority.

Reason for taking power

29. Ministers wish to be able to prescribe the form of an overcrowding statutory notice in order to ensure that a landlord is clearly informed of the obligations it places on him or her and, if necessary, to ensure that the landlord is given any other information – for example, about rights to make representations or to appeal – that is considered appropriate.

30. The details of the form, including any information to be provided, and the persons to receive a copy of the notice may require to be amended in the light of experience, so this matter is most appropriately dealt with by an order-making power rather than primary legislation.

Choice of procedure

31. The Scottish Government does not consider that the content of the notice and the persons to whom it must be copied for the purposes of this provision, which is a technical matter, should merit a higher degree of Parliamentary scrutiny than negative resolution procedure.
Section 17(8) – Overcrowding guidance

Power conferred on: The Scottish Ministers
Power exercisable by: Issue of guidance
Parliamentary procedure: None

Provision

32. Section 17(8) provides that a local authority must have regard to guidance issued by the Scottish Ministers in relation to overcrowding statutory notices.

Reason for taking power

33. The power is being taken, not to enable the Scottish Ministers to issue guidance (which they could do without any legislative basis), but to require that local authorities have regard to it. As the notices are an innovation, it is thought likely that guidance will be useful in promoting good practice and consistency where the provisions are used. However, it is also considered appropriate that the guidance should only require local authorities to have regard to it, rather than direct them as to what they must do, since ultimately it is for local authorities to determine how to exercise the power to require private landlords to take steps to address overcrowding.

Choice of procedure

34. Given the very limited effects of any guidance, which has no directive effects on any local authority or person, it is not considered that there is a need for any formal provision as to the making of guidance, such as consultation or laying before Parliament. The operation of the notices, in terms of their form, content and who must receive them, will be covered separately, by order. Guidance will simply assist local authorities in considering how to use their powers.

PART 4 – MISCELLANEOUS

Section 28(2) (inserts new section 89A into the Rent (Scotland) Act 1984) – Premiums: regulations

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

35. Section 82 of the Rent (Scotland) Act 1984 prohibits a person from requiring the payment of any premium or the making of any loan, in addition to the rent, as a condition of the grant, renewal or continuance of a protected tenancy. It makes the making of such a requirement an offence. The section also makes it an offence to receive any premium in addition to the rent in connection with the grant, renewal or continuance of a protected tenancy.

36. Section 82 and some related provisions in Part VIII of the 1984 Act (including, with one modification, sections 86 to 90) also apply to assured tenancies (including short assured tenancies) by virtue of section 27 of the Housing (Scotland) Act 1988.
37. Despite the prohibition on the charging of premiums, there is evidence of some confusion about what this means in practice and a variety of charges are made to tenants, some of which may be excessive. Various stakeholders, including members of the Private Rented Sector Strategy Group, have called for the position to be regularised and clarified. There is a widespread feeling that it is legitimate for agents and landlords to make certain reasonable charges to tenants, although views on what these should be vary. Suggestions have included charges for credit checks and reasonable administrative charges.

38. Section 28(2) of the Bill inserts into the 1984 Act, new section 89A, which gives the Scottish Ministers power to make by regulations, provision about sums that it will be permissible to charge in connection with the grant, renewal or continuance of a protected tenancy. The regulations will be able to specify categories of payment that are not to be treated as premiums in terms of section 82 and to set a maximum limit to the amount of any such payment that could be charged. Ministers must, before making regulations, consult representatives of tenants, private landlords and landlords’ agents, as well as such other persons (which may include tenants, private landlords and landlords’ agents) as they consider appropriate.

39. Any such regulations may also apply to assured tenancies (including short assured tenancies) because new section 89A will constitute part of the sequence of sections 86 to 90 of the 1984 Act referred to in section 27 of the 1988 Act.

Reason for taking power

40. The Scottish Ministers consider that it is appropriate to deal with this matter by the use of regulations. This will allow a considered view to be developed, based on consultation, of which charges should be permitted and what maximum limits should be set on them. If it becomes clear, due to changes in the future, that amendments are required – for example, that additional charges should be allowed, that abuses require certain charges to be disallowed, or that maximum levels of charge should be adjusted – it will be possible to do this efficiently and quickly by subordinate legislation, instead of having to wait for an opportunity of new primary legislation.

Choice of procedure

41. Specifying what charges may legally be made to tenants by agents and landlords and what the maximum amount of such charges may be will be a significant matter for the private rented sector, with implications for business models and for the costs of obtaining a tenancy in the sector. Therefore, as well as the duty to consult stakeholders before using the regulation-making power, it is considered appropriate that such regulations should also be subject to the level of scrutiny involved in affirmative resolution procedure.
Section 29 (inserts new section 30B into the Housing (Scotland) Act 1988) – Duty of landlord to provide certain information: further provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

42. The Scottish Government’s Review of the Private Rented Sector highlighted a widespread lack of knowledge of housing legislation and regulation among private tenants (and, to a lesser extent, landlords). The Private Rented Sector Strategy Group suggested that a statutory duty should be placed on a landlord to provide specified documents and information to a tenant at the beginning of the tenancy. Section 29 of the Bill inserts into the Housing (Scotland) Act 1988 new section 30A, which places a duty on a person who is to be the landlord under an assured tenancy (whether or not it is a short assured tenancy) to provide the person who is to be the tenant with specified documents. Failure to do so (without reasonable excuse) is an offence.

43. New section 30B gives the Scottish Ministers the power to specify by order, what these documents will be. They may, for example, include documents containing information about the tenancy (such as a tenancy agreement), about the house (such as the permitted level of occupancy), about the landlord (such as his or her landlord registration number), and about the rights and responsibilities of tenants and landlords. They may include documents that the landlord is already required to provide under other sections of the 1988 Act or other legislation. An order may make further provision, including about the form of the documents and the information to be included in (or expressly excluded from) any of them. It may make provision where there is another statutory obligation to give a document, so as to avoid unnecessary duplication. It may provide for documents to be provided separately or at the same time. Section 30B(2) requires the Scottish Ministers, before using the order-making power, to consult representatives of tenants, private landlords and landlords’ agents, as well as such other persons (which may include tenants, private landlords and landlords’ agents) as they consider appropriate.

Reason for taking power

44. The Scottish Ministers want to ensure that tenants are given all the information that they need in order to be aware of their general and specific rights and responsibilities and those of their landlords. They therefore want to consult with the relevant stakeholders to ensure that the documents to be given by landlords include all of those that are essential for this purpose, without imposing unnecessary burdens on the sector. Furthermore, as legislative changes are introduced in the future or as new issues in the private rented sector are identified, it will be necessary to update the list of documents specified. It would be appropriate to do this by order, rather than by primary legislation.

Choice of procedure

45. The statutory duty to consult before using the order-making power will ensure that the views of stakeholders are taken into account. The Scottish Ministers consider that this provides protection for the sector regarding the specific requirements placed on landlords. Given that the
This document relates to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

nature of the documents is a technical issue, Ministers consider that negative resolution procedure is appropriate.

Section 31(4) (inserts section 28B into the Housing (Scotland) Act 2006) – Landlord application to private rented housing panel: further provision

Power conferred on:   The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

46. Section 14 of the Housing (Scotland) Act 2006 places a duty on a landlord in certain tenancies to ensure that the house meets the Repairing Standard (set out in section 13 of the Act) at the start of, and throughout the tenancy. A tenant who considers that the landlord has failed to comply with this duty may, under section 22 of the 2006 Act, apply to the Private Rented Housing Panel for a determination of the matter.

47. Section 181(4) of the 2006 Act gives a landlord, or a person authorised by the landlord, the right to enter the house for the purpose of determining whether the house meets the Repairing Standard or carrying out work required to comply with the landlord’s duty to ensure the house meets the Repairing Standard or with a Repairing Standard Enforcement Order. However, many landlords consider that, where they are unable to exercise the right of entry, they should be able to apply for assistance to the Private Rented Housing Panel rather than, as at present, having to take court action or to wait for the tenancy to end.

48. Section 31(4) amends the 2006 Act by inserting new section 28A to make provision for a landlord to apply to the Private Rented Housing Panel for assistance in exercising the right to enter a house under section 181(4). Such an application will be considered by a single member of the Panel.

49. New section 28B gives Ministers power to make by regulations, further provision about applications made under section 28A. Such provision may relate to the form and content of applications and notices, the prescription of a fee to accompany applications, the procedure to be followed by applicants and the panel member, and the determination of applications and action following determination, among other things.

Reason for taking power

50. The Bill makes such provision for the making and determination of applications as is necessary to ensure that the panel member has sufficient information and powers to make reasonable decisions based on sound evidence. However, it would not be desirable to set out all the details of the process involved on the face of the Bill. It may prove necessary to amend such details in the light of experience or changed circumstances, and it is considered that regulations are an appropriate way of doing this. For example, if a fee to accompany applications is set, it may be necessary to alter this in future, and such alteration could be made more easily and quickly by amending regulations than by primary legislation.
Choice of procedure

51. Given that regulations will deal with administrative detail, the Scottish Government considers that negative resolution would be the appropriate procedure. By comparison, existing powers to make regulations under paragraph 8 of schedule 2 to the 2006 Act, making further provision about the making or determination of applications by tenants to the Private Rented Housing Panel under section 22(1) of that Act, are also subject to negative resolution.

Section 31(4) (inserts section 28C(11) into the Housing (Scotland) Act 2006) – Panel member to arrange suitable time for access

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

52. New section 28C, inserted into the 2006 Act by section 31(4), sets out the procedure for a panel member, having decided to assist a landlord who has made an application, to try to arrange with the tenant and landlord a suitable date and time for the right of entry to be exercised. If the tenant fails to respond or does not agree a suitable date and time, the panel member may fix the date and time for entry. Provision is also made for changing dates and times, the provision of information by the panel member, attendance by the panel member at the house and the delegation of functions by the panel member.

53. New section 28C(11) gives Ministers power to make by regulations, further provision about the action to be taken by the panel member under section 28C.

Reason for taking power

54. New section 28C makes such provision for a panel member to make arrangements for the exercise of the landlord’s right of entry, as is necessary to ensure that the right can be exercised effectively, unless the tenant still refuses to allow entry. However, it may prove necessary to set out how the action required by the Bill is to be undertaken, in the light of experience or changed circumstances. It is considered that regulations are an appropriate and flexible way of doing this.

Choice of procedure

55. Given that regulations will deal with administrative detail of the action that the Bill requires, the Scottish Government considers that negative resolution would be the appropriate procedure. The power is more limited than that at inserted section 28B, for which negative procedure is proposed.
PART 5 – GENERAL

Section 33 – Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative or negative resolution of the Scottish Parliament

Provision

56. Section 33 confers on Ministers a power to make by order, such consequential, supplementary, incidental, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for the purposes of giving full effect to any provision of the Bill. Such an order may modify any enactment, instrument or document.

Reason for taking power

57. Ministers may need to make provision by order to support the full implementation of the Bill. This will ensure that the policy intentions of the Bill are achieved. For example, when implementing the Bill, unforeseen issues may arise which require supplementary provision. The supplementary power would allow changes to be made without the need for further primary legislation. Also, whilst a number of consequential modifications have been identified in the schedule, it may be that not all of the consequences have been identified. The Scottish Government considers the order-making power to be necessary to allow for flexibility to address these issues.

58. Provision may also be needed to ensure a smooth transition from the current law to that in the enacted Bill. Issues may arise at the time of implementation which require transitional or transitory provision, or the saving of repealed or amended provisions.

59. Without the power, it may be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the original Bill. That would not be an effective use of resources by Parliament or the Scottish Government.

Choice of procedure

60. Ancillary provisions frequently deal with minor issues, and in general are subject to negative resolution procedure. An exception is made where the order adds to, omits or replaces any part of the text of an Act (see section 34(2)). In that case, affirmative resolution procedure applies. This approach on procedure is in line with the approach taken in most Bills and there are not considered to be any special factors justifying a different approach in this case.
Section 35 – Commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: None

Provision

61. Section 35 of the Bill provides that the provisions of the Bill (except sections 32 to 35, which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on the day determined by order, made by Ministers. Such an order may make transitional, transitory or saving provision.

Reason for taking this power

62. It is considered proper for the Bill to be commenced at such times as Ministers consider appropriate or expedient. It is standard practice for such commencement provisions to be dealt with by subordinate legislation. Such provisions may require to make transitional or transitory provision, or the saving of repealed or amended provisions.

Choice of procedure

63. In line with general practice, commencement orders will not be subject to any Parliamentary procedure.
Local Government and Communities Committee

2nd Report, 2011 (Session 3)

Stage 1 Report on the Private Rented Housing (Scotland) Bill

Published by the Scottish Parliament on 18 January 2011
Local Government and Communities Committee

2nd Report, 2011 (Session 3)

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Local Government and Communities Committee

Remit and membership

Remit:

To consider and report on (a) the financing and delivery of local government and local services and planning; and (b) housing, regeneration, anti-poverty measures and other matters falling within the responsibility of the Minister for Housing and Communities.

Membership:

Bob Doris (Deputy Convener)
Patricia Ferguson
Alex Johnstone
Duncan McNeil (Convener)
Alasdair Morgan
Mary Mulligan
Jim Tolson
John Wilson
David McLetchie (Member from 13/06/2007 until 22/12/2010)

Committee Clerking Team:

Clerk to the Committee
Susan Duffy

Senior Assistant Clerk
Katy Orr

Assistant Clerk
Ian Cowan

Committee Assistant
Fiona Sinclair
INTRODUCTION

1. The Private Rented Housing (Scotland) Bill (SP Bill 54) (“the Bill”) was introduced to the Parliament on 4 October 2010 by Nicola Sturgeon MSP, Cabinet Secretary for Health and Wellbeing. The Bill was accompanied by Explanatory Notes (SP Bill 54-EN) which included a Financial Memorandum and a Policy Memorandum (SP Bill 54-PM) as required by the Parliament’s Standing Orders. The Local Government and Communities Committee was designated the lead committee to consider the Bill. Under Rule 9.6 of Standing Orders, it is for the lead committee to report to the Parliament on the general principles of the Bill.

2. The Policy Memorandum states that the Bill’s principle policy objectives are “to improve standards of service for consumers in private rented housing and enable continued sustainable growth in the sector.” It aims to achieve this by “…measures to strengthen the regulation of the private rented sector; improve the working of the private sector tenancy regime and related matters; address more effectively the problems caused by rogue landlords; and deal with the worse effects of overcrowding.”

3. The Bill covers three main areas – landlord registration, licensing of houses in multiple occupation (HMOs) and overcrowding. It also makes a number of miscellaneous amendments relating to the private sector tenancy regime.

BACKGROUND

4. The Anti-Social Behaviour etc (Scotland) Act 2004 (“the 2004 Act”) included provisions for a private landlord registration scheme. The primary objective of the 2004 Act was to make provision for measures to tackle anti-social behaviour and within the context of addressing such behaviour, the Act introduced a compulsory registration scheme for private landlords. This scheme subsequently came into force in April 2006.
5. The Housing (Scotland) Act 2006 (“the 2006 Act”) restated, amended and extended provisions relating to licensing of HMOs and these provisions are due to come into force on 31 August 2011.

6. In 2007, the Scottish Government published Firm Foundations— a discussion document about the future of housing in Scotland. This document set out the Scottish Government’s support for a thriving private rented sector and announced that there would be a review of the private rented housing sector. The results of this review were published in March 2009.

7. The Scottish Government subsequently established the Scottish Private Rented Sector (PRS) Strategy Group in October 2009. Its membership was as follows—

   Association of Residential Letting Agents
   Chartered Institute of Housing
   Citizens Advice Scotland
   Consumer Focus Scotland
   Cosla
   Crisis
   Local Authority representatives (Scottish Borders and City of Edinburgh)
   National Association of Estate Agents
   National Federation of Property Professionals
   National Union of Students
   Royal Institute of Chartered Surveyors
   Scottish Association of Landlords
   Scottish Council for Single Homeless
   Scottish Rural Property and Business Association
   Shelter Scotland

8. The PRS Strategy Group’s remit was to “advise the Scottish Government on how it can support tenants, landlords and others to grow a professional, high quality Private Rented Sector equipped to provide sustainable housing solutions

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for Scotland in the 21st century”.\(^3\) It was intended that the group should provide initial recommendations for legislative change to the Scottish Government by December 2009 to inform a consultation for a proposed Private Housing Bill. The Group’s recommendations were published in January 2010. The Scottish Government then issued a consultation paper in March 2010.

9. The Housing (Scotland) Bill was introduced on 13 January 2010 and included a number of measures on the regulation of the private sector. The Policy Memorandum for the Private Rented Housing (Scotland) Bill states that the intention behind this was to “take forward some relatively straightforward proposals as quickly as possible, while more complex measures were developed in discussion with the PRS Strategy Group”\(^4\). The issues contained in the Housing (Scotland) Bill covered landlord registration and HMO licensing.

10. In its Stage 1 report on the Housing (Scotland) Bill, the Committee expressed concerns about this approach stating—

“that it would have been preferable to have consolidated as many of the provisions contained in the current Bill with those proposed in the private sector bill that the Minister has indicated will be introduced “during this Parliamentary session”. The Committee is of the view that this would have been a far simpler approach as opposed to the one being pursued by the Scottish Government, which will introduce further layers of new and amending legislation. The Committee remains unconvinced that the urgency to amend some aspects of the legislation relating to private landlords and HMO licensing justifies introducing the provisions in two separate bills. The Committee would have preferred to consider changes to the existing legislation in their totality, rather than being asked to consider some provisions in the current Bill without knowing what will subsequently be introduced in the private sector bill.”\(^5\)

11. The Scottish Government subsequently included the sections from the Housing (Scotland) Bill relating to the private rented sector in the Private Rented Housing (Scotland) Bill with some amendments. The relevant sections were then taken out of the Housing (Scotland) Bill by amendment at Stage 3.

12. According to the Bill’s Policy Memorandum, there will be further consideration of issues related to the private rented sector by the PRS Strategy Group. It also notes that an evaluation of landlord registration is currently being carried out and is expected to be completed in March 2011. The Policy Memorandum suggests that further measures may be forthcoming as a result of these pieces of work but it is not clear whether this would involve further legislative change. However,

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\(^4\) Policy Memorandum, paragraph 13

\(^5\) Scottish Parliament Local Government and Communities Committee. 5th Report 2010 (Session 3). *Stage 1 Report on the Housing (Scotland) Bill* (SPP 456)
Rosemary Brotchie from Shelter commented that “we have been led to expect further legislation.”

13. The Memorandum states “Ministers believe that it is appropriate to bring forward the measures in the Bill without further delay so that local authorities have these powers to deal with bad landlords.”

14. The relationship between this Bill and the further work being carried out by the PRS Strategy Group is discussed in more detail later in the report.

SCOTTISH GOVERNMENT CONSULTATION

15. As set out above, a number of issues related to the private sector were contained in the Housing (Scotland) Bill as introduced. The Scottish Government carried out a consultation on private sector housing issues for possible inclusion in that Bill between July and September 2009 and subsequently published a report on the consultation responses in December 2009. The consultation paper included questions relating to landlord registration, HMO licensing and local authority powers to deal with disrepair in private houses.

16. In addition, a consultation on the PRS Strategy Group’s recommendations for a proposed private housing bill was carried out in March and April 2010. Apart from proposals on landlord registration, HMO licensing, overcrowding and the tenancy regime, this consultation also covered two issues which are not being taken forward in this Bill. These are: issues relating to the 20 year rules on standard securities (which was inserted into the Housing (Scotland) Bill by amendment at Stage 2) and the licensing of mobile home sites. This latter issue is to be considered further, but in the meantime, the Scottish Government will develop secondary legislation to update terms used in contractual agreements between site owners and residents.

17. The Policy Memorandum states that “Ministers decided that, in addition to the existing proposals [in the Private Rented Housing Bill consultation], further measures were needed to address the serious problems caused by rogue landlords and unscrupulous agents, such as those identified during Stage 1 of the Housing (Scotland) Bill.” The Memorandum goes on to state that “there was not sufficient time for a public consultation on the small number of new proposals, but the PRS Strategy Group was asked to consider and provide comments on them.”

18. Minutes of the PRS Strategy Group state that the group “was strongly concerned that the Bill now had a different focus and was not the Bill it recommended. It felt that the ‘tackling rogues’ agenda is important but only one,
relatively small part of the group’s wider remit of growing and developing the PRS”.

19. This was echoed by the Scottish Council for Single Homeless in their written submission. However, they also stated that legislation in the private sector was overdue and they welcomed the main provisions in the Bill.

20. The Committee notes that consultation has been carried out both in relation to this Bill and to the Housing (Scotland) Bill. The Committee also notes that there was no public consultation on the provisions to deal with rogue landlords, although it recognises that a number of the concerns which led to these provisions arose during Stage 1 of the Housing (Scotland) Bill. The Committee notes that members of the PRS Strategy Group expressed concern that the revised focus of the Bill only concentrated on one, relatively small part of their remit to grow and develop the private rented sector, but were generally content with the further provisions being proposed.

COMMITTEE CONSIDERATION

21. Recognising there was limited time within which to seek written evidence, the Committee issued a general call for evidence soon after the Bill was introduced. It subsequently agreed a detailed approach to its scrutiny of the Bill at its meeting on 27 October 2010. This included seeking evidence from members of the PRS Strategy Group and all those who gave written or oral evidence on the Housing (Scotland) Bill.

22. The Committee took evidence on 10 November 2010 from the following witnesses—

   City of Edinburgh Council
   Glasgow City Council
   Scottish Borders Council
   Association of Residential Letting Agents
   Scottish Association of Landlords
   Scottish Rural Property and Business Association

23. It then took evidence on 17 November 2010 from—

   Chartered Institute of Housing Scotland
   Consumer Focus Scotland
   Scottish Council for Single Homeless
   Shelter Scotland

24. Finally, the Committee took evidence from Alex Neil MSP, the Minister for Housing and Communities on 1 December 2010.

25. The Committee would like to thank all those who gave oral and written evidence on the general principles of the Bill.

26. The Subordinate Legislation Committee (SLC) considered the delegated powers under the Bill and reported to the Parliament. The SLC’s report is attached at Annexe B.

27. The Finance Committee considered the Bill’s Financial Memorandum and agreed to adopt “level one” scrutiny which involves seeking written submissions and passing these onto the lead committee. The submissions received by the Finance Committee are attached at Annexe C.

OVERALL VIEWS ON THE BILL

Landlord Registration

Introduction

28. Part 1 of the Bill makes changes to system of landlord registration which was established by the Antisocial Behaviour etc. (Scotland) Act 2004 and which came into effect in April 2006.

29. The Bill also includes four of the provisions (with amendments) on landlord registration that were contained in the Housing (Scotland) Bill. These provisions—

- give local authorities the power to obtain information to enable, or assist, them to carry out their functions in relation to the registration of landlords
- increase the fine for acting as an unregistered landlords to £50,000 (this is an increase on the fine of £20,000 that was originally proposed in the Housing (Scotland) Bill)
- give local authorities the power to charge a registered landlord a fee if they subsequently nominate an unregistered agent
- allow the public to see additional information from the landlord register

30. The Bill also brings forward new provisions to—

- clarify issues that local authorities should consider when a landlord is applying for registration such as sexual and firearms offences and anti-social behaviour
- put landlord registration numbers on a statutory footing and requires local authorities to provide landlords with their registration number when advising them their registration has been completed
- require all adverts for properties to include the landlord registration number or to notify that a registration is pending
- require the Private Rented Housing Panel to pass details about a landlord and their property to local authorities and requires local
Local Government and Communities Committee, 2nd Report, 2011 (Session 3)

authorities to “have regard” to any guidance issued by Scottish Ministers in respect of landlord registration

Fit and proper person test

31. Section 1 amends the 2004 Act to expand the list of offences to be declared by an applicant for landlord registration to include firearms offences and sexual offences. It also amends the 2004 Act by specifying certain examples of information that a local authority may take into account when making a decision about whether an applicant is fit and proper. For example, this could include whether an anti-social behaviour order has been served on the landlord or tenant or whether a landlord had breached the Repairing Standard, which is a basic level of repair that all private rented accommodation must reach.

32. Section 2 of the Bill would give local authorities the power to require a landlord to provide a criminal record certificate if it deemed it was necessary.

33. There was general support for these measures. In written evidence, the Chartered Institute of Housing Scotland suggested that the fit and proper person test could be further expanded to comply with forthcoming tenancy deposit duties.

34. Alistair Somerville from the City of Edinburgh Council made the point that, regardless of what is contained in legislation, local authorities will take a number of factors into account when assessing an application for registration. However, local authorities also recognised that having issues in statute gave a focus and an impetus to gather that information. He went on to state—

“The bill provides a useful focus and direction to local authorities on what issues they should take into account, but the important point of which we should be aware is that the lists are not exclusive...Therefore, a landlord’s fitness and propriety will be assessed against not only the issues that are listed in the bill, but potentially other issues as well.”

35. The local authorities who gave oral evidence also agreed that other issues might be identified in the future. Cathie Fancy from Scottish Borders Council noted that the PRS Strategy Group had agreed to consider, in the next few months, whether there were any such additional issues, but that “at the moment, those that are in the bill are the most pertinent ones.”

36. Both Consumer Focus Scotland and the Scottish Council for Single Homeless (SCSH) raised concerns about how anti-social behaviour orders are likely to be taken into account, stressing that there needs to be a balance between dealing with anti-social behaviour and protecting tenants. SCSH remarked—

“it is important to recognise that it is hoped to make more use of the private rented sector in housing more vulnerable individuals who could include people against whom ASBOs have been granted. This element [of the bill] should not be able to be used to restrict the use of the private rented sector

12 Scottish Parliament Local Government and Communities Committee. Official Report, 10 November 2010, Col 3702
13 Scottish Parliament Local Government and Communities Committee. Official Report, 10 November 2010, Col 3702
from housing a broad range of households or from assisting in meeting the objectives of housing people with a variety of needs."^{14}

37. The Committee supports the expansion of the fit and proper person test as a means of providing focus and direction to local authorities regarding the issues that they must take into account when assessing a landlord’s registration. The Committee notes the comments that have been made regarding the balance that needs to be struck when taking into account anti-social behaviour orders and asks the Scottish Government to clarify how it anticipates this will be achieved.

Landlord Registration Numbers

38. When landlords register with their local authority, they are given a landlord registration number. Section 3 of the Bill puts such registration numbers on a statutory footing and local authorities would be required to provide landlords with their registration number when advising them that their registration has been completed.

39. Section 6 requires all written advertisements for properties to let to include the landlord registration number or, in the case of landlords whose application is yet to be determined, the phrase “landlord registration pending”. Reusable “To Let” boards are exempt from this. If a registered landlord does not include their number, they could be removed from the register.

40. There was general agreement over the principle of confirming landlord registration in advertisements. However, some concerns were raised over how this would work in practice.

41. John Blackwood from the Scottish Association of Landlords (SAL) expressed concern over the practicality of including landlord registration numbers in advertisements. He noted that such a number is “like a credit card number. It is a long series of digits”^{15} and went on to highlight that it might not mean anything to a member of the public unless there was an explanation. He also stated—

“A bigger concern is that two or three people could own a property, such as a husband and wife or various members of a family. Does that mean that every registration number would need to be printed against the advert?...An advert could appear in a newspaper that said “Two-bedroom flat £450, with a phone number to call, then the next three lines would just be registration numbers.”^{16}

42. Sarah-Jane Laing from the Scottish Rural Property and Business Association (SRPBA) suggested that an unregistered landlord who sees a number routinely appearing in the paper could use that number when placing an advert themselves.

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^{14} Scottish Council for Single Homeless. Written submission to the Local Government and Communities Committee

^{15} Scottish Parliament Local Government and Communities Committee, Official Report, 10 November 2010, Col 3705

^{16} Scottish Parliament Local Government and Communities Committee, Official Report, 10 November 2010, Col 3705
43. Some witnesses suggested that it might be preferable to have a symbol or kite mark to denote registration rather than using the number itself. However, witnesses also noted that, like registration numbers, there would need to be an explanation of what the symbol meant.

44. This was echoed by Douglas White from Consumer Focus Scotland who stated that whatever method was used, it had to be accompanied by an awareness-raising campaign “so that tenants are aware of the fact that the number or kite mark that appears in an advert means that the landlord is registered, and that they should look out for that, be extremely wary of approaching any advert that lacks such a mark and, possibly, report such adverts to their local authority.”

45. Concerns were also raised over how the system would be enforced. As set out above, SRPBA raised the issue of an unregistered landlord using someone else’s number and in doing so, raised the question as to who would check that this was a valid number. It is arguable that a similar issue could arise with a symbol or kite mark as there would need to be a check that the landlord was entitled to use the symbol.

46. Sarah-Jane Laing from SRPBA noted that—

“a couple of local authorities are proactive and go through the local papers every week to check up on such matters...but difficulties arise in other local authorities due to factors such as the wide areas that they cover and the fact that local papers do not fit neatly into local authority areas.”

47. However, it was also noted that such advertisements are not just placed in newspapers, but in local shops and particularly, online. Brian Adair from ARLA confirmed that his company does not advertise in newspapers and instead everything is done online.

48. The Bill proposes that “to let” boards should be exempt from the requirement to display a landlord registration number. John Blackwood explained that the PRS Strategy Group thought that it would be “completely impractical” to put numbers on “to let” boards, explaining that—

“The landlord registration number is specific to a particular landlord, not to a property or agency, and it is also specific to the local authority, which means that a landlord who got a few to let boards printed would potentially have to have different numbers on different board – for an agent, that would be horrendous.”

49. The Minister was asked why the Scottish Government had opted to use landlord registration numbers in advertisements rather than a symbol or kite mark. It was also suggested that if a symbol or kite mark were used then perhaps it

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17 Scottish Parliament Local Government and Communities Committee, Official Report, 17 November 2010, Col 3731
18 Scottish Parliament Local Government and Communities Committee, Official Report, 10 November 2010, Col 3713
19 Scottish Parliament Local Government and Communities Committee, Official Report, 10 November 2010, Col 3712
Local Government and Communities Committee, 2nd Report, 2011 (Session 3)

would not be necessary to exempt “to let” boards. The Minister explained that the rationale behind the proposal was that a number could be easily checked and would be unique to each landlord as opposed to a kite mark which would, in his view, be easy to copy.

50. However, the Minister also stated that he would not “go to the barricades” over the issue and that he would be open to examining any suggestions that the Committee might wish to make.

51. The Committee appreciates the point that there needs to be a system which is not, or is less likely to be, abused by unregistered landlords. However, it also notes the concerns that have been raised about the practicality of using only a registration number. The Committee notes that a number of trade bodies use kite marks to denote registration but that this is backed up by a list of registered organisations who will be given unique registration numbers. The Committee therefore recommends that the Scottish Government considers using a combination of a kite mark and registration system as used by other trade bodies and examines whether, by using such a system, it would not be necessary to exempt “to let” boards from these requirements.

Fees for appointment of agents
52. Section 4 of the Bill would allow a local authority to charge a registered landlord a fee when the landlord seeks to add an agent following registration. No fee would be payable if the fit and proper test had already been carried out on the agent. This section would also allow Ministers to make regulations to set the level of fees and how fees would be calculated. These provisions were contained in section 133 of the Housing (Scotland) Bill as introduced. The Committee supported these proposals in its Stage 1 report on that Bill.

53. Section 4 also contains a provision that was not in the Housing (Scotland) Bill. This provision creates an offence if a landlord does not notify a local authority that they have appointed an agent with a maximum fine at level 3 on the standard scale (currently £1,000).

54. In its written submission, the SRPBA agreed there should be a fee for the appointment of unregistered agents. However, it was opposed to this fee having to be paid by the landlord and stated it would prefer to see a requirement for all agents to register and “thereby pay their own fee.”

55. This was echoed by the Chartered Institute of Housing (CIH) Scotland who argued that there should be some legislative responsibility for agents to notify local authorities when they are acting on behalf of landlords. CIH suggested the position regarding letting agents was unclear and that to avoid confusion, letting agents should be required to register in their own right.

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21 Scottish Rural Property and Business Association. Written submission
56. The Minister explained that there were issues around whether it would be legislatively competent to make provision with regard to letting agents. He explained that his understanding was that this issue had been considered by the previous Scottish Executive and that legal advice at that time suggested that registration of letting agents was a reserved matter under consumer legislation. However, he also noted that the penalties for letting agents under this Bill do not fall into this category. He further noted that the registration of property factors as provided for in the Property Factors (Scotland) Bill had been deemed legislatively competent and therefore he could “see no reason why the registration of letting agents should not be in the same position.”

57. However, the Minister went on to say that regardless of whether it could be argued that such provisions would be legislatively competent, it was not realistic to include the issue in this Bill.

58. The Committee notes the Minister’s comments regarding the requirement for letting agents to register in their own right and recognises that further discussion is likely to be required on the issue. The Committee therefore recommends that this issue be included in the further review of the private rented sector which is being taken forward by the PRS Strategy Group.

Access to the register

59. Section 5 amends the provisions in the 2004 Act in relation to access to the register to allow additional information on applications to be given out in certain circumstances. It also requires local authorities to keep and provide information on whether an application has been received but not yet decided. It places an obligation on a local authority to note in its register any person that has been refused entry or removed from the register on the grounds that they – or their agent – are not fit and proper to act as a landlord. Any such note must be removed after 12 months if a subsequent registration of that landlord is completed.

60. These provisions were contained in section 134 of the Housing (Scotland) Bill as introduced and were supported by the Committee in its Stage 1 report.

Penalties for acting as an unregistered landlord

61. Section 7 of the Bill increases the penalty for acting as an unregistered landlord from level 5 on the standard scale to £50,000. The Housing (Scotland) Bill as introduced had proposed that the fine be increased to £20,000. This maximum fine is the same as is proposed for HMO licensing offences.

62. In its Stage 1 report, the Committee supported increasing the penalty as it would help to act as a deterrent to landlords who operate without registering.

63. However, the Committee also expressed concerns that at that time, no landlords had been prosecuted for not registering and concluded that the lack of

prosecutions had effectively allowed bad landlords to continue operating outwith the system and had had limited effect on protecting the most vulnerable tenants.

64. In evidence on this Bill, the City of Edinburgh Council confirmed that they had successfully prosecuted an unregistered landlord in October 2010. However, the Committee noted that the landlord in question had failed to register three of his seven properties and was only fined £65 for each property. When asked how much it had cost the authority to bring the prosecution, Alistair Somerville from the council responded that it had probably cost between £2,000 and £3,000.23

65. There are two financial penalties available to local authorities if someone rents out a property but is not registered. A late application fee can be levied and/or a Rent Penalty Notice can be served which would suspend a tenant’s liability to pay rent to the landlord. In correspondence, the Minister for Housing and Communities confirmed that as at November 2010, 2,049 late application fees had been applied and 1,398 Rent Penalty Notices had been served.24

66. The local authorities who gave oral evidence welcomed the increase in the maximum fine to £50,000 and thought that as well as acting as a deterrent, it would send a signal to the courts about the seriousness of the issue. Alistair Somerville from the City of Edinburgh Council commented that—

“there is a feeling that the courts do not give weight to the landlord registration and HMO licensing schemes. Our impression is that they are simply seen as licensing and registration schemes, not as systems for controlling safety in properties and antisocial behaviour. The proposals to increase the fine levels would, I hope, get the message across.”25

67. However, in their written submission, Hillhead Community Council stated that “increasing fines to £50,000 is all very well”26 but that this has to be contrasted with the levels of fines which have actually been imposed by the courts.

68. John Blackwood from SAL agreed that having a court impose a minimal fine was demoralising for “the wider sector and for local authority staff”27 He also thought that the measures in the Bill might encourage courts to increase the fines they impose. However, he also raised concerns about the process that has to be gone through to take cases to court.

69. Local authorities themselves recognised there were issues around bringing cases to court. Alistair Somerville from the City of Edinburgh Council made the point that not all enforcement was formal and therefore “a significant amount of enforcement work is undertaken that is not formal and does not result in

24 Correspondence from the Minister for Housing and Communities. November 2010
26 Hillhead Community Council. Written submission to the Local Government and Communities Committee
27 Scottish Parliament Local Government and Communities Committee. Official Report, 10 November 2010, Col 3709
prosecution but still results in compliance.”

However, he also recognised there were problems with cases that did come to court, notably the amount of time it can take for a case to be heard. He stated—

“My concern is about the number of cases that do not even make it to prosecution and the ability of the courts to deal with cases timeously. We still have an appeal hearing for a refusal of a licence that happened two years ago. There is a constant deferring of actions. Various pleading diets have to be held before we get to a trial date. We still have a case that is to be heard this month that started more than a year ago.”

70. The Minister also recognised the difficulties in prosecuting cases, noting that “many local authorities tell me that they often do not pursue legal action because they know what the result will be”. He also noted that in his review of the court system, Lord Gill had recommended introducing a dedicated housing court. The Minister went on to say that his personal view was that rather than introducing a dedicated housing court, there should perhaps be a dedicated housing panel that would incorporate the current private rented housing panel. In effect, it would constitute a housing tribunal.

71. The Committee hopes that an increased fine will act as a deterrent but it is concerned that the current level of fine imposed is significantly less than the current maximum and that difficulties persist in being able to take cases to court. These two issues mean that whatever the maximum fine, there is some doubt as to whether it can act as an effective deterrent, but if courts were to take cognisance of the higher fines and impose them, then this could act as an incentive for local authorities to take forward cases. However, the Committee does support the increase in the maximum fine as one part of the solution and an initial step in the right direction.

72. The Committee concurs with the views expressed by local authorities that it is vital courts give sufficient weight to both the landlord registration and HMO licensing schemes. The Committee believes that having either a dedicated housing court or a housing tribunal may be worthy of further consideration and suggests that the Scottish Government examines these issues further.

73. Concerns were raised during Stage 1 scrutiny of the Housing (Scotland) Bill regarding the consistency and effectiveness of enforcement across all local authority areas. For example, the Private Rented Housing Forum argued that “it makes no difference to an unregistered landlord whether they are fined £5,000 or

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£20,000 if no-one enforces it in the first place.” Such concerns were highlighted again during scrutiny of this Bill.

74. The three local authorities who gave oral evidence to the Committee all had established systems in place to deal with landlord registration. However, other evidence suggested this might not be the case across the country. John Blackwood from SAL stated—

“Part of the problem is that properties that landlords own and manage are spread over local authority boundaries. Landlords say “The scheme is great in this authority, but a mile away, over the boundary, nothing is happening.”

75. He went on to suggest that there should be a national scheme, administered nationally with local authority input to ensure consistency across the country.

76. The Minister made it clear that he did not favour a national scheme, however he also acknowledged that while there have been some good examples of enforcement there were also some local authorities which “to be frank, have taken a more laissez-faire approach to enforcement than is desirable.”

77. This was echoed by Alistair Somerville from the City of Edinburgh Council who stated—

“the main incentive for taking prosecutions is probably having high calibre private rented service enforcement officers who are well trained and experienced in prosecution work. We would hope that they would not be discouraged, but Scottish Government guidance on enforcement policies and activities is a more appropriate way in which to ensure that prosecutions take place.”

78. The Minister confirmed that the review of the private rented sector which is being undertaken would look specifically at issues like enforcement. In addition, the Bill gives Scottish Ministers power to issue statutory guidance (this is discussed in more detail later in the report). The Minister noted that currently there is no statutory guidance procedure and stated that such a procedure—

“would allow us to build in best practice, and that will be possible once we have received in March the conclusions and recommendations of the review of the specifics of the landlord registration scheme.”

79. The Committee commends those local authorities who gave oral evidence over their approach to enforcement. However, it remains...
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extremely concerned that there is a lack of consistency across the country and that this lack of consistency undermines confidence in the landlord registration scheme. While the Committee welcomes the PRS Strategy Group’s further consideration of enforcement, having this ongoing work does suggest that the provisions in this Bill will, not in itself, make improvements to the consistency of approach.

Civil versus criminal proceedings
80. Prosecutions are taken through the criminal courts and the proceeds from fines go to the UK Treasury. During Stage 1 scrutiny of the Housing (Scotland) Bill, the Minister confirmed that he was not inclined to introduce civil rather than criminal offences, stating “the weight of the evidence that I have received, as a minister, suggests that it is much better to keep that provision in the criminal sphere, rather than under the civil law.”36 He added—

“For some people there is an argument that, if the provisions came within the civil law sphere, the money would not go to the Treasury but would come back into the coffers here. I do not think that the amounts that would be involved outweigh the other arguments against making such a change.”37

81. Additionally, there was a difference of opinion over whether it would be appropriate for local authorities to receive the fines or a proportion of the fines. Cathie Fancy from Scottish Borders Council agreed that local authorities should receive a proportion of the fines to offset the costs of a prosecution. Whereas Alistair Somerville from the City of Edinburgh Council stated that he would be “fundamentally uncomfortable about a fine being linked as a sort of incentive to generate income.”38

82. The Minister was asked whether, as an alternative to fines going directly to local authorities, the proceeds could be given to the Scottish Government instead. The Minister responded that he had raised this issue with the UK Government and that he would continue to press the case although he regarded the prospects of agreement as slim39.

Disqualification orders
83. Section 8 gives courts the power to make a disqualification order banning someone from acting as a landlord in any local authority area for up to 5 years where the person is convicted for acting as a unregistered landlord. This is similar to the power given to courts by the 2006 Act in relation to HMO licensing offences.

84. Both the CIH Scotland and the Scottish Federation of Housing Associations raised concerns about this proposal. CIH Scotland was concerned that a ban could mean a landlord being prevented from operating across the whole of

38 Scottish Parliament Local Government and Communities Committee. Official Report, 10 November 2010, Col 3693
Scotland and that this in turn could have consequences for landlords and tenants who could become homeless. Natalie Sutherland from CIH Scotland further commented —

“the whole idea of the ban came in at the last minute. It was not something that the private rented sector strategy group considered and it is an area that we have concerns about.”

85. The Policy Memorandum confirms that this provision was not part of the original consultation on the Bill, but was one of the proposals developed in response to concerns raised during Stage 1 of the Housing (Scotland) Bill and which was referred to the PRS Strategy Group for comment. The Policy Memorandum also stated “whilst some stakeholders say the proposal to disqualify unregistered landlords for up to five years is disproportionate to the offence committed, there was agreement that the potential five year ban could act as an effective deterrent.”

86. The Committee notes the concerns raised over the proposal to ban landlords. However, it also recognises that a range of measures will be required to tackle bad landlords and to ensure effective deterrents are in place. On balance, therefore, the Committee is content with this proposal.

**Interaction with other systems**

87. It emerged in evidence to the Committee that some local authorities conducted cross-checks to establish whether tenants in receipt of housing benefit were living in properties where there was a registered landlord but that there was no systematic approach to drawing on existing data - whether it is council tax or housing benefit data - to establish whether properties were let by an unregistered landlord. One reason given for this was data protection provisions.

88. The Minister confirmed that two or three local authorities, including the City of Edinburgh Council were working with the Department of Work and Pensions on this issue. He confirmed that those authorities were comparing their databases, looking at landlord registration and claims for housing benefit and that “both the DWP and we are keen to roll that sharing of information out across the country because it has proved to be very effective in the two or three authorities that are doing it at the moment.”

89. He also noted that the procedure for paying housing benefit had changed in the previous 18 months and that benefits are now paid directly to the tenant and not to the landlord. He went on to say that there was anecdotal evidence that this change had contributed to increasing the bad debt ratio for landlords and on that basis, a number of landlords were considering withdrawing from the rental market. However, he understood that these procedures were being reviewed. It was suggested that if the DWP reverted to the previous regime, then it might be possible only to pay housing benefit to a Registered Social Landlord or to a

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40 Scottish Parliament Local Government and Communities Committee. *Official Report, 17 November 2010, Col 3743*
41 Policy Memorandum, paragraph 70
42 Scottish Parliament Local Government and Communities Committee. *Official Report, 1 December 2010, Col 3871*
registered landlord. The Minister agreed this could be useful and recognised that there would need to be close working between the Scottish Government, local authorities and the DWP to make this happen.

90. The Committee considers that, whatever system of payment is in place, it is essential that local authorities work together with the DWP to ensure a linkage between databases to enable further information to be made available to identify unregistered landlords. The Committee reiterates the conclusion that it reached in its Stage 1 report on the Housing (Scotland) Bill that it believes considerable progress could be made in enforcing landlord registration by identifying unregistered landlords through council tax or housing benefit data. The Committee believes that greater enforcement could be achieved through this route than by giving local authorities the power to obtain information on landlords from third parties. It therefore calls on the Scottish Government to continue to work with the Department of Work and Pensions and to support and facilitate this work by local authorities as a means of reinforcing the enforcement provisions proposed in the Bill.

**Power to obtain information**

91. Section 9 gives local authorities the power to obtain information to enable, or assist it to carry out its functions in relation the registration of landlords. The local authority would be able to serve a notice on specified people to require them to provide information on the nature of their interest in the house, specify information about other people who have an interest in the house or other people that the local authority may reasonably request. The purpose of this provision is to help the local authority obtain information that will allow it to identify the landlord. A fine of £500 can be imposed on a person who does not comply with this requirement.

92. These provisions were contained in section 136 of the Housing (Scotland) Bill. In its Stage 1 report, the Committee expressed reservations about the provisions to provide local authorities with the power to obtain information. While the Committee noted that the Minister had emphasised in evidence that the power was discretionary, it questioned how a local authority official would be able to ascertain which tenants might be colluding with a landlord and who might be fearful of the landlord ending the tenancy if they provide information on the landlord. The Committee also considered that the provision might be impracticable; for example, it considered that it was not outside the realms of possibility that a “rogue” landlord might pay a £500 fine if the tenant was prepared not to reveal the information. The Committee further stated that it believed improvements in landlord registration and tackling “rogue” landlords could be better achieved by other means.

93. The Bill’s Policy Memorandum acknowledges the concerns raised about vulnerable tenants who declined to provide information due to fears of retaliation. It goes on to state that—

“The Private Rented Housing (Scotland) Bill gives Ministers power to issue statutory guidance on the discharge of local authorities’ landlord registration functions, to which local authorities must have regard. This will allow
Ministers to take account of these concerns about local authorities requiring information from tenants when issuing guidance.\(^\text{43}\)

94. The Committee’s initial concern was echoed by the Scottish Independent Advocacy Alliance which said “we have concerns about Section 9 of the provisions which makes an individual guilty of an offence if they withhold information about a property if approached by the Local Authority regarding their landlord.”\(^\text{44}\)

95. The guidance referred to by the Policy Memorandum is contained in section 10 of the Bill as is discussed below.

**Guidance**

96. Section 10 introduces a requirement for local authorities to have regard to any guidance issued by Scottish Ministers when carrying out their functions in respect of landlord registration, including, as outlined above, the use of the power to require information in relation to tenants.

97. As outlined earlier in this report, the Minister indicated that such statutory guidance would allow best practice in relation to landlord registration to be disseminated and put on a statutory footing.

98. The Committee is pleased to note that the concerns it raised in its Stage 1 report on the Housing (Scotland) Bill over the provisions for tenants to provide information have been acknowledged by the Scottish Government. The Committee further notes the Scottish Government’s commitment to include such issues in statutory guidance and that Scottish Ministers must consult local authorities and “such other persons as they think fit”. The Committee also notes the Minister’s comments that statutory guidance will play a role in improving the effectiveness and consistency of enforcement. Given the importance of this draft guidance, the Committee asks the Scottish Government to make it available to the Committee as soon as practicable to enable the Committee to assess whether the potential benefits envisaged by the Minister are likely to be achieved.

**Information from the Private Rented Housing Panel**

99. Section 11 proposes that the Private Rented Housing Panel would be required to pass onto the relevant local authority details about a landlord and a property where the Panel considers a dispute in relation to the landlord’s obligations to meet the Repairing Standard [as defined in the 2006 Act].

100. The Policy Memorandum states that currently “whilst the Private Rented Housing Panel (PRHP) receives referral from tenants and landlords it does not check whether a landlord is registered when it receives an application relating to the Repairing Standard.

101. The Committee believes that this proposal will assist local authorities to identify unregistered landlords and therefore is supportive of it.

\(^{43}\) Policy Memorandum, paragraph 50
\(^{44}\) Scottish Independent Advocacy Alliance. Written submission to the Local Government and Communities Committee
Effectiveness of registration

102. A number of witnesses questioned whether the existing system of registration was working effectively. John Blackwood from SAL stated —

“The Scottish Association of Landlords had high hopes for landlord registration in weeding out the rogue landlords. I have to be honest and say that we have not seen that happen, much to the dismay of our members.”

103. He went on to outline that a number of his members had become disillusioned with the system and that in some local authority areas, “only 50 per cent of landlords who are already in the system are reregistering. Landlords – non-members as well as members – say to us, “Nobody seems to do anything about it anyway, so why should we bother?”

104. The Minister confirmed there was anecdotal evidence of landlords failing to register and that work undertaken by the Scottish Government suggested about 20 per cent of landlords had not registered. However he also stated—

“we are talking about the big landlords who tend to reregister in bulk and, as a result, we do not think that there is the kind of big problem that has been suggested to the Committee.”

105. However, John Blackwood went on to say that his organisation advocated abolishing the scheme altogether. Sarah-Jane Laing from the SRPBA and Brian Adair from ARLA agreed with this view. However, both John Blackwood and Sarah Jane Laing also stated that they supported the aims of the provisions in this Bill which had been carried forward from the Housing (Scotland) Bill and John Blackwood stated that “anything that enforces or strengthens the current legislation is useful and we have no objection to any of the proposals.”

106. In its written submission, Shelter Scotland made clear that it did not support the abolition of the current scheme and that in their view “the “genie” of regulation is out of the bottle and we do not agree with suggestions that registration should be scrapped.”

107. The Committee notes that the PRS Strategy Group will be evaluating the effectiveness of the current registration scheme and that, as Shelter Scotland commented, “the measures in the bill only go so far.” While witnesses recognised that this gave an opportunity to undertake a more fundamental review of landlord registration in particular, some commented that this would lead to
further fragmentation and confusion. Natalie Sutherland from CIH Scotland commented—

“I am interested to see the outcome of the review, but it is a shame that it has come now and not before the bill was introduced. The timing is unfortunate.”

108. In responding to concerns that reforms were being undertaken on a piecemeal basis and that it would have been better to have a focused review of registration leading to one piece of legislation, rather than several, the Minister for Housing and Communities stated that the forthcoming review by the PRS Strategy Group would focus on the effectiveness of the landlord registration scheme but that this Bill “is about more than landlord registration; it is about the consequences and conclusions of the very substantial review that was undertaken last year. Some of the bill’s measures on overcrowding, for example, arose from those consultations”

109. The Committee does not agree that the registration scheme should be abolished. However, it does not believe the scheme is working as effectively as it should be and it is concerned by evidence that some landlords might not re-register. Notwithstanding the fact that failing to re-register while continuing to let our properties would be an offence, the Committee’s view is that it is extremely important that landlords re-register to ensure there is continued pressure on ‘rogue’ landlords.

110. The Committee recognises that this Bill will make some improvements to the scheme but that issues such as consistency of approach and enforcement remain unresolved. The Committee notes that the PRS Strategy Group will evaluate the current scheme and it is likely that further legislation could be introduced as a result of this review.

111. The Committee agrees that it would have been preferable if such a review had been undertaken and completed before the introduction of this Bill to avoid further confusion and fragmentation. However, this is not the case and therefore the Committee has had to focus on the provisions in the Bill. The Committee is generally supportive of these provisions but recognises that they only go so far and that there is an expectation that subsequent statutory guidance will assist in improving enforcement and consistency. The subsequent work of the PRS Strategy Group will also be crucial in making further, much needed improvements to the registration scheme and enforcement of the scheme.

Awareness raising
112. There was agreement among witnesses that it was essential to raise awareness among tenants and landlords about their rights, responsibilities and the regulations to which landlords are subject.

52 Scottish Parliament Local Government and Communities Committee. Official Report, 1 December 2010, Col 3861
113. Natalie Sutherland from CIH made the point that given the current housing market and general economic climate, it was likely that more people would become landlords and therefore it was incumbent on all housing professionals, local authorities, mortgage lenders and insurance companies to make landlords aware of the need for them to become registered.

114. Rosemary Brotchie from Shelter Scotland agreed and suggested that what had been missing from the focus on regulation and registration was the role of tenants and consumers in the process. When asked who should have the responsibility to raise awareness, she suggested—

“Picking out just one body to do the work will probably not be the answer. We envisage a sector-wide response. Yes, there is potential for leadership from the Government and local authorities, but we would like all organisations across the sector that have a stake or interest in the private rented sector to contribute to the awareness raising.”

115. Natalie Sutherland from CIH also made the point that tenants themselves needed to recognise they had a responsibility to check whether their landlord was registered and therefore, it was vital that easy and accessible means of checking registration were put in place to enable this to be done.

116. Witnesses recognised that much of the necessary information could be incorporated into the tenant information pack proposed by the Bill and this is discussed later in the report. However, it was also recognised there was a need to increase awareness before people become tenants and therefore before they receive a tenant information pack.

117. The Minister confirmed that he would talk to the PRS Strategy Group about how awareness can be increased and that such awareness raising would be done on an on-going basis and not on the basis of a one-off advertising campaign. However, he also stated that “one constraining issue for everybody will, of course, be budgets.”

118. The Committee believes it is essential to increase awareness among both tenants and landlords. While the tenant information pack will perform much of that function for those who become tenants, it is crucial that prospective tenants are also aware of their rights and responsibilities. The Committee will be keen to monitor the work that is carried out in this area.

**HMO Licensing**

*Introduction*

119. Part 2 of the Bill deals with HMO licensing and includes two of the provisions that were contained in the Housing (Scotland) Bill. These provisions—

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allow the HMO system to be extended to regulate categories of multi-occupancy property that present problems, but are not currently subject to licensing.

give local authorities a power to address the issue of HMOs operating in breach of planning control

120. Additionally, the Bill—

- increases the maximum fine for HMO offences to £50,000
- amends the 2006 Act so that local authorities only need to provide a statement of reason for an HMO decision where it is requested
- enables Scottish Minister to give guidance over the use of information relating to HMO licensing as provided for in the 2006 Act

121. In its Stage 1 report, the Committee expressed the view that “it would have been more helpful if it could have considered the totality of the proposed amendments to the 2006 Act, rather than considering some in the knowledge that further amendments might be introduced later in an additional bill. The Committee is not currently in a position to ascertain whether the provisions in the Bill will address the concerns about HMOs that were raised in evidence. It also believes that it would have helped stakeholders with an interest in HMO licensing legislation to have a complete picture of the Scottish Government’s intentions in relation to amending the HMO licensing regime”.

122. In its report, the Committee also noted that the Scottish Government’s consultation on this Bill would include proposals to allow tenants and local authorities to claim back rent paid in an unlicensed HMO and a proposal that failure by the landlord of a property to provide information when required would lead to the presumption that a property is an HMO. These proposals were not taken forward in the Bill as introduced.

123. The Minister for Housing and Communities was asked why this proposal had not been taken forward in this Bill. He replied that it was “dropped because after consultation, we were advised that it was unworkable – difficult to implement and enforce.” He noted that the Part 5 of the 2006 Act which comes into force in August 2011 will give local authorities the ability to “prevent rent from being payable for an unlicensed HMO without the need to go to court.” However, the Committee recognises this is did not go as far as allowing rent to be returned that had already been paid.

124. In supplementary correspondence, the Minister stated that issues were raised during the consultation on the Bill, “particularly in relation to how rent repaid to tenants would interact with Housing Benefit and the impact repayment would have on any subsequent entitlement to Housing Benefit. Use of the Rent...
Repayment Orders would also give practical difficulties around who was entitled to the repayment where Housing Benefit covered some of the rent paid.”

125. During Stage 1 of the Housing (Scotland) Bill, the Committee heard a number of views from witnesses on extending the definition of HMOs to include short-term and holiday lets. It concluded that given the problem with so-called “party flats” appeared to be limited to urban areas, the Scottish Government should consider providing local authorities with discretionary powers to take action to tackle this problem under anti-social behaviour legislation.

126. The Bill’s Policy Memorandum notes that the Scottish Government considered including such lets within this Bill, but concluded that the potential changes would have “unnecessarily brought a wide range of types of accommodation within the scope of HMO licensing.”

127. However, the Scottish Government confirmed its intention to introduce a Scottish Statutory Instrument (SSI) to deal with this issue. The Minister for Housing and Communities further confirmed that such an SSI will amend Part 7 of the 2004 Act and will be introduced “by the end of this Parliament”. The instrument will be subject to affirmative procedure and its development is being assisted by “ongoing dialogue with City of Edinburgh Council officials”.

128. Given that the more substantive changes in relation to HMO licensing were included in the Housing (Scotland) Bill, the written submissions received on this Bill tended to concentrate on those areas and on other concerns regarding HMOs that submitters believed the Bill should address. During its Stage 1 consideration of the Housing (Scotland) Bill, the Committee took oral evidence from a number of organisations in relation to HMOs and this evidence is replicated in this report, where appropriate.

Amendment of HMO licensing regime

129. Section 13 of the Bill amends the licensing regime for HMOs contained in the 2006 Act. It amends section 125 of the 2006 Act to provide Scottish Ministers with the power to specify by order any additional categories of multi-occupancy living accommodation as licensable HMOs. This will allow Ministers to extend HMO licensing – which is designed to protect the occupant by setting conditions for physical occupancy, safety and tenancy management – to types of multi-occupancy accommodation that currently fall outside the definition of a licensable HMO.

130. The amendments change the provisions in relation to living accommodation in order that it does not need to be a house or premises or the only or main residence of the occupants in terms of the 2006 Act. This responds to concerns expressed by local authorities that landlords were avoiding HMO licensing of properties where the occupants lived in the property only for a short time and that their principal residence was elsewhere (or the landlord claimed that this was the

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57 Scottish Government. Supplementary correspondence, December 2010
58 Policy Memorandum, paragraph 98
59 Written answer to PQ S3W-37150
60 Written answer to PQ S3M-37180
case). These provisions were contained in section 141 of the Housing (Scotland) Bill.

**Amendment of HMO licensing regime – breach of planning control**

131. Section 13 also introduces a new section into the 2006 Act on preliminary refusals of breaches of planning control. This gives local authorities a discretionary power to refuse to consider an application for an HMO if it believes that the occupation of the accommodation as an HMO would constitute a breach of planning control. The purpose of this amendment is to allow local authorities, where they decide that HMOs in their area require planning permission, to require planning permission. This will prevent the anomalous situation whereby an HMO can continue to have a licence even when it is operating in breach of planning law.

132. In oral evidence on the Housing (Scotland) Bill, NUS Scotland expressed concerns about this provision. It stated—

> “The paramount concern for NUS Scotland centres around proposals to mix safety and planning legislation. The proposal to give local authorities the power to refuse to consider an application for an HMO licence, if they feel that the occupation of the property as an HMO would be a breach of planning control, is very worrying. The key aim of HMO licensing is to protect tenants from harm and exploitation by ensuring HMOs are of a certain standard and tenants are treated fairly. By giving local authorities the ability to make HMOs secondary to planning legislation, tenants, including students, could be very vulnerable to decreasing levels of safety and to poor treatment in the private rented sector.”

133. On the other hand, organisations such as Hillhead Community Council and Sustainable Communities Scotland welcomed the linkage between planning and HMO licensing, although they felt that the provisions did not go far enough.

**Penalties**

134. Under Part 5 of the 2006 Act which comes into force on 31 August 2011, the maximum fine for offences in relation to HMO licensing would increase from £5,000 to £20,000. Section 14 of this Bill would increase this maximum fine to £50,000. This is the same maximum fine as that proposed for offences in relation to landlord registration.

135. In a similar vein to concerns raised about landlord registration, submissions questioned whether increasing the maximum fine would be a sufficient deterrent, given the actual level of fines likely to be imposed and concerns about enforcement.

**Reasons for decisions**

136. Under the current HMO licensing regime, local authorities must provide reasons for decisions on HMO licensing within 10 days of it being requested by an applicant or objector. The Policy Memorandum notes that some local authorities raised concerns that under the 2006 Act, they would be required to provide such a statement whether it had been requested or not. Therefore, section 15 of the Bill

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61. NUS Scotland. Written submission to the Local Government and Communities Committee.
amends the 2006 Act to clarify that a statement of reasons only needs to be provided when it is requested by any person who receives the decision. The recipient would have 14 days from receipt of the notice to request reasons for the decision.

**Guidance**

137. Section 16 enables Scottish Ministers to give guidance, to which a local authority must have regard, over the use of the information gathering powers contained in section 186 of the 2006 Act. Section 186 of the 2006 Act allows a local authority to require certain people to provide information relating to the land or premises to help it carry out its functions under HMO licensing. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale (currently £500).

138. The Policy Memorandum states that this guidance “will include the use of the section to obtain information from tenants in HMOs and guidance could set out how a local authority will be expected to take account of the circumstances of a tenant”\(^{62}\). This seeks to address the concerns raised by the Committee in its Stage 1 report on the Housing (Scotland) Bill over vulnerable tenants providing information both in relation to HMOs and landlord registration.

**Enforcement**

139. In evidence on the Housing (Scotland) Bill, the Committee heard a number of concerns about the powers that local authorities had in relation to HMOs and the enforcement of the existing legislation. This was also reflected in written submissions on this Bill.

140. In relation to HMOs, the Committee noted in its Stage 1 report that Part 5 of the 2006 Act will also provide greater powers to local authorities but that this will not come into force until 31 August 2011. Some of the main changes will be as follows—

- the test of whether a landlord is a “fit and proper person” will be aligned with the test for landlord registration as set out in the 2004 Act
- Ministers will have a power, by order, to prescribe mandatory conditions for HMOs.
- Ministers will have a power, by order, to direct the manner by which fees are determined by all authorities or by particular authorities
- Local authorities will have a power to require HMO landlords to undertake certain works to their properties (through HMO amenity orders)
- Local authorities will be able to issue a temporary exemption order, which will allow the owner of an HMO that does not have a licence to

\(^{62}\) Policy Memorandum, paragraph 94
take steps to stop it from being an HMO, for example, by reducing the occupancy rate. The local authority will be able to specify steps the landlord must take to ensure the safety or security of occupiers in the meantime.

- Local authorities will be able to suspend rent payments to landlords of HMOs that are unlicensed or where conditions are breached.

141. In oral evidence on the Housing (Scotland) Bill, Hillhead Community Council stated that enforcement did not work “because local authorities do not have the powers that they need and the enforcement powers have no teeth.” It further explained that—

“Houses in multiple occupation officers tell us that they desperately need powers to close the properties of persistent offenders and HMOs in which serious breaches of the rules have occurred. They also tell us that the cost of taking an enforcement case to court is £2,000; that fines are derisory—they are less than a week’s rent for an HMO; and that bringing a case to court is almost impossible because of the level of serious crime cases that sheriffs are hearing.”

142. Hillhead Community Council was of the view that the HMO provisions in the Housing (Scotland) Bill did not provide enough power to local authorities, stating that, “There is nothing in the legislation that enables local authorities to use powers to correct that situation.” It explained that enforcement orders where “simply ignored” and fines “not necessarily paid” and not always pursued. Where an HMO was taken to court “the fine has been £400 or the court has simply admonished a landlord who has been fined before.” Hillhead Community Council concluded that, “Failings in how the system operates could be addressed.”

143. In its written submission, Sustainable Communities Scotland concurred with this view, stating—

“At present, enforcement is not well resourced and local authorities are understandably reluctant to engage on costly enforcement practices.”

Subdivision of properties and concentration of HMOs

144. The subdivision of properties to accommodate more tenants in an HMO was a particular issue raised in oral evidence on the Housing (Scotland) Bill and again in written evidence on this Bill. This included adaptations which incorporated services into new areas of tenemental properties and, as a result, caused additional disturbances to neighbours. In written evidence, Hillhead Community

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67 Sustainable Communities Scotland. Written submission to the Local Government and Communities Committee.
Council identified three areas in which properties were adapted for the purposes of letting as an HMO. These were the: "relocation of stacked services (kitchens, bathrooms, drainage); subdivision of main rooms to increase rental; [and] installation of extra kitchens and bathrooms to avoid HMO legislation." Sustainable Communities Scotland called for this to be addressed in legislation—

"Measures should be enacted to prevent the adaption of flats in traditional tenement properties which involve sub-division of rooms and relocation of services (such as water supplies to toilets, sinks and showers) which increase flooding risks for downstairs tenements and produce noise problems which adversely affect living conditions and amenity for neighbours."68

145. The National Union of Students suggested that students and tenants groups shared the same views on the adaptations and subdivision of tenemental properties, but pointed out that a ceiling on the proportion of HMOs in an area might further encourage this—

"Students and tenants groups more generally are probably at one with people who do not want overcrowded properties that are subdivided too much. It is quite interesting—or perhaps ironic—that some of the proposals for capping or reducing the number of HMOs in a given area would increase both the pressure on the remaining HMOs and the benefit of making such subdivisions. If... we do not want overcrowding and oversubdivision of properties, we therefore do not want to reduce the number of and increase the pressure on the remaining HMOs in a given area."69

146. One particular issue that emerged in evidence was the concentration of HMOs in certain areas. Sustainable Communities Scotland outlined its concerns about concentrations of HMOs in oral evidence to the Committee—

"...no matter where they are, concentrations of HMOs are detrimental to a community. They change its nature. There is often a progression from reasonable numbers of HMOs to overwhelming numbers of HMOs, as they tend to congregate together. If you live in a tenemental property—or, indeed, in any other kind of property—and your neighbours are being replaced by short-term and in some cases seasonal residents with an average tenancy of 10 months, the "pride of place" in that community begins to evaporate, as our submission says. People who live there permanently have few or no long-term neighbours. The community starts to deteriorate in a number of different ways, including those that we heard about earlier, such as the difficulty of maintaining a property if there are absentee landlords."70

147. Hillhead Community Council observed that, "A lot of people who live below undesirable HMOs would agree that there should not be any HMOs in

68 Sustainable Communities (Scotland). Written submission to the Local Government and Communities Committee.
and that Glasgow City Council had approached this issue by imposing a 5% restriction on the number of tenements in a close, a block or a street. However, this did not address “existing situations in which there is a high density of HMOs, nor does it address situations in which landlords have got away with operating an illegal HMO for 10 years and have automatically got planning consent.” Hillhead Community Council suggested that the latter point should be addressed when the HMO licence came up for renewal.\textsuperscript{72}

148. The NUS Scotland disputed the views about “concentrations of HMOs overwhelming other residents or bringing a monoculture to a particular area.” It argued that—

“There is a great deal of diversity in HMOs. Of course, there is the example of the archetypal, traditional student, but there are also increasing numbers of young professionals and couples living with others in shared flats, and of people who cannot afford to buy their first property—there are even more of them in the current economic downturn. The idea that HMOs bring with them a particular group of people and many negative aspects is not necessarily true. That perception needs to be dealt with, but not by reducing or putting caps or limits on the number of HMOs.”\textsuperscript{73}

149. The NUS Scotland also warned about the potential risks associated with adapting HMO legislation to deal with issues other than safety—

“The overriding point for us is that HMOs are about safety, not social engineering. HMO licences were brought in and made mandatory after two young students died in a fire in Glasgow. If we start to mix safety with social issues around services, as important as those issues are, we start to threaten the integrity of the safety legislation. Above all, to us that is the last thing that needs to be done. There are other ways of tackling the issues, perceptions or assertions that are being made, but risking tenants’ safety is not the way to do it.”\textsuperscript{74}

Conclusions
150. As stated in its Stage 1 report on the Housing (Scotland) Bill, the Committee welcomes the amendments to the Housing (Scotland) Act 2006 introduced by section 13 to provide Scottish Ministers with the power to specify by order any additional categories of multi-occupancy living accommodation as licensable HMOs. The Committee considers that this will help reduce the grounds on which landlords avoid HMO licensing and protect groups such as migrant workers. It will also support local authorities in enforcement. The Committee is firmly of the view that this order should be subject to the affirmative procedure.

151. The Committee welcomes the insertion of a new section into the 2006 Act allowing for the refusal of a licence where the occupation of the living accommodation concerned as an HMO would constitute a breach of planning control. The Committee believes that this establishes an important link between the issuing of a licence and the existence of planning permission for an HMO property. It considers that this will help to address the problem of subdivision and new services in tenemental properties. The Committee calls on local authorities to use these powers in order that the legislation can be effective in addressing the problems recounted by witnesses in relation to HMO properties.

152. The Committee welcomes the recognition of the concerns it raised previously regarding vulnerable tenants who refuse to provide information and the assurance that guidance will set out how a local authority will be required to act. As with the guidance to be issued in relation to landlord registration, the Committee ask the Scottish Government to make available a copy of this guidance as soon as practical and preferably before Stage 3 takes place.

153. The Committee recognises the concerns raised by witnesses about the effect that a concentration of HMOs can have on a community and is conscious of the need to find a balance which can allow communities to be sustainable for all residents. It acknowledges that the profile of many areas within cities have been altered as a result of an increasing number of HMOs as the size of the student population expands. However, it believes that it is also important for young people to have access to safe and secure accommodation. The Committee considers that local authorities must use housing and planning legislation and policies to support sustainable communities and the maintenance of private sector housing.

**Overcrowding**

*Introduction*

154. Part 3 of the Bill introduces powers to enable local authorities to deal with overcrowding in the private rented sector.

155. The Scottish Government’s Review of the Private Rented Sector identified a number of studies highlighting a particular problem of overcrowding among migrant workers. Additionally, petition PE1189 was lodged with the Parliament which highlighted particular problems in the Govanhill area of Glasgow.

156. There are already provisions contained in existing legislation that can be used to deal with overcrowding. Part VII of the Housing (Scotland) Act 1987 provides the legal definition of overcrowding. A house is regarded as overcrowded if it fails either of two tests. The first is the room standard, based on which and how many people have to a share a room. The second test is space standard which is based on the total number of people occupying a house relative to the number and size of rooms. The HMO licensing system allows local authorities to address overcrowding by specifying the maximum number of occupants permitted in a licensed HMO.
157. The Bill’s Policy Memorandum suggests that existing legislation is not adequate to deal with the issue of overcrowding. According to the Memorandum, “the enforcement provisions in Part VII [of the 1987 Act] were only ever brought into effect in two localities and are now inoperable and archaic…there are currently very limited means for local authorities to take action to address overcrowding in properties that are not HMOs.”\(^{75}\) With regard to the provisions in the HMO licensing system, the Memorandum notes that it can be difficult for a local authority to identify that the dwelling is an HMO if occupants claim to be members of the same family.

158. Section 17 of the Bill gives local authorities the power to serve an overcrowding statutory notice on the landlord of a house which is overcrowded (in terms of the 1987 Act) where a local authority considers that the overcrowding is having “an adverse effect on the health or wellbeing of any person” or “an adverse effect on the amenity of the house or its locality.”\(^{76}\)

159. Section 18 allows local authorities to provide advice and assistance to the occupants of a house where an overcrowding statutory notice has been served. Sections 19 to 26 make further provision about the content and duration of notices and the procedure for making them, outline the appeals procedure and provide that failure by a landlord to comply with a notice will be an offence not exceeding level 3 on the standard scale (currently £1,000). A local authority may revoke a notice at any time.

**Impact on homelessness and social housing**

160. A number of significant concerns were raised over these proposals both in written and oral evidence. For example, the Scottish Independent Advocacy Alliance stated it had “grave concerns”\(^{77}\) and suggested that further research should be carried out before any legislation is put in place. Glasgow and West of Scotland Forum of Housing Associations welcomed the provisions but suggested they were very broadly framed, that some provisions should be strengthened and questioned whether the level of fines would be sufficient to act as a disincentive.

161. Organisations such as Shelter Scotland and the Scottish Council for Single Homeless accept that overcrowding is a significant issue that needs to be dealt with, but were concerned that unless local authorities had a duty to deal with those who were displaced, that the problem of homelessness would be exacerbated.

162. SCSH stated—

“The main areas of concern we have are about how the people displaced by an overcrowding order will be treated under related legislation. Given that our homelessness framework in Scotland seeks to provide a safety net for all, SCSH believes it is important that the legislation makes clear that a

\(^{75}\) Policy Memorandum, paragraph 116
\(^{76}\) Explanatory Notes, paragraph 28
\(^{77}\) Scottish Independent Advocacy Alliance. Written submission to the Local Government and Communities Committee
household displaced by such an order could not be found ‘intentionally homeless’ simply because they had been in that situation.”\(^78\)

163. Similarly, Shelter Scotland in its written submission stated the proposals would result in “increased homelessness or simply moving the problem from one property to another.”\(^79\) In oral evidence, Rosemary Brotchie from Shelter Scotland went on to say that further work should be undertaken before attempting to legislate on the basis that “we simply do not know enough about the circumstances of the people who live in those conditions, what their alternatives are and why local authority action is not working to known whether the powers in the bill will solve the problem.”\(^80\)

164. Shelter Scotland went on to say that if the proposals in the Bill were accepted that they would suggest “at the very least the power to provide advice and assistance should become a duty and that there should be a duty to rehouse displaced households.”\(^81\)

165. This point was echoed by Douglas White from Consumer Focus Scotland who stated—

“Local authorities will need clear guidance and support on when they should issue such notices and what factors they must take into account in determining what an overcrowding situation looks like...We want to see those criteria in guidance to ensure that tenants in such situations are treated in a fair and consistent manner.”\(^82\)

166. However, concern was also raised about the pressures that might place on local authorities and on social rented housing and whether landlords might breach the legislation in the knowledge that their tenants would then become the responsibility of local authorities.

167. The local authorities who gave evidence to the Committee explained that the power to serve an overcrowding notice is discretionary and that it is likely it would be used as a weapon of last resort. Stephen McGowan from Glasgow City Council acknowledged that authorities did not “want to solve one crisis only to create another.”\(^83\)

168. In evidence, the Minister for Housing and Communities rejected the suggestion that local authorities should have a duty to rehouse anyone displaced by an overcrowding statutory notice. He reiterated the point that local authorities wanted powers only to deal with the most severe cases and that “it is neither my

\(^{78}\) Scottish Council for Single Homeless. Written submission to the Local Government and Communities Committee

\(^{79}\) Shelter Scotland. Written submission to the Local Government and Communities Committee

\(^{80}\) Scottish Parliament Local Government and Communities Committee. Official Report, 17 November 2010, Col 3734

\(^{81}\) Scottish Parliament Local Government and Communities Committee. Official Report, 17 November 2010, Col 3735

\(^{82}\) Scottish Parliament Local Government and Communities Committee. Official Report, 17 November 2010, Col 3741

\(^{83}\) Scottish Parliament Local Government and Communities Committee. Official Report, 10 November 2010, Col 3700
intention, nor is it that of local authorities to ask for powers to swoop in and make people homeless.”

169. He explained local authorities would have to have regard to guidance issued by Scottish Ministers (which would be produced in consultation with stakeholders) as well as taking into account the particular circumstances of a case before deciding whether to issue on overcrowding notice.

170. If a notice were served, it would require a landlord to take specified steps to ensure the house is no longer overcrowded and it would also set out the period within which such steps have to be taken and completed. Such a period must be at least 28 days. The Minister suggested that typically, overcrowding situations would be addressed by local authorities managing down the numbers by finding alternative accommodation and that in many cases, such alternative accommodation would be in the private rented sector.

171. The Minister also stated—

“It is certainly not the intention that the provision should become a fast track for tenants to get on to social housing lists, although local authorities’ statutory homelessness duties will apply in some cases.”

172. The Committee notes the Minister’s comments that overcrowding situations would be addressed by managing down the numbers. However, it also notes evidence given by Robert Aldridge of the SCSH who questioned whether the serving of notices would be practical and legal in certain circumstances—

“I point out that for people who do not have formal short assured tenancy notice, the legal default is an assured tenancy, under which overcrowding is not a ground for eviction. As a result, a landlord would be unable to reduce numbers. We must ensure that there is some means of employing an overcrowding statutory notice legally, that the people who are displaced by it are not left homeless or destitute and that before any such notice is imposed people are aware of the implications of such a move.”

173. The Committee asks the Scottish Government to provide further clarification regarding situations where there is no formal short assured tenancy and in particular, to clarify how landlords can be expected legally to reduce overcrowding.

Relationship with homelessness duties
174. Scottish Government officials confirmed that tenants who live in overcrowded accommodation can already apply as being homeless and may be eligible for local authority assistance if all the other criteria are met—

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84 Scottish Parliament Local Government and Communities Committee. Official Report, 1 December 2010, Col 3859
86 Scottish Parliament Local Government and Communities Committee. Official Report, 17 November 2010, Col 3734
“The serving of the overcrowding statutory notice does not affect the existing position. The local authority does not have to serve a notice and, if it does not, the position is not altered. The people could apply for housing on the ground of being homeless because of overcrowding affecting their health. What we are doing here is giving local authorities an additional power that does not affect existing rights with regard to homelessness.”

175. The Minister was asked to clarify further the relationship between the provisions on overcrowding in this Bill and existing duties in relation to homelessness. There are a number of factors which could have a bearing on whether current homelessness duties would apply.

176. In supplementary correspondence, the Minister acknowledged that the particular steps that a local authority sets out in an overcrowding statutory notice could have different implications for homelessness. The first example given was where a notice stated that no additional tenants were allowed and existing tenants were not to be replaced as they left until the occupancy level fell to the statutory maximum. The Minister stated that this situation “should not lead to anyone being treated as legally homeless.”

177. A different example was given of a notice which specified that to reduce the number of occupants to the permitted maximum level, the excess tenancies should not be renewed when they reached their contractual end. In this situation “this could mean that some of the occupants would be able to apply to the local authority as being threatened with homelessness. If an occupant were found to be threatened by homelessness, the local authority may in certain circumstances have to ensure that accommodation – not necessarily social housing – was available at the point when they had to leave their present accommodation.”

178. The reasons for serving an overcrowding notice are also relevant. For example, if a notice was served because the overcrowding was adversely affecting the health of the occupants this could imply that the occupants were already statutorily homeless under section 24(3)(d) of the Housing (Scotland) Act 1987 which in turn would mean that local authorities would have to ensure that accommodation was available.

179. The circumstances of the occupants will also determine their rights. Some groups are not entitled to assistance with homelessness (including people who are subject to immigration control and asylum seekers as well as some European Economic Area (EEA) nationals). Additionally, local authorities need to decide whether occupants should be regarded as being in priority need or unintentionally homeless. The supplementary correspondence notes that the priority need test will be abolished in 2012.

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87 Scottish Parliament Local Government and Communities Committee. Official Report, 1 December 2010, Col 3867
88 Scottish Government. Supplementary correspondence to the Local Government and Communities Committee, December 2010
89 Scottish Government. Supplementary correspondence to the Local Government and Communities Committee, December 2010
Scale of the problem
180. The Minister’s view was that when local authorities had to find alternative accommodation for people who had been displaced, such accommodation would not necessarily be in the social rented sector. Section 5 of the Housing (Scotland) Act gives local authorities the power to request housing in the social rented sector where a homelessness duty exists. Therefore, the Minister was asked whether and how these provisions would apply to occupants in an overcrowding situation.

181. Supplementary correspondence from the Minister states—

“If the service of an OSN [overcrowding statutory notice] resulted in occupants being found to be unintentionally homeless and in priority need, the local authority could use a Section 5 referral to have those people housed by a registered social landlord.”

182. In a submission to the Finance Committee, Glasgow City Council stated that in Govanhill alone, there was a “12 block radius with high density private rented sector housing” and that many of these flats “would meet the new overcrowding criteria due to the number of residents in each unit and the conditions therein.”

183. The Minister was therefore asked to clarify how many statutory notices were likely to be issued and how many occupants might be entitled to social rented housing as a consequence. In supplementary correspondence, the Minister estimated that under 100 notices would be issued annually throughout Scotland. On the specific issue of Govanhill, he stated—

“it is known that many people in Govanhill do not have homelessness rights, but not how many of them living in conditions that would permit the service of an OSN.”

184. The letter goes on to state that it is not possible to say how many additional cases of homelessness across Scotland would result from the serving of overcrowding notices. However, the Scottish Government expects the numbers “to be minimal”. The letter states that in 2008-09 and 2009-10, 2% of all homelessness applications were on the grounds of overcrowding (1,266 and 1,119 households respectively).

Conclusions
185. The Committee recognises that overcrowding is a significant and serious issue and that steps have to be taken now to address this. In general, it supports the provisions in the Bill but has concerns about their practical application.

186. The Committee notes the Minister’s reassurances that these provisions are neither intended to increase levels of homelessness nor to use social housing stock as a means to address overcrowding in the private sector. However, it also recognises that the current position in relation to homelessness and local authority duties in that regard is already complex.

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90 Scottish Government. Supplementary correspondence to the Local Government and Communities Committee, December 2010
91 Glasgow City Council. Written submission to the Finance Committee
For example, the Minister confirmed that he had to issue a letter of clarification to local authority housing conveners regarding a perceived link with homelessness legislation and anti-social behaviour. This suggests there is already confusion within local authorities and the provisions of this Bill have the potential to confuse the situation further.

187. In addition, as it is not currently possible to predict with any certainty how many cases of homelessness there are likely to be across Scotland, it is difficult to assess whether there is likely to be sufficient capacity in the private and social rented sector to house people who have been displaced.

188. The Committee recognises that the powers are discretionary, likely to be used as a last resort and that local authorities will need to take a number of factors into account (including guidance from the Scottish Government) before deciding to issue an overcrowding notice. However, it is also concerned that, for the reasons outlined above, it is difficult to predict the likely consequences arising from the provisions in relation to levels of homelessness and impact on housing stock.

189. The Committee therefore recommends that the Scottish Government consults widely on the guidance to be issued in relation to overcrowding; that it monitors the number of overcrowding notices that are issued by local authorities and the circumstances leading to their issue and that it reviews the provisions to assess how effective they are in dealing with overcrowding and to assess their impact on levels of homelessness and on housing stock.

Miscellaneous

190. Part 4 of Bill makes a number of miscellaneous amendments to legislation relating to the private sector tenancy regime. It contains provisions that aim to clarify rights and responsibilities for tenants, landlords and agents in the private rented sector. It also includes a proposal to allow landlords to seek assistance from the Private Rented Housing Panel to exercise the right of entry in relation to the Repairing Standard.

Pre-tenancy charges

191. Section 28 seeks to clarify the situation regarding pre-tenancy charges made by landlords or letting agents. It would give Scottish Minister powers to specify, by order, charges than can be allowed in connection with the grant, renewal or continuance of a tenancy. Scottish Minister could also specify maximum levels for such charges.

192. Brian Adair from ARLA welcomed the proposal to “make pre-tenancy charges lawful...because it is a grey area”\(^\text{92}\) He went on to say that “Reputable agents incur costs before a tenancy is taken in obtaining references, carrying out credit

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checks and so on, so it is only reasonable that such costs be charged to tenancy applicants.”

193. Robert Aldridge from the Scottish Council for Single Homeless acknowledged that “certain administrative charges can be defensible” but he also outlined the difficulties that people currently face in putting together a pre-tenancy deposit and that “it is important that we do not exclude from the private rented sector people who would otherwise be in the social rented sector.”

194. The Minister concurred that charges such as a deposit and a charge for a credit check would be legitimate, but that “to say “We are going to charge you £400 for keeping this place open for you” would not be legitimate.” The order will list legitimate charges and therefore, any charges that are not listed will be deemed to be illegitimate. The Minister confirmed that the order will not only deal with the issue of legitimacy but also the level and reasonableness of the charge.

195. The Committee is supportive of these proposals as they will bring much needed clarity to the issue of charges that can reasonably and legitimately be levied.

Tenant information packs

196. Section 29 requires private landlords to provide tenants with specified documents (a tenant information pack) at the start of the tenancy. Scottish Ministers would be given powers to specify, by order, the documents that must be provided. Failure to supply these documents, without reasonable excuse, would be an offence attracting a fine not exceeding level 2 on the standard scale (currently £500).

197. There was strong support for the introduction of tenant information packs, particularly as a tool to raise awareness about rights and responsibilities and the regulation of the sector, although witnesses recognised that such packs would not be panacea.

198. The Scottish Rural Property and Business Association thought there should be a duty on Scottish Ministers not only to specify what goes into the packs but “to provide the statutory standard information, so that the administrative burden on the landlord is reduced.”

199. However, Crisis, in its written submission stated that the packs “should be promoted as best practice but not necessarily legislated for. We would ideally like to see a proactive drive to encourage all landlords to provide important information

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to the tenant at the beginning of the tenancy period. However, if this becomes a statutory duty we are not convinced that it will be practical or enforceable.”

200. The Minister explained that he saw the Scottish Government's role to provide “almost a checklist of the minimal information”. He envisaged it would include basic information on tenants rights and responsibilities, such as how to complain, health and safety issues and what to do in the case of any disputes over rent or tenancy deposits. The Minister also explained that an order would be issued which would set out a list of what packs must contain and that, as an order, it would be subject to consultation. However, he stated that his view was “if in doubt put it in”.

201. The Minister was asked whether there would be a requirement for assurances to be given about the safety of gas or electrical appliances and his response was that landlords and agents should already be giving out such information and that if a landlord were not complying with health and safety legislation and other legislation covering gas and electricity connections, they may be subject to prosecution.

202. In a written submission, the Electrical Safety Council suggested that the Scottish Government should “when making provisions about the form of documents and the information to be included in them” “require a Periodic Inspection Report (PIR) to be included and confirmation of whether an RCS [Residual Current Device which protects against electric shocks and reduces the risk of electrical fires] has been installed in the consumer unit”.

This written evidence was not received until after the Minister had given evidence to the Committee and therefore, the Committee would be interested to know the Scottish Government’s views on the suggestion made by the Electrical Safety Council.

203. The Committee is of the view that tenant information packs will have an extremely important role to play in raising awareness in the sector and is supportive of their introduction. It calls on the Scottish Government to keep the Committee informed on the consultation.

Notices required for termination of short assured tenancy

204. Section 30 seeks to clarify matters relating to notices required for the termination of a short assured tenancy. It would clarify that, under the Housing (Scotland) Act 1988, a notice of proceedings does not have to be served on short assured tenancies that have come to the end of their contractual agreement.

205. No concerns were raised over this proposal and therefore, the Committee is content to support it.
Landlord applications to the Private Rented Housing Panel

206. Section 31 would allow a landlord to apply to the Private Rented Housing Panel for assistance to enter a property in order to comply with the Repairing Standard (as defined in the 2006 Act). Currently, a landlord can seek court action if they cannot gain access to meet the Repairing Standard. An application to the Private Rented Housing Panel would be considered by a single member of the Panel. Scottish Ministers would be given a power to make regulations to specify further detail about the making or deciding of applications, which could include a power to prescribe a fee for an application to the Private Rented Housing Panel.

207. Some concerns were raised about this proposal in particular the possibility that a landlord might be charged a fee for applying to the Private Rented Housing Panel. Brian Adair from the Association of Residential Letting Agents commented—

“It is depressing that under the bill a landlord will have to apply to the private rented housing panel to get access to his property to carry out a repair, because the tenant will not let him in. Furthermore, the landlord will have to pay the fee. Why on earth should the landlord be landed with paying a fee to get in to carry out a repair to his own property, which is very likely to help the tenant and the property”.

208. The Policy Memorandum confirms that where a tenant does not grant access to a landlord, the landlord can seek a court order but that some landlords “advise this can take months to obtain”. It also notes that tenants can currently apply to the Private Rented Housing Panel to enforce the landlord’s duty to ensure the housing meets the Repairing Standard but that the landlord has no such rights. On the issue of fees, the Memorandum states—

“Given the present economic situation, Ministers may consider it appropriate that landlords, who will be saved the time and cost involved in court action, should pay a fee for access to the PRHP...It is likely that any such fee would be set at the average additional cost to the PRHP of dealing with applications from landlords.”

209. The Committee notes the concerns raised by the Association of Residential Letting Agents but also recognises that applying to the Private Rented Housing Panel may be a less expensive and less time-consuming process than having to take court action. The Committee supports the objective of the proposal which is to encourage landlords to maintain and repair their houses, but would ask the Scottish Government to respond to the concerns raised by the Association of Residential Letting Agents.

FINANCIAL MEMORANDUM

210. The Finance Committee decided to adopt what is known as “level one” scrutiny which involves seeking written evidence from organisations upon whom costs will fall and forwarding this evidence to the lead Committee. The Finance

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100 Scottish Parliament Local Government and Communities Committee. Official Report, 10 November 2010, Col 3717
101 Policy Memorandum, paragraph 157
Committee received 3 submissions and these, together with correspondence from the Convener of the committee, are attached at Annexe C.

211. The Financial Memorandum indicates that in those areas where it has been able to make an estimate, that costs to local authorities are likely to be minimal or negligible. In relation to the power to serve an overcrowding notice, the Memorandum states that costs are “likely to be very low”\textsuperscript{102}

212. However, as noted earlier in this report, Glasgow City Council was of the opinion that the Bill’s overcrowding provisions would cover a number of residents particularly in Govanhill and that these provisions would require additional resources to be given to councils. For its part, Glasgow suggested it would require 1 new member of staff to carry out inspections and liaise with the landlord registration unit in the short-term and that an additional 0.5 FTE (full-time equivalent) would be required in the landlord registration team.

213. The two other authorities who responded to the Finance Committee were Orkney Islands and Fife councils, both of whom suggested that they could deal with the Bill’s provisions from within existing resources.

214. The Committee notes that Glasgow City Council believes additional resources will be required to deal with overcrowding and asks the Scottish Government to respond to these concerns.

**SUBORDINATE LEGISLATION**

215. The Subordinate Legislation Committee (SLC) considered the delegated powers under this Bill and its report is attached as Annexe B.

216. The Committee notes that the SLC determined that it did not need to draw this Committee’s attention to the delegated powers in sections: 1, 4, 10, 13, 16, 17(7), 17(8), 28(2), 29, 31(4) (so far as relating to insertion of section 28C(11) into the Housing (Scotland) Act 2006) and 3.

217. The Committee notes that the SLC was initially concerned by the power under section 31(4) in relation to a landlord’s application the Private Rented Housing Panel. The SLC was concerned that regulations under this power could cover a wide range of matters, going beyond matters of administrative detail, yet are to be subject to negative procedure only. It noted that they could, for example, specify the circumstances in which a panel member must decide to reject an application or stop assisting a landlord. The SLC considered this could be a matter of some significance in relation to the overall scheme of the landlord application process. It also noted that the provision made at section 28B(2) is not exhaustive, and that the Scottish Ministers could make further provision, by regulations, around the fairly wide subject area of the “making of applications under section 28A”. The Scottish Government was therefore asked if it was not the case that this power could be used to deal with a wide range of matters, potentially involving more than administrative detail, and whether it would be appropriate that they be subject to affirmative procedure.

\textsuperscript{102} Financial Memorandum, paragraph 76
218. In its report, the SLC notes that in its reply, the Scottish Government agrees that there are aspects which could potentially address more than administrative detail. It further notes the indication given by the Scottish Government that it is reviewing the position with a view to bringing forward amendments to the Bill to address the SLC’s concerns about the range of matters that could be covered by regulations under this power.

219. The Committee notes that the SLC has welcomed the indication that the Scottish Government is reviewing the position with a view to bringing forward amendments to the Bill to address the concerns expressed by the Committee. It further notes that the SLC will reconsider this power in section 31(4), relating to inserted section 28B, after Stage 2.

CONCLUSION

220. The Committee recognises that the landlord registration scheme is not having the impact that was intended and that improvements need to be made to the scheme. The Bill sets out a number of intended improvements, albeit with a reliance on subsequent, statutory guidance to assist with issues such as enforcement. The Committee has set out a number of concerns with some of the provisions related to landlord registration.

221. Similarly, the Committee recognises that the issue of overcrowding has to be addressed, but is concerned that the current position in relation to homelessness and local authority duties will be made even more complex by the Bill’s provisions, that it will be difficult to predict with any certainty how many cases of homelessness there are likely to be and whether there will be sufficient capacity in the private and social rented sector to house displaced people.

222. With these caveats, the Committee recommends that the general principles of the Bill be agreed to.
ANNEXE A: EXTRACTS FROM THE MINUTES OF THE LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

23rd Meeting, 2010 (Session 3), Wednesday 6 October 2010

1. Decision on taking business in private: The Committee agreed to take items 5 and 6 in private. The Committee agreed to consider a detailed approach to proposed legislation in private at its next meeting.


24th Meeting, 2010 (Session 3), Wednesday 27 October 2010

Decision on taking business in private: The Committee agreed to take item 4 in private. The Committee also agreed to consider the evidence heard and its draft reports on the Private Rented Housing (Scotland) Bill, Local Electoral Administration (Scotland)

6. Private Rented Housing (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1. The Committee also agreed to delegate to the Convener the responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses during the Stage 1 scrutiny of the Bill.

26th Meeting, 2010 (Session 3), Wednesday 10 November 2010

Private Rented Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Stephen McGowan, Housing Strategy Manager, Glasgow City Council;

Alistair Somerville, Head of Section, HMO Inspection Team, City of Edinburgh Council;

Cathie Fancy, Group Manager, Housing Strategy and Services, Scottish Borders Council;

John Blackwood, Director, Scottish Association of Landlords;

Sarah-Jane Laing, Head of Policy, Scottish Rural Property and Business Association;

Brian Adair, Former Chairman of Scottish District and National Council Member, Association of Residential Lettings Agents.
Private Rented Housing (Scotland) Bill (in private): The Committee discussed the main themes arising from the evidence heard to date.

27th Meeting, 2010 (Session 3), Wednesday 17 November 2010

Private Rented Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Douglas White, Senior Policy Advocate, Consumer Focus Scotland;

Rosemary Brotchie, Policy Officer, Shelter Scotland;

Natalie Sutherland, Policy and Practice Officer, Chartered Institute of Housing Scotland;

Robert Aldridge, Chief Executive, Scottish Council for Single Homeless.

Private Rented Housing (Scotland) Bill (in private): The Committee discussed the main themes arising from the evidence heard to date.

29th Meeting, 2010 (Session 3), Wednesday 1 December 2010

Private Rented Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Alex Neil MSP, Minister for Housing and Communities, Lisa Wallace, Team Leader, Private Housing Unit: Policy and Consumers, and Colin Affleck, Policy Officer, Private Housing Unit: Policy and Consumers, Scottish Government.

Private Rented Housing (Scotland) Bill (in private): The Committee considered the main themes arising from the evidence heard to date.

32nd Meeting, 2010 (Session 3), Wednesday 22 December 2010

Private Rented Housing (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

1st Meeting, 2010 (Session 3), Wednesday 12 January 2011

Private Rented Housing (Scotland) Bill (in private): The Committee considered and agreed a draft Stage 1 report.
ANNEXE B: SUBORDINATE LEGISLATION COMMITTEE REPORT

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 9 and 23 November 2010, the Subordinate Legislation Committee considered the delegated powers provisions in the Private Rented Housing (Scotland) Bill at Stage 1. The Committee submits this report to the Local Government and Communities Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The Private Rented Housing (Scotland) Bill (“the Bill”) was introduced in the Parliament on 4 October 2010 by the Cabinet Secretary for Health & Wellbeing, Nicola Sturgeon MSP.

3. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

4. Correspondence between the Committee and the Scottish Government is reproduced in the Annexe.

5. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in sections: 1, 4, 10, 13, 16, 17(7), 17(8), 28(2), 29, 31(4) (so far as relating to insertion of section 28C(11) into the Housing (Scotland) Act 2006) and 33.

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1 Private Rented Housing Delegated Powers Memorandum
Delegated powers provisions

Section 31(4) (inserts section 28B into the Housing (Scotland) Act 2006) – Landlord application to private rented housing panel: further provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

6. This power takes the form of provision inserted into the Housing (Scotland) Act 2006. In terms of the context for this power the Committee notes firstly, that inserted section 28A enables a landlord to apply to the private rented housing panel for assistance under new section 28C, in exercising the landlord’s right of entry to the house concerned. Section 28A sets out a detailed process in that regard. Under the power in section 28B, the Scottish Ministers can make further provision about the making or deciding of applications under section 28A.

7. The Committee was concerned that regulations under this power could cover a wide range of matters, going beyond matters of administrative detail, yet are to be subject to negative procedure, only. It noted that they could, for example, specify the circumstances in which a panel member must decide to reject an application or stop assisting a landlord. The Committee considered this may be a matter of some significance in relation to the overall scheme of the landlord application process. It also noted that the provision made at section 28B(2) is not exhaustive, and that the Scottish Ministers could make further provision, by regulations, around the fairly wide subject area of the “making of applications under section 28A”. The Scottish Government was accordingly asked if it was not the case that this power could be used to deal with a wide range of matters, potentially involving more than administrative detail, and whether it would be appropriate that they be subject to affirmative procedure.

8. The Committee notes that the Scottish Government, in its reply, agrees that there are aspects which could potentially address more than administrative detail. It further notes the indication given by the Scottish Government that it is reviewing the position with a view to bringing forward amendments to the Bill to address the Committee’s concerns about the range of matters that could be covered by regulations under this power. As commented upon in the Committee’s letter to the Scottish Government, those concerns focus on the choice of procedure.

9. The Committee welcomes the indication that the Scottish Government is reviewing the position with a view to bringing forward amendments to the Bill to address the concerns expressed by the Committee. It will reconsider this power in section 31(4), relating to inserted section 28B, after Stage 2.
Section 35 – Commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: None

10. The commencement power contained in section 35(3) of the Bill, enables provisions to come into force on such day as the Scottish Ministers by order appoint. In terms of section 35(4), an order under subsection (3) can include transitional, transitory or saving provision. Such an order would not be subject to Parliamentary procedure. A separate power under section 33 enables the Scottish Minister to make “such consequential, supplementary, incidental, transitional, transitory or saving provision as they consider necessary for the purposes of, or in consequence of, or for the purposes of giving full effect to, any provisions of this Act”. Such an order is subject to negative procedure, unless it textually amends primary legislation in which case an order must be approved by the Parliament.

11. The Committee contrasted the difference in procedural treatment under sections 33 and 35. It asked the Scottish Government why an order made under section 35, where that order includes transitional, transitory or saving provision, should be subject to no procedure, whereas an order containing such provision where made under section 33 would be subject to either negative or affirmative procedure. The Scottish Government was therefore asked whether an order under section 35, in circumstances where it deals not simply with matters of commencement, but also includes transitional, transitory or saving provision, should be subject to negative procedure, rather than no procedure.

12. The Committee notes that the Scottish Government considers the approach taken within section 35 to be appropriate. The Government indicates that transitional, transitory or saving provision is by its very nature temporary and time-limited. It also makes clear that, in its view, any such provision made under these powers must be closely related to the section to be commenced, which the Parliament has already closely scrutinised. As regards the choice between the use of powers under section 33 or 35 when making transitional, transitory or saving provision, the Scottish Government states that the powers in section 33 “will tend to be for more substantive matters where the negative procedure is more appropriate”.

13. The Committee’s particular interest is concerned with ensuring that the subordinate legislation making powers in this Bill are subject to an appropriate level of scrutiny.

14. The Committee accepts that ancillary provision in an order is likely to be temporary, time-limited and closely related to the section being commenced. Nonetheless, the Committee recognises that the Bill offers the Government a choice between using the ancillary power in conjunction with commencement or on a stand-alone basis. The choice made impacts on the ability of Parliament to scrutinise the provision made. The present Government has offered some assurance as to how the choice would be made. While this is not binding, the principle that the more substantive the effect of the order is, the more likely the Government would be to select
section 33, accords with the Committee’s view. It therefore will adopt in future this approach in scrutinising future use of these powers.
ANNEXE

Correspondence with the Scottish Government

Private Rented Housing (Scotland) Bill at Stage 1

Section 31(4) (inserts section 28B into the Housing (Scotland) Act 2006) – Landlord application to private rented housing panel: further provision

Q. The Scottish Government is asked whether the power to make further provision about the making or deciding of landlord applications could be used to deal with a range of matters, potentially involving rather more than administrative detail, and that it would be appropriate that it be subject to affirmative procedure?

The Scottish Government notes the Committee’s concerns about the range of matters that could be covered by regulations under this power and agrees that there are aspects which could potentially address more than administrative detail. The Scottish Government is therefore reviewing the position with a view to bringing forward amendments to the Bill to address this.

Section 35 – Commencement

Q. The Scottish Government is asked why an order made under section 35, where it includes transitional, transitory or saving provision, should be subject to no procedure, in contrast to an order containing such provision where made under section 33, which would be subject to negative procedure? Should an order under section 35, in those circumstances where it deals not simply with matters of commencement, but also includes transitional, transitory or saving provision, be subject to negative procedure, rather than no procedure?

The Scottish Government notes the Committee’s comments. However, the Scottish Government considers that it is appropriate to include transitional, transitory or savings provision with commencement orders which take no procedure on the basis that such provision is by its very nature temporary and time-limited and is closely related to the section to be commenced, which the Parliament has already closely scrutinised.

The use of such powers in the context of section 33 will tend to be for more substantive matters where the negative procedure is more appropriate.
ANNEXE C: CORRESPONDENCE FROM THE FINANCE COMMITTEE

Finance Committee – consideration of the Financial Memorandum of the Private Rented Housing (Scotland) Bill

As you are aware, the Finance Committee examines the financial implications of all legislation, through the scrutiny of Financial Memoranda. The Committee agreed to adopt level one scrutiny in relation to the Private Rented Housing (Scotland) Bill. Applying this level of scrutiny means that the Committee does not take oral evidence or produce a report, but it does seek written evidence from affected organisations.

The Committee received two submissions on the FM, which are attached to this letter. If you have any questions about the Committee’s scrutiny of the FM, please contact the clerks to the Committee via the contact details above.

Andrew Welsh MSP
Convener
Submission from Glasgow City Council

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made? A response was submitted in respect of the Private Rented (Scotland) Housing Bill and the financial implications.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
Yes in respect of landlord registration provisions

3. Did you have sufficient time to contribute to the consultation exercise?
Yes.

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
Yes in respect of landlord registration provisions.

In terms of overcrowding we do not feel that the Financial Memorandum has sufficiently addressed the costs associated with the implementation and indirect affects of these new provisions. In Govanhill we have a 12 block radius with high density private rented sector housing; many of these flats would meet the new overcrowding criteria due to the number of residents in each unit and the conditions therein e.g. severe cockroach and bedbug infestations. This legislation will allow this issue to be addressed, however, there is going to be a potential knock on effect on, for example, the Council’s homeless unit should tenants be evicted or the legal team in case of appeals.

Consideration of extra resources needs to be given to Councils with overcrowding issues; at least 1 new member of staff would be required to carry out inspections and liaise with the landlord registration unit in the short term (1-2 years) before the workload would stabilise. The landlord registration team may also require an additional 0.5 FTE to directly respond to overcrowding enforcement and concerns.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
There are changes within the Bill which are difficult to place financial values on. It is however noted that cases which lead to refusal or revocation of landlord registration could cost as much as £500 per case. It is possible for these costs to be met through an increase in registration fees. This should be considered in the course of the Landlord Registration review which is ongoing.
Further scrutiny of resource requirements within Glasgow City Council to meet these new demands regarding overcrowding requires to be carried out. Any additional resources required could be allocated via grant application or other appropriate funding stream as required. These new powers could not be covered under existing resources.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes in respect of landlord registration.

In terms of overcrowding the Financial Memorandum does not reflect the true costs and resource requirements for implementing these new powers. Within certain parts of Glasgow overcrowding is a serious issue which needs to be addressed to improve health and wellbeing and reduce inequalities.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Not applicable.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

There may be additional costs where Scottish Ministers make further provisions. Such costs cannot be quantified at this time.

Brian Carroll, Landlord Registration Manager, Glasgow Community & Safety Services
Submission from Orkney Islands Council

Consultation

1. We were invited to take part in the consultation on the Private Rented Housing Bill but chose, ultimately, not to respond.

2. N/A.

3. There was ample time, in our view, to permit a measured response had we so desired.

Costs

4. We think that what is set out in the Financial Memorandum accurately reflects the increased costs for the Scottish Government in relation to IT upgrading and the possible increased costs for local government of the changes in verification and so forth.

At this stage it is difficult to be precise in relation to increased costs but we consider, as a relatively small authority, they are likely to be fairly minimal. However, there will be a need for us to keep costs under close scrutiny and Ministers need to be advised if costs spiral as a result of the changes in the law.

The relatively small numbers of HMOs in our area mean that costs for changes in this activity are also likely to be minimal and manageable.

5. We are confident that we will be able to meet any additional financial costs associated with the Bill and anticipate that these are likely, in our local context, to be minimal.

6. We think the Financial memorandum covers both cost estimates and timescales very comprehensively.

Wider Issues

7. Yes.

8. Very difficult to anticipate potential future costs at this stage. Any future guidance development would need to consider, in the same way as the Bill has done, potential implications for local government especially given the current, and probable, future financial climate where authorities may well be seeking to deliver improved services with fewer resources.
SUBMISSION FROM FIFE COUNCIL

Consultation
9. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made? Yes, there was a response from Fife but it did not include comment on financial assumptions.

10. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum? Not Applicable.

11. Did you have sufficient time to contribute to the consultation exercise? Not Applicable.

Costs
12. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details. Yes. Although there will be additional work arising from these proposals as well as work which potentially could be expected of the Local Authority dependent entirely on the resources being able to be applied to such activities.

13. Are you content that your organisation can meet the financial costs associated with the Bill? Yes. It is expected that any additional costs can be borne within, or offset by additional, fee income. If not, how do you think these costs should be met?

14. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise? Yes, although one or more individual authorities may have over estimated the potential costs for individual elements of the Bill, e.g. linking planning permission and HMO licensing (paragraph 73).

Wider Issues
15. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum? Yes.

16. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? Not aware of any. If so, is it possible to quantify these costs? No.
ANNEXE D: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

10 November (26th Meeting, 2010 (Session 3))

Written Evidence
Scottish Rural Property and Business Association Limited

Oral Evidence
Stephen McGowan, Housing Strategy Manager, Glasgow City Council;
Alistair Somerville, Head of Section, HMO Inspection Team, City of Edinburgh Council;
Cathie Fancy, Group Manager, Housing Strategy and Services, Scottish Borders Council;
John Blackwood, Director, Scottish Association of Landlords;
Sarah-Jane Laing, Head of Policy, Scottish Rural Property and Business Association;
Brian Adair, Former Chairman of Scottish District and National Council Member, Association of Residential Lettings Agents

Supplementary Written Evidence
Glasgow City Council
Scottish Borders Council

17 November (27th Meeting, 2010 (Session 3))

Written Evidence
CIH Scotland
Consumer Focus Scotland
Scottish Council for Single Homeless
Shelter Scotland

Oral Evidence
Natalie Sutherland, Policy and Practice Officer, Chartered Institute of Housing Scotland;
Douglas White, Senior Policy Advocate, Consumer Focus Scotland;
Robert Aldridge, Chief Executive, Scottish Council for Single Homeless
Rosemary Brotchie, Policy Officer, Shelter Scotland.

1 December (29th Meeting, 2010 (Session 3))

Oral Evidence
Alex Neil MSP, Minister for Housing and Communities, Scottish Government;
Lisa Wallace, Team Leader, Private Housing Unit: Policy and Consumers, Scottish Government;
Colin Affleck, Policy Officer, Private Housing Unit: Policy and Consumers, Scottish Government.
Supplementary Written Evidence
Scottish Government (Overcrowding)
Scottish Government (HMOs)
Introduction
1. The Scottish Rural Property and Business Association Limited ("SRPBA") uniquely represents the interests of both land managers and land based businesses in rural Scotland. Our members include those who own or manage a significant proportion of properties in the rural private rented sector, as well as those firms which provide professional advice to rural landlords. The SRPBA welcomes the opportunity to present both oral and written evidence to the Committee in respect of the Private Rented Housing (Scotland) Bill.

2. The SRPBA applauds the stated purpose of the Bill to support responsible landlords and address more effectively the problems caused by landlords who act unlawfully. The Association is fully committed to the continued raising of standards in the sector, as demonstrated by our involvement in Landlord Accreditation Scotland. We support the moving of the private rented sector issues from the Housing (Scotland) Bill to the Private Rented Housing Bill. We are disappointed that the Bill is one described as a maximalistic approach to tackle rogue landlords rather than one which supports the sector and we see little within the provisions which supports responsible landlords.

3. The Bill introduces further regulatory burdens for private landlords without addressing issues in relation to irresponsible tenant behaviour, such as abandonment. We believe that this unbalanced approach is detrimental to the sector as a whole and acts as a disincentive for future, and indeed continued, investment.

4. The Association believes that the aspiration of the Bill is unrealistic and can see nothing within the Bill which will enable sustainable growth in the sector (Policy Memorandum, para 2). We disagree that the Bill will give landlords greater confidence (Policy Memorandum, paras 17 & 152) and instead feel that continued piecemeal changes to housing legislation may in fact have the opposite effect.

5. The SRPBA has some concerns regarding, what is perceived to be, constant changes to landlord registration legislation, and suggests that all changes required – both those already identified and also those which may come out of the review of landlord registration currently being undertaken – should be carried out at the same time to minimise confusion and disruption to the scheme. We believe that landlord registration is not delivering and constant tinkering with the legislation is not the answer to addressing this.

6. In addition, the SRPBA is concerned that housing regulation is being used to try and tackle much wider problems being experienced in certain areas of Scotland, such as Govanhill. We would suggest that those who currently operate as landlords without being registered, or indeed without complying with HMO and other housing legislation, will continue to operate outwith the law, while those
who do comply will find that compliance with regulations become more burdensome.

7. The SRPBA is also concerned that the increased enforcement action now being carried out by local authorities in relation to landlord registration may be impacted upon by yet more changes to the legislation. Any change to legislation leads to a period of adjustment, and this adjustment could shift the focus away from enforcement.

8. The SRPBA suggests that the constant labelling of tenants as a homogenous vulnerable group is somewhat patronising, and is not reflective of the wide range of society that lives within the sector. Some tenants will undoubtedly be vulnerable but not all tenants will require the same level of support. Finally, the SRPBA believes that the Bill provides an opportunity for addressing the confusion surrounding the application of landlord registration legislation and HMO licensing to properties on tenanted farms. We have discussed this issue with the Scottish Government and we look forward to discussing possible amendments with them.

9. The SRPBA wishes to make reference to the Bill Explanatory notes section 71, which states that any additional costs would be negligible, but if changes to the system involved substantial costs for local authorities it would be possible to adjust the level of fees accordingly if necessary. A great deal of money has already been spent on the IT system and on development funding for local authorities to introduce registration. The SRPBA does not believe that any further changes to address problems with the system should be borne by those landlords complying with requirements through a general increase in fees. Instead the fees should only be increased for those against whom enforcement action is taken.

10. The SRPBA would like to make the following specific comments:

**Section 1 – Fit and proper person: considerations**

11. The SRPBA is supportive of the provisions in relation to firearms and sexual offences.

12. The SRPBA believes that taking into account breaches of the Repairing Standard and the other factors set out in Section 1 seems appropriate but it would be necessary to examine closely the circumstances in relation to anti-social behaviour by tenants to ensure that a landlord who had taken reasonable measures to address and control such behaviour was not inappropriately restricted from becoming registered if he/she is otherwise suitable for registration.

13. The SRPBA would like clarity on what is meant by ‘any financial obligation’ and specifically how wide ranging this would be. Also consideration must be given to the fact that there may well be legitimate reasons for share of common repairs remaining unpaid and it will be necessary for local authorities to investigate this to ascertain whether or not it should be considered as part of the fit and proper person test.
14. We would like further information on the process for consideration of complaints – how will these be investigated to ensure that they are valid and should be taken into account? What right of redress or appeal would the landlord have against the complaints?

15. The SRPBA questions whether specifying these examples of material in primary legislation is required, as all of the matters listed can already be taken into account by local authorities when considering whether or not a person is fit and proper for the purposes of landlord registration. We would therefore like confirmation from the Scottish Government as to what section b (to be inserted after subsection 5 of section 85 of the 2004 Act) really adds to the current legislation.

Section 2 – Fit and proper person: criminal record certificate
16. The Bill introduces a power for local authorities to require a criminal record certificate, and the SRPBA is concerned that this requirement may become routine for all landlords rather than being used only when deemed necessary as intended. We appreciate that the Scottish Government does not intend for this to be used routinely. Also, the SRPBA does not agree that the local authority should be able to give a timescale to provide the certificate within as it will be totally outwith the control of the landlord as to how long the certificate takes. Instead we would suggest that the local authority should be able to prescribe a timescale within which a landlord must apply for a criminal record certificate.

Section 3 – Landlord Registration Number
17. The SRPBA supports these provisions.

Section 4 – Appointment of agents
18. Whilst we do think that there should be a fee for the appointment of unregistered agents, the SRPBA is opposed to the landlord being charged a fee for this and would prefer to see a requirement for all agents to register and thereby pay their own fees. The SRPBA would like to draw attention to the phrase “without reasonable excuse”, and would suggest that continual changes to legislation and resulting unawareness of the legislation could be construed as a reasonable excuse.

Section 5 – Access to register: additional information
19. The SRPBA fully supports these provisions, but would ask that any changes to the IT system and access to it ensure that the current restrictions on access to prevent misuse and even extortion are maintained.

Section 6 – Duty to include certain information in advertisements
20. The SRPBA questions whether this is workable. We are supportive of the increased use of a registration identification to raise awareness amongst tenants and potential tenants but think that the length of numbers may make a requirement to provide a number impractical, and suggest that perhaps a registration symbol may be more appropriate. Also will there be a duty on the advertiser to check if the number is valid, or will it be assumed that local authorities will check the adverts within their area as it would seem that without
any checks the effectiveness of this will be limited? Although it will be an offence on the landlord, the success of this will rely on enforcement.

Sections 7 & 8 – Penalty for acting as unregistered landlord etc; Disqualification orders for unregistered landlords

21. Increasing the financial penalty will raise the seriousness of failure to register but the proposed increased level of £50,000 seems excessive for all but the minority who continually and deliberately flout the law. It is noted and welcomed therefore that this is a maximum level and that the Courts are to have discretion in setting financial penalties. The SRPBA believes that the majority of unregistered landlords are unregistered because they are unaware that they need to rather than due to deliberate avoidance and the penalties need to reflect this. What is needed, alongside the penalties is a properly resourced awareness-raising campaign leading to a situation where tenants ensure that they were renting from a registered landlord.

22. It is noted that part of the rationale behind the increased financial penalty is to bring landlord registration into line with HMO legislation. The SRPBA suggests that this is not an appropriate reason and any increase in fine must be linked to it acting as a proper deterrent. We would suggest that actually locating and fining existing unregistered landlords within the present level of fines would be a valid starting point rather than increasing the fine to a theoretical higher level but not using the mechanics to enforce compliance.

23. The SRPBA would like clarity in relation to the possible application of the Proceeds of Crime Act 2002 to rent received by unregistered landlords. Could this act alongside any fine as a more effective deterrent for those who continually flout the law?

Section 9 – Power to obtain information

24. Whilst the SRPBA supports the aims of these provisions we have some concerns about how they would be implemented. The provisions apply to solicitors so the SRPBA wishes to ask where this leaves client confidentiality? These have been laid aside in relation to money laundering but is it appropriate in this case?

25. After further consideration we feel that this provision goes much wider than we originally thought and we therefore think that further consideration is required in relation to the specific details. Specifically we would like further information on the statutory guidance which could be used to ensure that consideration is taken in relation to vulnerable tenants or other parties when the local authority is exercising this power.

Section 10 – Part 8 of the 2004 Act: guidance

26. The SRPBA supports these provisions, and hopes that this will increase consistency of approach by local authorities.

Section 11 - Information to be given to local authority

27. The SRPBA supports these provisions but questions why the PRHP should pass on details of the landlord’s registration number only “if known”. We suggest that it should be mandatory for any reference to the PRHP to result in an obligation for
the landlord to declare his/her registration number to PRHP as part of the process.

Section 13 - Amendment of HMO licensing regime
28. The SRPBA is generally supportive of the provisions contained within Section 13, and welcomes the requirement on Scottish Ministers to consult various parties, including landlords, before making an Order to define in secondary legislation additional categories of multi-occupancy accommodation.

29. The SRPBA is pleased that the powers for a local authority to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control are discretionary.

Section 17 – Overcrowding in private rented housing: statutory notice
30. The policy memorandum and explanatory notes for the Bill appear to fail to recognise that overcrowding often arises from circumstances outwith the landlord’s control. The SRPBA would like clarity on what steps the Scottish Government envisages that a landlord could take to address overcrowding.

31. An example given by one of our members is where a 1 bedroom house was rented to single woman, she then went on to have 3 children, and now also has a partner living with her – still in a 1 bedroom house. She has not breached any of the terms of her tenancy agreement and there is no alternative accommodation available within the village. What steps could this landlord be asked to take if it was deemed that the overcrowding was having an adverse effect on the health or wellbeing of any person or on the amenity of the house or its locality. She has no chance of being rehoused by the local authority as there is no council or housing association stock in the small village where she wishes to remain.

32. If this provision is introduced then it must be coupled with a change to the mandatory grounds for repossession in the Housing (Scotland) Act 1988 to include overcrowding, as without this change the landlord will be extremely limited in the steps he would be able to take.

33. The Local Authorities will also need to take cognisance of the impact of taking action, especially in rural areas where the alternative housing may be very limited.

Section 28 – Premiums
34. With regard to premiums, in general the SRPBA supports these provisions which we believe provide clarity the situation. The only issue we would like to raise is in addition to variations of lease at tenants’ request as the landlord cannot be expected to bear the cost of this and this should be an allowable service to charge for. For example, the landlord should be able to make a charge for changes to the lease in a situation where a couple have split up or where one of the joint tenants move on.
35. The SRPBA asks that recognition is given to the fact that there are situations where the tenant will want amendments to a lease which have a cost and are of no benefit to the landlord.

**Section 29 – Tenant information packs**

36. The SRPBA supports this provision but believes that the requirement on Scottish Ministers should be to prepare the statutory information for the pack rather than simply specifying what should be included. This will ensure consistency but could still allow for landlords to provide property specific information, such as advice on septic tanks, for example.

37. Careful consideration must be given to the timing of the provision of any further documents that Scottish Ministers may required to be included within the pack.

**Section 30 – Notices required for termination of short assured tenancy**

38. The SRPBA supports these provisions.

**Section 31 – Landlord application to private rented housing panel**

39. The SRPBA fully supports these provisions and is pleased that the request for access will be considered by a single member of the panel rather than through the whole panel process. We are often talking about an urgent repair so think that the proposed timescale is too long – a landlord will have already exhausted all means of accessing the property with the tenant’s permission – and therefore think that the timescales referred to in this section should be drastically reduced.

40. The SRPBA recommends that it should be clear that any access through this route is in support of and supplementary to, and not in substitution of, access arrangements contained within the contractual agreement between tenant and landlord and that emergency access is allowed.

41. The SRPBA strongly disagrees that there should be a fee. We consider that this is totally inequitable as the landlord is simply exercising his rights as the tenant may without charge, and the need to do so will only have arisen due to the tenant’s unwillingness to allow access.

**Other Comments**

42. The SRPBA is concerned that no account of landlords’ time and administrative costs is taken when considering the financial implications of the Bill. This is indicative of a continual failure to recognise the true costs of legislation to businesses, including private landlords.

43. In para. 79 of the Explanatory Notes we are surprised at the statement "especially as many landlords have more than one property" as this seems to run contrary to the Scottish Government’s own statistics which indicate that the majority of landlords have only one let property. (Ref: Review of the PRS: Vol. 1, Scottish Government - indicates that 101,778 landlords own 129,581 properties.)

Sarah-Jane Laing
Head of Policy
SRPBA
On resuming—

Private Rented Housing (Scotland) Bill: Stage 1

The Convener: I welcome Stephen McGowan, housing strategy manager at Glasgow City Council; Alistair Somerville, head of section, houses in multiple occupation inspection team at the City of Edinburgh Council; and Cathie Fancy, group manager, housing strategy and services at Scottish Borders Council.

In the interests of time, we will proceed straight to questions.

Bob Doris (Glasgow) (SNP): I thank the witnesses for coming along. I attended a really good event in the garden lobby last night with the Scottish Association of Landlords. Many landlords were there who do a fantastic job of maintaining their properties, keeping tenants informed and meeting the social need for housing. They, of course, are the good landlords. The unregistered landlords whom the bill seeks to tackle would not go to such an event.

I will have questions for our next panel of witnesses about the fact that the good landlords go along as normal, perform and jump through the hoops that they are required to jump through, but that there is an underbelly of unregistered landlords that give the sector a bad reputation. What are the barriers to prosecuting unregistered landlords? No unregistered landlord has ever been prosecuted in Scotland, never mind prosecuted successfully, since the power to do so was introduced.

Stephen McGowan (Glasgow City Council): I will start with the Glasgow context. Many of the hurdles that we have to clear are to do with the rules of evidence, how the local authority’s officers gather evidence and whether it is strong enough for the procurator fiscal to take to court. There may well be a number of reasons for evidence not being strong enough. There are particular pockets of serious problems in Glasgow, such as in Govanhill, where there are migrant workers, and language barriers and so on make it very difficult to communicate. Those workers are distrustful of authority, including local authorities, and are transient. They may move quickly and they may fear their landlords. Those are a number of the hurdles that might present challenges for council officers when they try to build up cases that are strong enough for the procurator fiscal to take to the criminal courts.

Cathie Fancy (Scottish Borders Council): I echo Stephen McGowan’s comments. There is a lack of evidence and also a lack of clarity about what evidence we need to gather and about the protection of tenants who would often be required to submit and corroborate some of that evidence. Those are the main barriers in Borders.

Alistair Somerville (City of Edinburgh Council): We have successfully prosecuted an unregistered landlord; it happened only last month.

Bob Doris: Congratulations.

Alistair Somerville: I confirm my colleagues’ comments that the problem has been gathering evidence. The person in the case that I mentioned pled guilty. They had seven properties and he was found guilty of failing to register three of them. The fine was £65 for each property. That is one of the problems: a fine of £65 does not really act as a deterrent.

There are a range of reasons for the problems in getting successful prosecutions. First, not all enforcement is formal, so a significant amount of enforcement work is undertaken that is not formal and does not result in a prosecution but still results in compliance. The fact that a lot of time is taken up in processing tasks in the landlord registration function probably takes a bit of time away that could otherwise be dedicated to enforcement.

There are difficulties in getting evidence from tenants. Often the reason why cases do not go to prosecution is that the tenants are no longer around by the time it gets to the hearing and the trial date. There are intermediate diets, a pleading diet, more intermediate diets and then the trial date, so it takes a fairly significant length of time to get the case to a trial date and the nature of such properties means that the tenants are quite often no longer around—they are away.

Bob Doris: I will come back on the level of fines shortly, but for now I will stick with the evidential requirements. I should perhaps say that I have been in correspondence with Gordon Matheson at Glasgow City Council, who has been very helpful and is keen to push this forward. I recall from the depths of my memory that one issue that he referred to was the corroborative aspect of evidence gathering and prosecution. He seemed to hint that the local authority could have substantial evidence on file but, unless the tenant was willing to testify against the landlord, it could all fall down, which would certainly be a disincentive for local authorities. That was quite illuminating, but I would like to clarify whether that is based on legal advice—Mr McLetchie is the lawyer, not me. Is corroboration necessary in the criminal process, and is it the case that the corroboratory must be from the tenant? Have local authorities had legal advice not to prosecute unless they can get a tenant to step forward?

Stephen McGowan: My understanding is that the rules of evidence require that there must be
corroboration in a criminal case, and that evidence in court from a third party representing a tenant who is directly affected by a rogue landlord is not sufficient to carry the day. Hearsay evidence basically cannot stand up in court in a criminal case.

**Alistair Somerville:** The fiscal’s office has made it clear that tenant evidence is required. If we say that a property was let as an HMO or a private rented sector let, the tenant must verify that they were a tenant there. If the tenant produces a witness statement, the defence has the right to cross-examine that evidence, so the tenant is required to be there.

One way of dealing with a tenant not being there would be to have a different type of offence and additional powers to obtain information from landlords and agents. If we requested information from the landlord or agent, that would give the local authority additional information about the status of the let of the property, and if the landlord gave or refused to give information, a tenant would not be required. There would be an offence, but a tenant would not be required.

**Bob Doris:** We will certainly have to look at that in much more detail. I understand that the Government has a strategy group to consider ways of removing barriers to prosecution. Do local authority representatives sit on that group? Have you had an input into it?

**Alistair Somerville:** Yes. We are members of the strategy group.

**Cathie Fancy:** All three of us are members of it.

**Bob Doris:** So the minister is well aware of it. Is progress slow? I imagine that there is no disagreement and that it is a case of—[**Interruption.**] I do not think that that noise is coming from my BlackBerry, but I will put it off anyway. That distracted me slightly.

Is there consensus among ministers and those on the strategy group on finding a solution to the issue? How far forward are we?

**Alistair Somerville:** There is a difference between what can be done in legislation and what comes down to judicial procedures, the criminal courts and how they have to operate. If an offence requires tenant evidence, it will always require that evidence, but there could be additional offences that may not require tenant evidence which might help to control the private rented sector.

**Bob Doris:** I am mindful that many local authorities and housing associations have professional witnesses for antisocial behaviour, for example. If a tenant has an issue and does not want to say that the person upstairs is doing X, Y or Z, they can phone a number and the professional witness will come out, observe and take notes. That can provide the corroboration in a court case. However, that is not possible under the current legislation for unregistered landlords.

**Cathie Fancy:** Not that I am aware of. The landlord legislation does not operate in the same way as the antisocial behaviour legislation. There is great protection for reporting antisocial behaviour and the involvement is not directly with the landlord on whom they are dependent for their home and the roof over their head.

**Alistair Somerville:** The bottom line is that an offence must be proved. If the offence is letting a property as an HMO or a private rented sector let, that must be proved by proving the relationship between the tenant and the landlord. There must be evidence to support that beyond reasonable doubt.

**Bob Doris:** Okay. I turn to fine levels. I admit that the successful prosecution that Mr Somerville mentioned passed me by. I assume that it was the first.

**Alistair Somerville:** It was just in the past month.

**Bob Doris:** Okay. The person had seven properties and was fined £75 for each.

**Alistair Somerville:** It was £65 for each.

**Bob Doris:** I am sorry—it was £65 for each. The maximum that the court could have levied was £5,000. Do you think that the court levied the fine that it did because it did not take the matter seriously enough, even within the current constraints of fine levels?

**Alistair Somerville:** From an enforcement officer’s point of view, there is a feeling that the courts do not give weight to the landlord registration and HMO licensing schemes. Our impression is that they are simply seen as licensing and registration schemes, not as systems for controlling safety in properties and antisocial behaviour. The proposals to increase the fine levels would, I hope, get the message across. We are talking about safety in properties, how tenants are dealt with, and neighbours who have to endure problems.

11:00

**Bob Doris:** We have to move on shortly to another line of questioning, so my final questions to you will be about the cost of taking forward such prosecutions. I have been calling for local authorities to be able to keep the money that comes in from fines. A local authority might have spent a significant amount of money seeking a prosecution, but if by some quirk of fate the authority got a successful prosecution and a significant fine was passed down by the courts—
perhaps the proposed maximum fine of £50,000—all that money would go to the United Kingdom Exchequer and none of it to the local authority.

Do you support the significant increase in fines? How much of a driver, an incentive and a help would it be if local authorities could keep the money that came in from fining unregistered landlords?

Stephen McGowan: We support the increase in fines to the levels that are mooted in the bill. That will act as a deterrent and it might also signal to the courts how serious the issue is. The idea that local authorities should keep the proceeds from fines is new to me and I would have to think about it. I do not think that Glasgow City Council has a position on that yet.

Bob Doris: I think that Mr Matheson said in his letter that he is supportive, but—

The Convener: Bob, let the witnesses answer your questions.

Stephen McGowan: Two aspects spring to mind. We want to tackle rogue landlords and we want to have sufficient resources to do that properly, but from a strategic housing authority point of view, we have to bear in mind all the sectors—owner occupied, social rented and private rented—and the representatives of those sectors, and I wonder whether there might be a perception of a conflict of interest. That is my initial thought on the matter. The leader of the administration would be clearer on that, though, and obviously his view is crucial.

Cathie Fancy: We have given some consideration to the matter. We agree with the increase in the fine, and we believe that we should get a proportion of the fine back to neutralise the cost. The money that we would get would cover the cost of taking the case to a prosecution. We do not see that as a conflict of interest.

Alistair Somerville: I probably have a different view again. It is important to get the level of fine correct so that it acts as a disincentive. I would be fundamentally uncomfortable about a fine being linked as a sort of incentive to generate income. My view is that local authority enforcement decisions should be based on objective, independent enforcement decision making. If the decision was seen to be incentivised by income, that would put us in a difficult position. Decision making on appropriate enforcement action should be made on a case-by-case basis, taking into account the enforcement concordat and enforcement policies. Decision making should be seen to be linked solely to that and not to income.

I also believe that the level of income from fines would be pretty much insignificant in terms of budgeting. Much as local authorities would like to have any source of income at the moment, I would caution against the proposal.

The Convener: On the specifics of Mr Doris’s question, you had a disappointing outcome with the £65 fines, but what did it cost the authority to bring the prosecution?

Alistair Somerville: It cost a significant amount. It would be in the thousands. There was significant work by enforcement officers.

The Convener: Tens of thousands?

Alistair Somerville: It was probably between £2,000 and £3,000.

The Convener: Would an increase in the fine to £50,000 encourage local authorities to take out more prosecutions? How would it help with enforcement at a lower level?

Alistair Somerville: We certainly do not want to discourage enforcement officers, but the main incentive for taking prosecutions is probably having high calibre private rented service enforcement officers who are well trained and experienced in prosecution work. We would hope that they would not be discouraged, but Scottish Government guidance on enforcement policies and activities is a more appropriate way in which to ensure that prosecutions take place.

Stephen McGowan: The increase in fines would help local authorities to prioritise resources, because another aspect of winning a court case is that it sends signals throughout the sector, particularly if it is a prominent case. That might help to raise standards in the sector.

Cathie Fancy: I agree with Stephen McGowan’s view. Increasing fine levels would act as a deterrent. If local authority enforcement officers felt that they could prosecute, cases would be taken forward. There is a disincentive just now, because we have had only one court case since registration was introduced. Local authorities put a lot of work into getting to that point, so a higher fine would incentivise them.

Mary Mulligan: Will you explain how each of your local authorities performs its role in landlord and HMO registration?

Cathie Fancy: We have a landlord registration team that gives landlords a lot of advice and prompts them when renewal comes up. We also have a dedicated enforcement officer—he is an ex-policeman—who is very up on the legislation and good practice. Having that dedicated officer has been invaluable to the authority in pursuing unregistered and rogue landlords.

Stephen McGowan: We have separate teams for the HMO sector and landlord registration. Both are located in the council’s development and regeneration services, where I am also based.
Alistair Somerville: We have two teams that deal with the inspection and enforcement of property standards under HMO licensing. They also deal with the applications. We have a separate enforcement team that investigates complaints about unlicensed properties and standards of tenancy management. Dedicated enforcement officers deal with that side of matters as opposed to property inspection. We also have a separate landlord registration team that deals with the applications for and approvals of landlord registration and the enforcement of that.

Cathie Fancy: Our HMOs are dealt with by our legal department; landlord registration is in the housing department. We also have a landlord forum where we provide legal training on good practice and all the new legislation that comes out. It is well attended and landlords get newsletters, so they are kept up to date with what has changed and what is expected of them or the tenant.

Mary Mulligan: Do Glasgow City Council and the City of Edinburgh Council have landlord forums?

Stephen McGowan: We have landlord forums that meet periodically. They give us an opportunity to engage with representatives of the sector.

Alistair Somerville: We have regular landlord training events that are undertaken by a separate entity called Letwise. We also organise separate events for landlords to come to. We had one last month, for which we targeted landlords and agents with more than a certain number of properties to get the biggest hit through the impact that they could have on the sector in Edinburgh.

Mary Mulligan: I commend the work that your units do. I was at the same meeting as Mr Doris last night and spoke to landlords who have properties throughout Scotland. I must tell you that not every local authority operates in the way that yours do. I was told that one local authority—it is not any of yours—has one officer, who is presently on maternity leave. Therefore, it has nobody—any of yours—engaging landlord registration, which concerned me somewhat. I will pursue that elsewhere.

How will the bill assist you to ensure that landlords know that they need to be registered and are registered timeously? How will it assist you in working with them to ensure that we have a quality private rented sector?

Alistair Somerville: The proposed amendment to landlord registration that provides for the landlord registration number to be put on advertising information is a good way of getting the message out. That will make a significant difference.

The landlord registration proposals make up a sum total that will heighten the profile of landlord registration and, taken collectively, they will act as a driver for the landlord registration process. Our current problem is that landlords perceive being engaged in the process as a disincentive because they feel that no enforcement activity is being undertaken. If enforcement activity were seen to be undertaken, the good landlords would engage in the process. That will probably have the net result of compromising the bad landlords.

Stephen McGowan: I agree with Alistair Somerville’s comments and add some of my own. The additional powers proposed in the bill will mean that local authorities can take more effective action against unregistered landlords. For example, having to put a registration number on adverts will help in the daily business of identifying unregistered landlords who are advertising. We can chase them down and engage with them so that they register and begin the process of meeting required standards. Having information about a landlord who requires a criminal record certificate is an addition to our armoury in dealing with landlords who should not be registered because they are not fit and proper.

Cathie Fancy: I agree with my colleagues. The certificate provision is a good addition to the bill and shows that we are serious. Having to put the landlord registration number on let boards is another good addition. We said that we wanted a light touch in the bill, but that meant that the word was out to landlords that there was to be a light touch. Those provisions will firm things up, create consistency across the sector and support local authorities to do their job. We welcome the changes, which will enable us to deal better with those difficult landlords.

Mary Mulligan: Thank you; that was really helpful. I have a further quick question. The bill proposes that to let boards will be exempt from displaying the registration number. Do you understand that?

Cathie Fancy: I felt that there was some ambiguity about which boards the number should be on. We thought that it referred to the home board near the property. There might be an increase in such boards if they were exempt from the provisions in the bill and we were concerned about what constitutes a for let board. However, perhaps the fact that agents have to register and give notice will strengthen the position.

The Convener: I do not know whether non-registered landlords and housing benefit have been discussed, but should non-registered landlords benefit indirectly from tenants who are being paid housing benefit?

Cathie Fancy: In our council, the housing benefit department contacts directly any landlord who makes a claim. Where housing benefit is paid
to a landlord, they are screened to find out whether they are registered.

The Convener: What if they are not registered?

Cathie Fancy: The enforcement officer would follow it up to the letter of what is currently in place and give the landlord the opportunity to register and rectify their position.

The Convener: How successful is that scheme?

Cathie Fancy: Very successful.

The Convener: I suspected that it would be. What happens if the landlord just says no? That would be difficult, in that it would impact on the person who lived in the house.

Cathie Fancy: We have not had experience of people just saying no. They use delaying tactics or excuses, but no one has said no. We have good results from our approach. Tenants know that if they are concerned, they can check whether their landlord is registered, so the word is out there. The benefits department checks up on them all the time.

The Convener: Are there any other such schemes in place?

Stephen McGowan: In Glasgow, our housing benefit department runs a similar scheme to the one that Cathie Fancy described.

Alistair Somerville: Likewise. We check on housing benefits.

The Convener: It would be interesting to know more about such schemes, the difficulties of prosecuting and so on.

11:15

David McLetchie: From what I have heard, I have no great confidence that increasing the present maximum penalty from £5,000 to the £20,000 that was originally proposed in the Housing (Scotland) Bill or to £50,000 will actually have anything like a deterrent effect, given the attitude to prosecution. We have had one successful prosecution, in which the court levied derisory fines. I do not see the logic of saying that raising the maximum penalty will deter people, if we remain in a situation with wholly inadequate enforcement and a disappointing response from the courts even to a conviction.

Mr Somerville referred to the Edinburgh case. I think that it is not putting words in his mouth to say that he suggested that the courts do not take registration offences seriously. Assuming that that is a fair representation of his view, and perhaps that of his colleagues, I suggest that we should consider not ratcheting up a maximum fine that will never be levied in any prosecution, but introducing a minimum fine per property to which people should be subject. Then we would not have a situation in which somebody with seven houses pays £65 for each, with a total fine of £455. People should be charged £500 or £1,000 a house—something that approximates a month’s or two months’ rent and is a serious penalty for breaking the law. Would that not be a more reasonable or sensible approach than ratcheting up a maximum fine that will never be levied?

Alistair Somerville: The prospect of a minimum fine has been considered by the lawyers. You might have a precedent for that, but we have not found a precedent for a minimum fine following on from a prosecution. My understanding is that the level of fine that is levied for a first offence is a percentage of the maximum, so if the maximum fine is fairly low, for a first offence, a low fine will be levied. Therefore, the higher the maximum, the better the outcome and the more of a disincentive there is to operating illegally.

There is a package on enforcement. You rightly point out that, if nobody is prosecuted or enforcement does not happen, there is no point in having a fine. The package must include the improved enforcement powers that are available along with the significance that is given to the offence through the level of the fine and, we would hope, a better response from the courts to the indication in the legislation of the seriousness of the offence.

David McLetchie: In the case that you described, there was a maximum fine of £5,000, but the person paid barely 1 per cent of that as a fine. It will take the courts a long time to ratchet that up for anybody, even to the present maximum fine, never mind a larger one.

Alistair Somerville: My concern is about the number of cases that do not even make it to prosecution and the ability of the courts to deal with cases timeously. We still have an appeal hearing for a refusal of a licence that happened two years ago. There is constant deferring of actions. Various pleading diets have to be held before we get to a trial date. We still have a case that is to be heard this month that started more than a year ago. Those are the kind of issues that arise. Far and away the most significant issue is to do with the ability to go through the system, get a case into the courts and achieve a successful prosecution. The level of fine is an indication from the Scottish Parliament of what it feels about the offence, so it is important.

David McLetchie: We are all familiar, from road traffic legislation, with the concept of minimum fines. With parking and speeding offences, we are all subject to minimum penalties if we transgress the law. Why cannot we apply the same concept to people who fail to register their properties?
Cathie Fancy: Raising the fine would actually be a disincentive. It is not about the fine; it is about the message that goes out. A lot of the good work that the fine does involves keeping matters out of court as a deterrent, and getting the landlords to be fit and proper and to behave in the way that we want them to rather than having to go through the court process. If we can avoid that because a landlord turns around their management style, behaviour and properties, that is a successful outcome. We have done a lot of that through the enforcement officer.

Although we have had no prosecutions, we have had very high success rates in turning landlords around and achieving improvements for the tenants.

Alistair Somerville: Minimum fines for traffic offences are the result of fixed-penalty notices being issued. By paying such a fine, people are buying a discharge of their criminal liability. If that concept was applied to landlord registration or HMO licensing, once people had paid the minimum fine that could not be used as evidence of any criminal misbehaviour by them. There is a fundamental difference between a minimum fine, which is in effect a fixed-penalty discharge of criminal liability, and a fine that is meted out following a prosecution.

John Wilson: Much of what has been said so far has concentrated on landlords, but I want to focus on letting agents, particularly in Govanhill, which was mentioned earlier. Govanhill has a relatively large number of private landlords, but a large number of letting agents also operate in the area; surprisingly, just about every street corner in Govanhill has a letting agent.

Does the bill as it is currently drafted go into enough detail on how we deal with letting agents? Many landlords or owners of properties transfer powers to letting agents to let out and maintain those properties. How can we tackle the issue of letting agents, and does the legislation go far enough in dealing with that issue?

Stephen McGowan: In a Glasgow context, we certainly think that the proposals in the bill will help in terms of being able to identify letting agents and get information about them, so that is a step forward. As you pointed out, letting agents play a particular role in the sector, especially in certain parts of the city. The legislation will be helpful in getting a better handle on managing letting agents.

John Wilson: Should any penalties be imposed on letting agents? Are any such penalties proposed in the bill?

Stephen McGowan: My understanding is that the penalties would be the same as those for landlords.

John Wilson: We will clarify that at a later date. One provision in the bill concerns the tenant information pack that landlords or letting agents must provide to new tenants. Is that a good step forward? The information packs would surely assist the enforcement officers in finding out how properties are being let, the conditions that they are in and the nature of the tenancy. Does that provision go far enough? Does it adequately cover the type of information with which landlords should provide tenants?

Cathie Fancy: I welcome the introduction of the tenant information pack. It clearly sets out the responsibilities on the landlord and the tenant, so there should be no ambiguity. It will also give consistency across the private rented sector if similar templates are used for landlords.

Stephen McGowan: I agree with Cathie Fancy. The information packs are a useful addition to the sector. They will help to clarify the rights and responsibilities for landlords and tenants and give a measure of improvement in standards for enforcement officers. A better informed tenant in the private rented sector will help the enforcement activities of local authorities.

Alistair Somerville: The information packs are a significant step forward. The way in which the measure is being introduced should allow the packs to develop over time. The content of the packs can be adjusted and made to fit circumstances as they arise by regulation. The packs are a welcome addition to the overall control of the sector. The more information that tenants have, the more they can inform local authorities of issues that require to be dealt with. Hopefully, with more information, landlords and tenants may engage more with one another, thereby avoiding the need for enforcement action.

John Wilson: When enforcement action results from overcrowding, what is the local authority’s responsibility in tackling the issue? If a landlord is found to be letting a property that is overcrowded, who picks up the eventual responsibility for ensuring that the tenants get a property where they will not be overcrowded? Will the bill’s enforcement provision place an additional liability on local authorities to provide adequate housing for families who find themselves in that situation?

Stephen McGowan: That is a key issue for all local authorities, and for Glasgow City Council in particular. We do not want to solve one crisis only to create another. The overcrowding statutory notice has to be regarded almost as a last resort. The various services that operate within the local authority would co-ordinate their activities regarding landlords whose properties have been demonstrated to be overcrowded and work together on a solution to rehouse the families in question. The intention in Glasgow is not to take a
blanket approach, but to focus on where to take action. Such action would also be the result of a long process of engagement with the landlord and the families involved and with the respective support services such as homelessness services and the local community. We would work out a solution. On that basis, we would move to rehouse successfully individual families who are in that situation.

**Cathie Fancy:** I absolutely agree with Stephen McGowan. Overcrowding is also an issue for us in the Borders, in the social rented sector as well as the private rented sector, on which we depend. There is overcrowding and there is overcrowding, however. In some cases, there is a blatant disregard for the legislation. We would adopt the same approach as that which Stephen McGowan outlined for Glasgow City Council.

**Alistair Somerville:** It is important to recognise that the powers are discretionary. The local authority is best placed to consider all aspects in the interests of the tenants and their neighbours. The local authority will have to justify any action that it takes in terms of the health effects that are connected specifically to the overcrowding. The power is necessary in the interests of the occupants, neighbours and others in the locality, but it would be used sparingly. As I said, it would be used only when health effects are associated with the overcrowding.

**John Wilson:** I am interested in your responses on how local authorities intend to deal with overcrowding. Let me paint the scenario of a landlord who has two small properties that have been identified as overcrowded. Because the maximum penalty that can be imposed on the landlord is £1,000 and because of what we heard earlier about the penalties that the courts have imposed, we could end up with the landlord deliberately allowing the property to become overcrowded because they know that, eventually, the local authority will intervene and resolve the problem by taking on the responsibility for those tenants in its own social rented sector.

I am concerned that, because of the low maximum penalty, landlords may flout the legislation and see to it that overcrowded tenants eventually become the local authority’s responsibility, despite the fact that local authorities do not have the properties to deal adequately with their own overcrowding.

**The Convener:** I do not know whether there was a question in there. We will move on to questions from Patricia Ferguson.

**Patricia Ferguson:** Section 1(a) expands the list of offences that a landlord has to declare under section 85 of the Antisocial Behaviour etc (Scotland) Act 2004 to include firearms and sexual offences. Section 1(b) also increases the number of issues that local authorities should consider before granting a landlord registration certificate. For example, they would have to consider antisocial behaviour orders. Will the new lists that will exist after the bill is enacted contain the right amount of information? Will they address the issues that matter when local authorities make their deliberations?

**Alistair Somerville:** They will provide a useful focus and direction to local authorities’ deliberations. In a sense, those matters could always be taken into account. The landlord register operates in conjunction with a review list. Local authorities compile a review list of issues that other agencies refer to them for whatever reason. They then take account of all those to form a view on whether a landlord should be approved or removed from the register.

The bill provides a useful focus and direction to local authorities on what issues they should take into account, but the important point of which we should be aware is that the lists are not exclusive. Other issues may arise that should also be taken into account. Therefore, a landlord’s fitness and propriety will be assessed against not only the issues that are listed in the bill but, potentially, other issues as well. The registration officer who makes the decision will ultimately decide, taking everything into account, whether a landlord is fit and proper.

**Stephen McGowan:** I agree with Alistair Somerville’s comments. In the consultation, Glasgow City Council identified those provisions as ones that it would like to see in statute.

**Cathie Fancy:** Likewise, Scottish Borders Council supports that. We also agree with the power for a local authority to ask for a criminal record certificate, because it verifies the information. Otherwise, there is little point in asking for the information.

**Patricia Ferguson:** As I understand it, the particular, identified issues in the bill are issues that you will have to take account of, not just something that you might take account of in the future. Is the list right? Are there other issues that you would want to be similarly identified?

**Cathie Fancy:** The Scottish private rented sector strategy group agreed to consider in the next months whether there are any other such issues but, at the moment, those that are in the bill are the most pertinent ones. We all agreed that we have to take them into account and consider them.

**Stephen McGowan:** I agree with that.
Alistair Somerville: Local authorities will have to put systems in place to ensure that they gather the information that is relevant to those issues and to enable other officers within the local authority and external agencies to supply such information. If the issues were not listed, there would not be a focus on setting up systems to gather that information.

Patricia Ferguson: You have answered my third question, Mr Somerville, so well done.

The Convener: As there are no other questions from the committee, I thank the witnesses for attending and for their valuable evidence.

We will suspend for a moment to allow us to set up the next panel of witnesses.

11:34
Meeting suspended.

11:37
On resuming—

The Convener: We move to our second panel of witnesses on the Private Rented Housing (Scotland) Bill. I welcome John Blackwood, director of the Scottish Association of Landlords; Sarah-Jane Laing, head of policy with the Scottish Rural Property and Business Association; and Brian Adair, former chairman of the Scottish district of the Association of Residential Letting Agents and a national council member of the association. We will move directly to questions, if that is okay.

Bob Doris: Good morning, panel—it is still morning, just—and thank you for coming. The previous panel of witnesses, who were from local authorities, gave evidence on their support for increasing the maximum fine that is available for unregistered landlords. Do you support increasing the maximum fine to £50,000? A second strand is that all the previous witnesses thought that, if fines were forthcoming, some of the money should go back to local authorities, to help them cover the cost of prosecuting—successfully, we hope. We have just had the first successful conviction of an unregistered landlord in the past month. If there were more such convictions, should local authorities get some of that revenue to cover the costs of enforcement in the sector?

John Blackwood (Scottish Association of Landlords): We have no objection to the proposed fine level. Our concern is about whether enforcement will take place. Moving it from £5,000 to £50,000 might not make a difference. If local authorities do not chase people for £5,000, they might not chase them for £50,000, or perhaps there will be a greater incentive to chase them. We are keen on any proposed action against unregistered landlords. If an increase in the fine will have an effect, we support it.

On the second question, it probably would be appropriate for the fine to be remitted to local authorities to use for enforcement action. We hear from authorities that they have difficulty getting enough people out there to take enforcement action. That is where the majority of the income that they receive from the fees goes. If anything can be brought into the authorities to boost their expenditure and to help alleviate that difficulty, we would be delighted to have that and to support it.

Sarah-Jane Laing (Scottish Rural Property and Business Association): I echo John Blackwood’s comments. We are comfortable that the maximum fine of £50,000 would be used only for the minority who continued deliberately to flout the law. We fully support the idea that enforcement action must be taken. We said at the outset that we would rather see 10 landlords in an area being fined £5,000 each than one landlord being fined £50,000, because that would send a stronger message.

On the point about the money from fines going back to local authorities, we have some concerns about how the money would be protected for use in enforcement, because ring fencing of any money in local authorities is difficult. We support the idea as long as the money could be used for enforcement measures.

Brian Adair (Association of Residential Letting Agents): I do not think that ARLA was very impressed by the proposal for fines of £50,000. I wonder whether we would ever get to the stage of fining a landlord. Presumably, there would be a chance for the landlord either to register or to withdraw from the market. I think that the proposal will get headlines and possibly put landlords off entering the market.

Bob Doris: That is an interesting view. To move the discussion on slightly, another aspect of the bill is that there will be an obligation on landlords to display their registration number when they advertise. I believe that there will be an exemption for to let boards. One of the penalties for a landlord’s failure to display their registration number could be deregistration. I do not think that this is contained in the bill, but should a newspaper be able to print an advert without a registration number? Many unregistered landlords might use newspapers to get tenants. Would that be another trick or another tool for newspapers to have in the box?

John Blackwood: It would indeed. When registration came in, the larger newspapers in the country, such as The Scotsman and The Herald, introduced a policy of not taking adverts from
unregistered landlords, so they actively asked for landlords’ registration numbers. I do not use that medium, but I believe that that policy has been relaxed in recent times simply because they feel that it is safe enough not to ask any more, given the lack of enforcement in some areas. However, there was certainly such a policy, and most of those in the printed press who publish adverts take their responsibilities seriously.

As part of the private sector strategy group, we have discussed whether there should be enforcement to make those who publish adverts do so responsibly. For example, in their to let columns, they could have a section that states that landlords should be registered, what registration means and where people can go to check out a landlord. That brought us on to another idea. At one of the public consultation groups in Glasgow, somebody suggested that it would be more appropriate to have a little symbol next to the advert rather than the registration number, as long as the publication stated what the symbol meant and how people could find out about the scheme. If we do not have such a system, we will just have a number next to the advert. For those who have not seen it, the registration number is like a credit-card number. It is a long series of digits. It will not mean anything to a member of the public unless they are told what it means. In fact, a false number could be put in. Would anybody—whether the publication or the tenant—actually check it out?

A bigger concern is that two or three people could own a property, such as a husband and wife or various members of a family. Does that mean that every registration number would need to be printed against the advert? That has not been decided on yet. An advert could appear in a newspaper that said “Two-bedroom flat, £450”, with a phone number to call, then the next three lines would just be registration numbers. People would pay more to include the registration numbers than they were paying to tell prospective tenants about the property.

We have more concerns about the practicality of the proposal than about the principle. We believe that a symbol or some annotation would be a better approach and that those who publish adverts should be required to inform people about what landlord registration is and how people can take action against landlords.

Sarah-Jane Laing: I echo John Blackwood’s points. We have always said that the proposed provision is laudable, but we have real concerns about whether it is workable in its current form.

On the use of registration numbers in advertisements, an unregistered landlord who sees a number routinely appearing in the paper could use that number when he applies to the newspaper to put his advert in. There may be no check; even if there is, the number would simply go through a system, with the answer, “This is a valid registration number,” popping out. We suggested the use of a symbol that would show that registration had been checked, and which could then be used in the advert instead of the registration number.

11:45

Brian Adair: Yes, I agree. I do not understand why it takes so long to register landlords; I am not sure whether the technology is working to maximum efficiency. I wonder why housing benefit claims cannot be dependent on the confirmation of the landlord registration number. For landlord registration to work, there should be an inclusive approach.

Bob Doris: Thank you for your answers. Having heard about what The Scotsman used to do, I wonder whether a voluntary best practice scheme in the newspaper sector might be better than legislation. It was interesting to hear your comments.

The Convener: The majority of witnesses on the previous panel raised concerns about the link between local authority income and prosecutions, as the subsequent fines go back to the councils. Just to clarify your position, do you share those concerns?

Sarah-Jane Laing: My only concern is whether that money could be ring fenced and used for enforcement. If it could be ring fenced, we would support it going back to councils.

The Convener: But you do not have concerns about prosecutions being linked to income.

Brian Adair: I would be concerned, because it encourages local authorities to start chasing landlords who might need encouragement rather than threats.

Mary Mulligan: Good morning. Let me take you back a step, prior to the questions that you have just answered. Is a register an effective means of regulating landlords and HMO owners? Do you think that the register has made a difference since it was introduced?

John Blackwood: The Scottish Association of Landlords had high hopes for landlord registration in weeding out the rogue landlords. I have to be honest and say that we have not seen that happen, much to the dismay of our members, who I appreciate are probably the best out there in the sector. They say that they are paying their fees, and that they can give the names and contact telephone numbers of the unregistered landlords to local authorities. We have a hotline to those teams, and we willingly and happily phone the local authorities to say, “We’ve got another
unregistered one for you”. The issue with local authorities—which I appreciate is to do with resourcing—is that they turn round and say, “Sorry, but we don’t have the time to chase them up”. To us, as consumers in the sector, that is not acceptable. If you go to the online public register to try to search for a landlord, it is difficult to get the system to work. The site has been down for some time; I believe that there have been technical problems with it.

How publicly accessible, and how effective, is the register? Prosecutions are not happening, and local authorities have had limited success in engaging with bad practice. It has worked in some areas; I refer members back to the report that we provided to the committee earlier this year about the pros and cons of landlord registration. However, the bottom line is that the system needs to have teeth and we need to see it working. We are in favour of anything that supports the system, but I am afraid it is up to local authorities to get out and enforce it.

**Sarah-Jane Laing:** I agree with John Blackwood. The other point is that the benefits from landlord registration have tended to be ancillary. The system has increased engagement with the good landlords, who have benefited from landlord forums, but it has not delivered on the aims that were set out.

We originally opposed landlord registration, not because we did not believe in raising standards but because we believed that the proposed system would not deliver. We have worked with the Scottish Government to try to address some of those problems, but, as John Blackwood said, our members continue to tell us that the good landlords have reregistered and the bad ones are still out there.

**Brian Adair:** Our firm does not advertise or market properties unless the landlord is applying for registration or has a registration number. I cannot say whether landlord registration is working, except to echo the comments about the fact that the online system does not seem work, so I am not sure how one finds out who is registered and who is not.

**Mary Mulligan:** Mr Blackwood reminded us that we have had this discussion before. Particularly in relation to the answers to Mr Doris’s questions, it was beginning to feel like we had been here before.

To pursue the point further, I think that you accept the principle of registration but are flagging up the point that there are some issues with it. Will the bill address those issues or are there other measures that we need to take as well?

**Sarah-Jane Laing:** Because there is constant tinkering with landlord registration provisions, some of the proposed legislation may add to the problems for those landlords and local authorities that are already trying to enforce the system. The full review of landlord registration has only just started. We have concerns that the system will be tinkered with through the bill and then real changes might come out of the review’s recommendations. I have concerns about whether the bill will address some of the problems.

**Mary Mulligan:** Is there anything that would help to address some of the problems that you have identified?

**Sarah-Jane Laing:** We support the inclusion of consideration of firearms offences and sexual offences. The other information that is listed can already be taken into consideration so, if local authorities feel that it helps them to have that information included in primary legislation, we have to accept that is where it is needed.

Other changes that are not included in the bill, such as the application of registration to properties on tenanted farms, have caused widespread confusion. We have had some discussions about those, but the difficulty is knowing whether to address them as part of the review or as yet another tinkering amendment to landlord registration through the bill.

**John Blackwood:** It is easy for us to recommend changes to legislation and for the Parliament to implement them. On paper, they often look fantastic, but the question is whether they are translated into action on the ground and implemented. My fear is that that is not happening.

Given the state that we are in with local authority cuts, there are questions about what resources local authorities will have to implement any legislation in future. Does that mean that landlord registration will suffer as a result? I feel that, in some areas, that might well be the case.

It is all very well our coming up with ideas and changes, but the question is whether they will have an effect. If landlords hear that fines have been raised, will they feel that they must go down and register? I am not convinced that it will make any difference.

One reason why I feel that is that we are three years down the line now with some local authorities, so we are coming up to a period of reregistration and we know that, in some local authority areas, only 50 per cent of landlords who are already in the system are reregistering. Landlords—non-members as well as members—say to us, “Nobody seems to do anything about it anyway, so why should we bother?” That means a greater burden on local authorities, which will have to chase not only unregistered landlords but those who refuse to reregister.
The issue is the practicalities of implementation rather than the legislation itself.

Mary Mulligan: You said earlier that your members have taken the opportunity to flag up to local authorities some landlords who were not registered. Will anything in the bill encourage local authorities to pursue them, or are you saying that the issue is resourcing them to do that?

John Blackwood: It is a resourcing issue. The fines in the bill are maximum fines. As we know, the sheriff can decide to fine an offender £100. That is demoralising for the wider sector and for local authority staff, who think about how much effort, time and money they have put into the case for the landlord to be fined only £100. We constantly see that with HMO licensing.

The bill might encourage sheriffs to increase the fines that they impose, which might have a greater effect on unregistered landlords. However, the issue is the process of getting to the court.

Many landlords genuinely do not know about landlord registration. Where is the advertising for it? We do not see local authorities telling landlords—or the wider community—that they should be registered. Often, advertising involves a telephone call to a landlord to ask them whether they know that they have a legal obligation to register. Many register at that stage.

That is what happened in the past. However, my concern is that those who are registered will now think, “What’s the point? I was sent a letter three years ago with a number and that’s all I’ve heard. I paid my money for that. Why should I do it again?”

Sarah-Jane Laing: I add that, although a number of members have been disappointed when they have phoned local authorities, some local authorities have been very proactive. It does not just come down to resources but is about the attitude of the local authority. In that regard, there has not been consistency throughout Scotland.

Some have given us much more priority, politically, than others. It is clear to see which ones are, because the engagement with the good, registered landlords is much more positive in those areas.

Brian Adair: May I add to what John Blackwood said? When our staff go out to see potential landlords and tell them that they have to be registered, the majority know nothing about it. I remember that, when we were on the committee that discussed landlord registration, a pamphlet was produced with Victorian wallpaper on it. That was to be issued and advertising was to be carried out, but we have not seen much advertising, so the public do not know much about landlord registration. You could spend more on advertising, but it is likely that you do not have the money.

Mary Mulligan: Thank you for that.

Alasdair Morgan: I just want to check something, given some of the negative comments that have been made. Am I right in thinking that none of you is suggesting that it would be better if, instead of tinkering with or fine tuning landlord registration, the bill abolished it?

John Blackwood: From our perspective, we believe that it has not worked, and what is the point of having it if it is not going to work? We advocate abolishing it.

Sarah-Jane Laing: I agree with John Blackwood.

Brian Adair: You should get the thing to work before you bring in more legislation on it.

Jim Tolson: Good morning. I am sure you are all aware that, last week, the Parliament completed its deliberations on the Housing (Scotland) Bill. As part of those final deliberations, significant sections were moved from it to the Private Rented Housing (Scotland) Bill. I would be interested to hear the panel’s views on that, particularly as many of the provisions that have been moved are of great concern to—or are certainly pertinent to—your organisations. They include fees for the appointment of agents, the penalty for acting as an unregistered landlord, local authorities’ powers to obtain information, and additional categories of HMOs. I am sure that the committee would also be interested to hear your views on those issues. Will those provisions in the Private Rented Housing (Scotland) Bill be pertinent and helpful to your provision of services in the housing sector?

Sarah-Jane Laing: We supported the movement of the private sector provisions from the Housing (Scotland) Bill to the Private Rented Housing (Scotland) Bill largely because, although ignorance is no defence, many of our members have said to us, “I’m not sure which housing act refers to me. Which one do I have to look at?” We therefore thought that the movement would add clarity for the private rented sector.

I was fairly supportive of most of the provisions in the Housing (Scotland) Bill that have been carried forward. We made minor suggestions in relation to a couple of them, but we support their aims.

John Blackwood: I echo that. Anything that enforces or strengthens the current legislation is useful and we have no objection to any of the proposals.

Brian Adair: Does your question concern the changes to tenant charges?

Jim Tolson: It is about much more than just tenant charges. I outlined a few provisions that
have been moved across: I am interested to know whether you believe that it is helpful to have them in the Private Rented Housing (Scotland) Bill, as your colleagues seem to believe, or whether—as some people have said—the movement of the provisions to that bill has delayed their implementation. Is that delay an issue for ARLA?

**Brian Adair:** The issue that I would like to clarify is the charges that are made to tenants before they take a lease. Can we talk about that?

**The Convener:** Yes.

**Brian Adair:** The proposal to make pre-tenancy charges lawful is welcome, because it is a grey area. Reputable agents incur costs before a tenancy is taken in obtaining references, carrying out credit checks and so on, so it is only reasonable that such costs be charged to tenancy applicants. The payment of an admin charge removes the property from the market, and in the event of the tenant’s references not being up to standard, they get their money back—certainly, in our case.

12:00

Unless a charge is made, tenants can reserve properties from various agents who are put to abortive expense in processing the applications. That is neither fair nor does it help tenants. It is noted that Scottish ministers will consult on charges. Our concern is that regulations should be introduced at the same time as the bill is enacted. If that does not happen, we will be left in limbo.

**Jim Tolson:** I am grateful to you for the point, Mr Adair. Indeed, I am grateful to all panel members for their evidence, the focus of which seems to be that the provisions were not retained in the Housing (Scotland) Bill, where they would have been implemented more quickly, but moved to the bill that is before us. At the time, many of us felt that that was not the proper long-term course of action to take. I am glad that we now have this clarification from the people who are most closely involved in implementation.

**Patricia Ferguson:** Is landlord registration worth while? We have heard that the picture of how well landlord registration is carried out across Scotland is a mixed one. Certainly, what we heard in the previous evidence session suggests that some local authorities are doing a particularly good job. Without talking about specific authorities, if the system were to operate throughout Scotland to the highest standard, would you consider the scheme to be worth while? With amendment, could you support it not only in principle but in terms of the practicalities?

**John Blackwood:** If there was a consistent approach throughout Scotland, registration would be worth while. Part of the problem is that properties that landlords own and manage are spread over local authority boundaries. Landlords say, “The scheme is great in this authority, but a mile away, over the boundary, nothing is happening.” In a sense, it is worse when a really good authority interacts a lot but the neighbouring authority does nothing. It shows up that authority and makes the landlord think, “Hang on a minute, why am I paying all of this to that authority?” Of course, that is not what this is about; we need to consider the bigger picture. There are positives and negatives.

From the very beginning, we have felt that, if we are to have a scheme, it should be a national scheme that is administered nationally with local authority input. In essence, we now have 32 different registers, all of which do the same thing. Is that cost effective? Is it the best way to run a scheme? In an ideal world where everybody does exactly the same thing and every local authority puts the same political will behind it, the scheme would be a great idea.

**Sarah-Jane Laing:** As long as landlord registration continues to be based with individual authorities, some of the problems are insurmountable. As John Blackwood said, many landlord associations asked for a national landlord registration scheme. We felt that only a national scheme would work. We will support a scheme that is as pain-free as possible for landlords—by which I mean pain-free in terms of administrative burden and costs—and that targets and penalises unregistered landlords. I fail to see how that can happen with the scheme in its current format where the duty lies with individual local authorities.

**Brian Adair:** Landlord registration is a good thing in so far as there should be some vetting of landlords. That said, I agree with John Blackwood that the scheme should be administered nationally, just as the driving licence is administered. During the discussions at the start of the process, an MSP—luckily, I cannot remember her or his name—said that they wanted a light touch. I expect that it is difficult for bureaucrats to administer legislation lightly. They have to cover everything. A light touch was asked for, but that is not our experience.

**Patricia Ferguson:** I turn to the issue of registration numbers versus registration marks. In the debate, I suggested to the minister that we should have something like the kite mark, so I have a great deal of sympathy with the argument that is being made. If we go forward a little to the time when adverts will appear in the newspapers, should it be the responsibility of landlords and not newspapers to ensure that the advert complies? It might be that there should be an element of the legislation that considers whether a landlord has
used the registration mark improperly. That would make the issue something that the landlord, rather than the newspapers, would be responsible for. That is a small point, but do you have any thoughts on it?

Sarah-Jane Laing: I think that the offence would lie with the landlord rather than the newspaper. Of course, we are not just talking about newspaper adverts; we could also be talking about adverts in the local Co-op, for example.

The problem, of course, would be how to resource the checking and enforcement of that. I know that a couple of local authorities are proactive and go through the local papers every week to check up on such matters, and I am sure that they will continue to do that, but difficulties arise in other local authorities due to factors such as the wide areas that they cover and the fact that local papers do not fit neatly into local authority areas. I would be quite concerned about who would be doing the checks, but I agree that the offence would lie with the landlord.

Brian Adair: If you look through the papers, you will not see many adverts for properties. We do not advertise in papers; everything is online.

Patricia Ferguson: Another thing that there appears to be some ambiguity about with regard to the bill is whether to let boards would carry the registration mark or number. Do you have a view about what should happen in that regard, in order to make the legislation as effective as possible?

John Blackwood: We discussed this at the private sector strategy group when we went through the pros and cons of the principles behind that part of the bill. We felt that it would be completely impractical to have the registration number on to let signs, especially when the sign is put up by an agent. The landlord registration number is specific to a particular landlord, not to a property or an agency, and it is also specific to the local authority, which means that a landlord who got a few to let boards printed would potentially have to have different numbers on different boards—for an agent, that would be horrendous. We felt that the proposal was not practical, and that the kite mark system would be a far better way of doing it.

The situation with landlord registration is a bit like the situation with energy performance certificates. Are potential tenants looking at EPCs? If you have an EPC, you are keen to show that you do. Similarly, a landlord who is registered is keen to point out that they are—they have paid for it and the number proves it—and there is value in that if it makes them stand out against a landlord who is not registered. Our concern was about putting the huge registration number—it is not a three-digit number—or more than one huge number, if there is more than one person involved, on a sign. For a start, it will look horrendous. Also, will it mean anything to the consumer—the potential tenant? Will they know that they can go to a landlord registration website and check out the landlord using that number? Even if they tried that, the website does not work, so they would not be able to check out the landlord anyway. Do they know who they should phone? We get a lot of calls from tenants and landlords who want to know how they can find out about landlord registration.

The question comes back to the basics of marketing and ensuring that the information is accurate and accessible to all.

Patricia Ferguson: In answer to a previous question, Ms Laing said that she is keen that the administrative burden should not be overly taxing. Do you have views on tenant information packs? Will they protect landlords, in terms not only of their responsibilities but of those of their tenants?

Sarah-Jane Laing: We are supportive of the introduction of tenant information packs, but we would like there to be a duty on Scottish ministers not only to specify what goes into the packs but to provide the statutory standard information, so that the administrative burden on the landlord is reduced. A landlord could still produce property-specific information, such as advice on how to use a septic tank, but the statutory standard information would be provided by Scottish ministers. That would also ensure a consistent approach.

John Blackwood: We, too, support the introduction of the packs. There is a practical element behind the matter, with regard to all the pieces of paper that need to be issued prior to the signing of a lease. The situation is different in England; in Scotland, the process is quite complicated. That is to do not only with housing legislation but with issues around EPCs, making people aware of landlord registration and so on.

We thought that it would be far better to have just one pack for all the documents, which already exist. That would ensure that landlords know that they need to have all those elements, because many say, “I don’t know what bits of paper I need to issue to my tenants.”

Sarah-Jane Laing: Some legal-profession members of the SRPBA have pointed out that the timing of the provision of some notices is important. If all the documents are in one pack, landlords must ensure that the pack is provided to the tenant at the appropriate time.

Brian Adair: The liabilities and responsibilities of landlords and tenants are laid out in leases—they already exist—so I hope that what will be produced is bullet points and brief comments
about rights, timing and so on. The information is already in the 20-page lease.

**David McLetchie:** Good afternoon. I was interested to hear of your organisations’ membership of the Scottish private rented sector strategy group. I will ask about the bigger picture and about where the legislative framework fits into the bigger picture. In the past 10 years or so, the private rented sector has made a growing contribution to satisfying housing demand and need in Scotland, and the buy-to-let market has grown. From what the Government has said not just in relation to the Housing (Scotland) Bill, which the Parliament passed last week, but in “Housing: Fresh Thinking, New Ideas”, it appears to have a desire to encourage further investment—or institutional investment—in the private rented sector. When property prices in the housing market are static or—in some areas—falling, many people might think that it makes eminent sense to rent a house for a period rather than to make a commitment to investing in an asset that might fall in value and leave them in negative equity.

Where do you see your sector going? Where does all the legislation fit in? The Private Rented Housing (Scotland) Bill will make amendments. Tenancy deposits, for example, are being discussed. The committee is considering property factoring issues, although they do not relate directly to you. We have created and are creating quite a big legislative framework around the sector. Is that framework contributing positively or negatively to the sector’s direction of travel?

**Sarah-Jane Laing:** We always hold legal seminars in the autumn for our members, but we have had to cancel three housing seminars this autumn across Scotland because of a lack of interest from our members. I was surprised by that. When I canvassed several members who always go to such seminars, the resounding message was, “We are fed up.” That really concerns me. They said that they did not want to hear about yet more regulation of the sector and that they want to get on with providing housing in their communities. I am concerned that the continuing legislative changes are having a negative impact, even on current landlords.

I believe that the Scottish Government and all parties want the private rented sector to flourish. We have had discussions in the strategy group, but we were tasked to deliver—dare I say it?—quick wins that could fit into a bill in this parliamentary session. There are many discussions to be had about security of tenure. Some people would like the six-month short assured tenancy to be abolished, whereas we say that the six-month short assured tenancy would not be used in almost every case if landlords were confident that they could recover possession of their properties in the case of rent arrears or other issues.

Hard decisions and heated discussions might have to happen to ensure that the sector can fulfil people’s vision for it, but the constant introduction of legislation that landlords have faced in the past few years has had a detrimental impact on the sector.

**John Blackwood:** We have gone from being a largely unregulated sector to what I believe is a quite heavily regulated sector in 10 years since the introduction of HMO licensing. I have to be honest and say that that move has been to the detriment of the sector. I have seen many good landlords and housing providers leave the sector. More and more are now doing that. Perhaps that is because of the stage that they are at in their business plan—they feel that they have had enough and want to move on. Essentially, those landlords have been providing a worthwhile service. My concern is about when they go: what will we be left with in the sector?

**Brian Adair:** I doubt whether the legislation has done very much to help the private rented sector. Some things are good, such as the gas safety certificates that have come in and the electrical requirements. However, I asked our staff today how much it costs a landlord who comes into the market to meet all the requirements before he starts getting rent. I suspect that if I asked you, you would not realise that it costs £900 to £1,000. If the landlord was renting a property at £500 or £550 a month, which is about the average, he would not get any money in until the third month.

You want to encourage the private rented sector, but the things that are being suggested are not going to do so. It is depressing that under the bill a landlord will have to apply to the private rented housing panel to get access to his property
to carry out a repair, because the tenant will not let him in. Furthermore, the landlord will have to pay the fee. Why on earth should the landlord be landed with paying a fee to get in to carry out a repair to his own property, which is very likely to help the tenant and the property? I am sorry to say that does not send the message that you are encouraging the private rented sector.

David McLetchie: Thanks very much.

The Convener: While some of my colleagues were at a meeting with representatives of the private rented sector last night, I was watching some of the debate at Westminster about housing benefits and how the Government hopes that its plans will affect the private sector market. How does the Scottish legislation fit with the impacts of the changes in housing benefits? Will the changes exacerbate some of the problems that we are trying to address through the bill?

John Blackwood: I think that they will, particularly with regard to the provision of accommodation in the future and certainly in meeting the 2012 homelessness target, which is going to be incredibly difficult because of the recent and proposed changes. We had our national landlord day conference yesterday in Our Dynamic Earth. The resounding feeling that we were getting from people was that we will not in the future be able to afford to take people who are in receipt of benefits. Given that the sector will become more pressured to take more people, there will be more choice in some areas. If a landlord has a choice between taking somebody who is earning an income and somebody who is on benefits, you know exactly what is going to happen. People who are in receipt of benefits will become more marginalised in some areas.

A lot of landlords actively work within those areas at the moment. They do not have an issue with the tenants per se, but with the system. We think that that could get worse in the future. Many will opt to get out of that market, which is fine as long as there is another market for them to rent their properties. What we are seeing is rents going up again and greater pressure in some areas in Scotland to provide accommodation, so there is certainly a market for it.

The Convener: Are there any other observations? I know that the question was very general.

Sarah-Jane Laing: I have nothing to add. I agree with everything that John Blackwood said. I think that the changes will cause accessibility issues for the very people whom we are trying to help through the private rented sector, and they will really impact on our ability to deliver the 2012 homelessness target.

Brian Adair: It does not help the private rented sector for tenants to receive housing benefit direct—it does not go to the landlord or the agent. In a recent case that we had to take to court it cost the landlord £5,000 or £6,000 before he got his property back, because the tenant got the money direct and did not pay the rent. It does not encourage landlords if they cannot get the rent direct from the local authority.

The Convener: Thank you very much for your attendance today and your evidence.
Introduction
1. This note has been prepared at the request of the Local Government and Communities Committee which is considering the Private Rented Housing Bill.

The Private Landlord Registration Scheme in Glasgow
2. In Glasgow the Private Landlord Registration scheme is administered by Glasgow Community and Safety Services (GCSS), on behalf of Glasgow City Council (GCC).

3. Since commencement of Landlord Registration it has been recognised in Glasgow that the City Council, GCSS and a number of other partners and agencies across the City hold information which would assist in identifying unregistered landlords. A joint information sharing protocol exists which facilitates the sharing of information for the purposes of the 2004 Act. Information sharing conforms to the data protection and other relevant legislation such as the Anti-social Behaviour (Scotland) Act 2004 for the prevention and detection of crime. The main signatories are Glasgow Community & Safety Services, Glasgow City Council, Glasgow Housing Association (GHA) & Strathclyde Police.

4. A list of partners and agencies who have contributed to identifying unregistered landlords is attached as an appendix. Some practical steps are described below.

Joint Working between Glasgow City Council (GCC) Services & Glasgow Community & Safety Services (GCSS)
Financial Services - Housing Benefits
5. All new housing benefit claims for private sector housing are checked to ensure the landlord and property are registered. Housing Benefit staff inform the registration team of any unregistered properties allowing the landlord to be pursued for registration. The links with Housing Benefits have been strong since the outset and has proved a valuable resource in administrating the registration scheme. This working relationship has also allowed effective liaison in terms of investigation of benefit fraud.

Financial Services - Council Tax
6. Information is regularly shared between Council Tax (CT) and the registration team. This allows non registered landlords to be pursued but also assists with recovery of debt from landlords. This close working relationship with CT colleagues has allowed CT fraud to be identified, resulting in the Landlord application for registration being refused.

Development and Regeneration Services (DRS) - HMO Teams and Chief Executive Department - Licensing
7. Information sharing between the registration team and licensing functions is also strong. Regular updates are received in respect of HMO Licensing and other matters relating to licensing which impact on the ‘fit and proper’ assessment of a landlord and these are also shared. The HMO Enforcement team provide information following site visits to alleged unlicensed HMO properties. This allows landlords to be identified and pursued for licensing or alternatively to identify an unregistered property.

Land & Environmental Services - Environmental Teams and DRS Housing Investment
8. These teams have a responsibility for dealing with various aspects of housing quality. Close working links between these departments and the landlord registration team allow for effective interventions where statutory notices may need to be served or where a landlord fails to comply with such notices. Landlords have been refused registration based on evidence of their failure to comply with statutory notices and the housing quality which led to such notices being served.

Other Aspects to Landlord Registration Procedures
Glasgow City Council Publications.
9. Glasgow City Council website contains information via ‘Housing Options’ for private landlords and their tenants and particularly covers the requirements of landlords to register with the local authority. The ‘Glasgow’ magazine, delivered to every household in Glasgow, has also been used to communicate with residents about landlord registration.

Glasgow Community & Safety Services
10. GCSS offer a variety of services to Glasgow’s residents and regularly identify clients living in private rented property. Information is shared on an ongoing basis to allow non registration to be identified and pursued by the landlord registration team. Many instances involve allegations of Antisocial Behaviour emanating from privately rented properties. Close joint working between officers often leads to resolution of complaints prior to formal enforcement action being required.

Working with Other Public Bodies
11. The registration team work closely with housing associations, Community Planning Partners (Comprising 10 Local Area Groups), Strathclyde Police and Strathclyde Fire and Rescue. Information is shared to allow parties to address any concerns which may have arisen as well as identifying unregistered properties and landlords to pursue them for registration.

12. Particular work has been undertaken in this respect through the Govanhill Operational Hub and through data matching with housing associations which identified a number of unregistered properties.

13. Liaison within the Community Planning Structure is undertaken by colleagues within GCSS through their work with these groups. Landlord registration officers will also attend these meetings where required to
provide information and advice. This information and advice is also passed through the Community Council Network.

**Working with Other Agencies, Private Sector Business and Communities.**

14. Residents associations, factors, university accommodation services and others also engage to share information and to promote landlord registration.

15. The information above is not exhaustive but covers the core areas of work which raise awareness of a landlord’s requirement to register and to allow those who have failed to register to be identified and pursued.

**Appendix**

Glasgow City Council
- Revenues and Benefits Teams
- Benefits Counter Fraud
- HMO Enforcement Teams
- Licensing department
- Land and Environmental Services – Public Health Teams
- Housing Investment
- Community Councils
- Social Work Services
- Website & Other publications

Glasgow Community & Safety Services
- Community Relations Unit
- Police Intelligence Unit
- Mediation Service
- Locality Teams
- Other GCSS Functions

Other Public Bodies
- Glasgow Housing Association
- Registered Social Landlords
- Private Rented Housing Panel
- Community Health & Care Partnerships
- Community Planning
- Strathclyde Police
- Strathclyde Fire & Rescue
- Govanhill Operational Hub

Others
- Residents Associations
- Property Factors
- University and College Accommodation Services
- Letting Agents
- Residents of Glasgow
SUPPLEMENTARY EVIDENCE FROM SCOTTISH BORDERS COUNCIL

Please find attached a copy of our Private Landlord Enforcement Procedures - section five highlights the referral from our Revenues and Benefits.

At this time we do not collect specific stats on the number of referrals received from R&B but on average it can range from approximately 1-6 per week. In some cases the landlord is registered and there are detail anomalies but in many the landlord is not and the Council's Enforcement Officer then pursues this and to-date this approach has been very effective in securing appropriate registration of this group of landlords. Although in some cases it does take serving a 'rent penalty notice'.

I hope that this helps.

Cathie Fancy
Group Manager
Housing Strategy and Services
Scottish Borders Council

1. Introduction

Under the Antisocial Behaviour etc. (Scotland) Act 2004 and the Housing (Scotland) Act 2006 Scottish Borders Council have a statutory duty to improve the standards of the Private Rented Sector within the Scottish Borders by means of regulation and enforcement.

This document outlines the procedures for handling complaints relating to private landlord registration, issues arising which challenge a landlord's Fit & Proper status as outlined in the 2004 Act and allegations of a contravention of the 'Repairing Standard' as outlined in the 2006 Act. The procedures have been aligned with the Social Work Complaints Procedure.

Scottish Borders Council recognises an equal society protects and promotes the central and valuable freedoms and real opportunities of each person, securing human rights for all and ensuring that no-one is unfairly disadvantaged. In an equal society, central and valuable freedoms and real opportunities are not unconstrained, but are limited by the need to guarantee the same freedoms and opportunities for all. In an equal society, institutions and individuals respect the diversity of people and their goals, address their different needs and situations, and remove the barriers that limit what people can do and can be.

In carrying out the procedures for Private Landlord Registration, the Council will ensure that equality and diversity, particularly race, disability, gender, sexual orientation, religious belief, age and social exclusion are taken fully into account. All complaints will
be subject to ethnic monitoring to ensure that decisions are not influenced by unfair or unlawful discrimination and any equality consequences are identified and acted upon.

2. Definition

For the purpose of Private Landlord Registration, a ‘Complaint’ shall be defined as: “An expression of dissatisfaction, however made, which alleges a failure on the part of a Private Landlord, Agent or Organisation to comply with the statutory requirements placed upon them as a Private Landlord or managing agent” This definition shall include:

- Issues arising which would challenge a landlord’s Fit & Proper status as outlined in the Antisocial Behaviour etc (Scotland) Act 2004.
- Allegations of a contravention of the Repairing Standard as set out under the Housing (Scotland) Act 2006.

2.1 Who Can Complain

2.1.1 Any person affected by an issue contained within the definition of a complaint which relates to a private rented sector dwelling, private landlord, agent or organisation.

2.2 Types of Complaint

2.2.1 Informal Complaint - There may be an informal stage in an attempt to resolve the complaint before the need for any formal procedure is adopted. Where a complaint is of a minor matter and the complainant would like the matter recorded should there be a need for future action this information will be stored accordingly in the Housing Information & Advice database (HI&A).

2.2.2 Formal Complaint - A Formal Complaint is a complaint that cannot be resolved and where the complainant specifies that they wish to make a formal complaint.

2.3 Anonymous Complaints

2.3.1 These will be logged using the landlord registration complaints form (See Appendix A), and information recorded on the relevant page of the Private Landlord database. Complainants asking for their complaint to be dealt with anonymously will have this request respected but will be made aware that this may place restrictions on the handling of the complaint.

3. Complaints Procedure

The Housing Strategy Team positively welcomes complaints in relation to Private Landlord Registration as it allows the opportunity to put things right and improve the standard of the Private Rented Sector in the Scottish Borders. Each complaint received will be assessed individually on the information provided by the person making the complaint. The Council aim to resolve the complaint quickly and to the satisfaction of the complainant whenever possible.

3.1 What will be investigated as a complaint?
3.1.1 In considering whether a complaint against a landlord or agent falls within the definition of a complaint as outlined above, the Enforcement Officer will consider the following points;

3.2 Fit and Proper Criteria
3.2.1 With regards to whether or not landlords or agents are ‘Fit & Proper’ to fulfil those roles, as outlined in Section 85 of the Antisocial Behaviour etc (Scotland) Act 2004:

1. Does the information relate to allegations against a private landlord or agent of any offence involving:
   • Fraud, Dishonesty, Violence or Drugs
   • Unlawful discrimination in any business activity
   • A contravention of any provision of the law relating to housing or landlord & tenant relations
2. Does the information relate to any action (or failure to act) in relation to antisocial behaviour affecting a house which is let or managed by the landlord; and
3. Is the information relevant to the question of whether or not the landlord is fit and proper? This will include issues and information relating to the failure of a landlord or agent to comply with their legal obligations during the management of tenancies and the rental of property.

3.2.2 With regard to Part 1, Chapter 4 of the Housing (Scotland) Act 2006, the Repairing Standard:
1. Is the property wind and watertight and reasonably fit for human habitation.
2. Is the structure and exterior of the property (including drains, gutters and external pipes) in a reasonable state of repair and in proper working order.
3. Are the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water in a reasonable state of repair and in proper working order.
4. Are any fixtures, fittings and appliances provided under the tenancy in a reasonable state of repair and in proper working order.
5. Are any furnishings provided under the tenancy capable of being used safely for the purpose for which they are designed; and
6. Is there satisfactory provision of smoke alarms.

The diagram below illustrates how the procedures will incorporate all areas relating to the Complaints procedure for Landlord Registration.
3.3 Repairing Standard Complaints

3.3.1 Where a complaint does meet one of the Repairing Standard categories outlined above the Enforcement Officer will:

1. Pursue the complaint.
2. Provide the complainant with relevant housing information and advice including information of the role of the Private Rented Housing Panel (PRHP)\(^1\).

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\(^1\) The Private Rented Housing Panel is an independent body which receives funding from Scottish Government. The PRHP offers tenants a quicker and easier route to enforce a landlord’s obligations. Ultimately, the PRHP can make an enforcement order requiring a landlord to carry out any repairs.
3. Contact the landlord or agent and make them aware of their statutory requirements under the Repairing Standard and instruct them to address the issues raised.

3.3.2 Where the landlord or agent fails to address the issues, the Enforcement Officer will do the following:
1. Provide the tenant with the required advice and assistance in order to successfully report the matter to the Private Rented Housing Panel.
2. Refer the case to the Private Landlord Registration Working Group (PLRWG) \(^2\) for the consideration of further action being taken against the landlord or agent, including a review of their ‘Fit & Proper’ status.
3. Follow up any recommendations made by the working group.

3.4 Unregistered Landlords

3.4.1 Where an unregistered private landlord or agent is identified and brought to the attention of the Housing Strategy Team, this will not be recorded as a complaint but will be followed up and dealt with under the Private Landlord Registration Enforcement Procedures.

3.5 Referrals to SBC Departments

3.5.1 Where a complaint does not meet any of the categories listed above, but a valid complaint exists the following actions will be implemented:
1. The complaint will be referred to the relevant department using a Referral Form. (See Appendix A)
2. The complainant will be notified of the referral and informed of the name of the person dealing with the complaint. (See Appendix B)
3. Where such a referral is made the Enforcement Officer will monitor the referral until a conclusion is reached regarding the complaint.

3.5.2 The Enforcement Officer will work in partnership with Environmental Health and Building Standards in dealing with issues relating to conditions of property.

The diagram below illustrates how the procedures will incorporate all areas relating to the Complaints procedure for Repairing Standards issues.

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\(^2\) The Private Landlord Registration Working Group is a working group set up by Scottish Borders Council. The PLRWG undertakes the decision making process on private landlord issues that require further investigation. Any decision reached by the group is finalised by the Director of Social Work. The PLRWG is made up of representatives from Housing Strategy, Environmental Health, Mediation & Antisocial Behaviour, Revenues & Benefits, Legal Services and Lothian & Borders Police.
4. Stages of a Complaint

4.1 Receiving a Complaint:

**Establish** the nature of the complaint and the outcome that the complainant would like. **Identify** what initial action is needed, and if possible, resolve immediately. If the issue is resolved it should not be recorded as a complaint but an entry added to the HI&A database, unless the complainant specifically requests that it is recorded as a formal complaint.

**Advise** the complainant how and by whom their complaint will be dealt with and the timescale for a full response if one cannot be given immediately.
**Take Responsibility** for ensuring that the matter is followed through and referred to the relevant person to deal with. Follow up any referral and monitor the action being taken until a conclusion is reached.

**Register** the complaint as soon as practicable by recording the complaint on the landlord registration complaints form and update the HI&A database with the complainants details and the nature of the complaint.

**Categorise** the complaint as either a Fit & Proper Status or a Repairing Standard Complaint.

### 4.2 Assessing the Complaint

4.2.1 Each recorded complaint will then be assessed by the Enforcement Officer to ascertain if the content of the complaint falls within the definition of a 'Complaint' in regards to Private Landlord Registration.

If the complaint does not fall within the definition of a 'Complaint' it will be referred to the relevant department. The complainant will be notified in writing of this referral. Any such referral will be continually monitored until a conclusion is reached.

Where the complaint does fall within the definition, the complaint will be investigated appropriately.

Each complaint should be initially acknowledged in writing **within 5 working days**. (See Appendix C)

### 4.3 Investigating the Complaint

4.3.1 On commencing an investigation into a complaint, the complainant will be notified in writing of the investigation and informed that the investigating officer will endeavour to complete the investigation and provide a final written response **within 28 calendar days**. It is a statutory requirement that all formal complainers receive a formal written response within 28 calendar days and only with the express permission of the complainer can this deadline be extended. Where a complex and in depth investigation is required, the complainer will be informed that a longer time scale may be necessary to allow completion of the investigation and their permission sought for such an extended timescale.

### 4.4 Responding to the Complainant

4.4.1 Once the investigation is complete, the complainant will be sent a response letter from the Director of Social Work informing them that the investigation has now concluded and the appropriate action taken. The complainant will not receive specific information regarding the action taken. (See Appendix D)

### 4.5 Appeals

4.5.1 Where the complainant is not satisfied with the outcome of the investigation or the conduct of any investigating officer, such a complaint should be addressed under the Social Work Complaints Procedure.
5. Enforcement Procedures

Unregistered Landlords

Unregistered landlords are regularly brought to the attention of the Housing Strategy Team by other council departments and outside agencies. One of the main sources for this is the Council’s Revenues & Benefits Team. When processing any new claims for Housing Benefit/Local Housing Allowance where the tenant is occupying a private rented sector property, the officer keying the claim will check the online national landlord registration website to confirm that the landlord is registered. Where the landlord is found to be unregistered, the information is passed to the Housing Strategy Team to follow up.

5.1 Opportunity to Register

5.1.1 On the identification of an unregistered private landlord or agent, initial action is to inform the subject landlord by letter that it has come to the attention of the Council that to date they have failed to comply with the statutory requirement to register as a private landlord. The subject landlord should also be sent information regarding Landlord Registration and informed that an application for registration must be forthcoming within a period of 14 days from the date of the letter (see Appendix E). Where an application is received within the initial 14 day period as mentioned above, such an application shall be reviewed by the Enforcement Officer prior to any subsequent approval being authorised.

5.1.2 If, after the 14 day period has lapsed, no application for registration has been received, a further notice will be issued to the subject landlord by the Enforcement Officer, again stating the requirement to register. A further period of 7 days will be specified in this notice for the subject landlord to submit an application for registration. At this time the landlord will be informed of the possibility of a Rent Penalty Notice (RPN) being served and made aware of the offence being committed by failing to register and continuing to let property. Details of the possible penalty for such an offence will also be highlighted. This letter will also state that failure to submit a valid application within the 7 days will result in the addition of a late registration fee of an additional £110. (See Appendix F) If no application is made following this letter, the landlord will be sent a further letter informing them that sanctions will now be taken by means of Rent Penalty Notice or report to the Procurator Fiscal and that their registration will now be subject to the late registration fee. (See Appendix G) (The additional late registration fee is contained within paragraph 8 of The Private Landlord Registration (Information & Fees) (Scotland) Amended Regulations 2008).

5.1.3 Delivery of Letters & Notices

If following the initial 14 day period given to a landlord to apply for registration no application is received, all further letters or notices will be sent by recorded delivery. The Enforcement Officer will check via the Royal Mail website to ascertain if the item has
been delivered and signed for. Where the item has been signed for, the Enforcement Officer will print off an Electronic Proof of Delivery notice for the item from the website. Where the item is showing as being undelivered for whatever reason, the Enforcement Officer will, where practicable, hand deliver another copy of the letter/notice. Such a delivery will be corroborated by another Council Officer and where possible a delivery confirmation note signed by the person receiving the item.

**5.2 Failure to provide good management practices**

5.2.1 Where it is identified that a landlord or agent has failed to comply with any legal obligation in relation to the letting and/or management of properties, initial contact should be made with the landlord or agent in order to inform them of the identified concerns. Appropriate advice and information should be given to the landlord and if deemed necessary an action plan agreed in order to address the areas of concern. Where considered necessary the landlord shall be requested to attend formal training regarding good letting and management practices.

5.2.2 The landlord shall be made aware that their management practices will be monitored and that failure to adhere to their legal obligations will result in their suitability as a fit and proper person being reviewed. An action plan for improvement will be agreed with the landlord and monitored by the Enforcement Officer. The Enforcement Officer will liaise with appropriate Council Officers and the Police were evidence of antisocial behaviour, poor property conditions and management practices have been identified.

5.2.3 Where a landlord fails to comply with any recommendations or action plan, the case will be referred to the PLRWG to decide on the appropriate course of action to be taken and the possibility of reviewing the Fit & Proper status of the landlord/agent concerned.

**5.3 Failure to meet the Repairing Standard**

5.3.1 Where a tenant makes a complaint to the Council with regards to a private rental property failing to meet the Repairing Standard, the Enforcement Officer will visit the property concerned to assess the complaint. Appropriate advice will be given to the tenant with regards to the correct procedures involved in addressing such problems and the role of the Private Rented Housing Panel. The tenant should be advised to contact the landlord in writing outlining the issues concerned. Should the landlord fail to act on such a complaint, the Enforcement Officer will contact the landlord in order to remind them of their statutory obligation under the Repairing Standard.

5.3.2 Should the landlord continue to fail to rectify the identified repairs, the case will be referred to the PLRWG to assess and review the Fit & Proper status of the landlord. Consideration should also be given to a referral being made to the neighbour dispute resolution unit in an attempt to resolve the dispute regarding the repairs.

5.3.3 If following mediation the issues concerned are not resolved and a genuine issue exists regarding repairs, the tenant should be informed to apply to the Private Rented
Housing Panel (PRHP) regarding the issues. The management practices and fit & proper status of the landlord would require review in this instance by the PLRWG.

5.3.4 Where the PRHP serve a repairs notice on the landlord or make any other recommendations, the landlord’s level of compliance will be regularly monitored and their ‘Fit & Proper’ status reviewed.

5.4 Identification of other Offences

5.4.1 Where offences are identified under Section 83(4) of the Antisocial Behaviour etc (Scotland) Act 2004 relating to a person knowingly providing false information or omitting required information from an application, or Section 87(2) relating to the failure to notify the Council of any change in circumstances, the Enforcement Officer will assess the case and proceed with the sanctions deemed most appropriate to the circumstances. This may include a warning letter, fit & proper status being reviewed, or in extreme cases, registration revoked or a report submitted to the Procurator Fiscal.

6. Enforcement Sanctions

6.1 Issue of Rent Penalty Notice (RPN)

6.1.1 Where no application is received following the issue of warning notices as outlined in Section 5.1, the subject landlord will be issued with a Rent Penalty Notice (RPN) in accordance with Section 94 of the Antisocial Behaviour etc (Scotland) Act 2004 suspending rent payments on each property let by the landlord. The notice will give a period of 28 days prior to commencement during which the landlord may still register. If the landlord registers during this period, the RPN shall be revoked prior to commencement. (See Appendix H & I)

6.1.2 Failure to register however shall result in the RPN taking affect from the date specified on the Notice. The Notice will remain in force until revoked or overturned by the Sheriff. The landlord will also be notified at this time that failure to submit an application for registration within 28 days following the commencement of the Notice will result in a report being prepared for submission to the Procurator Fiscal for a contravention of Section 93(1) of the Antisocial Behaviour etc (Scotland) Act 2004.

6.1.3 Copies of the RPN will also be sent to the tenant of each property affected by the Notice, and to any agent, if applicable, along with a letter explaining the terms of the Notice. Suitable advice and assistance shall be given to the tenant with regards to financial implications arising from the service of the notice. (See Appendix J)

6.1.4 Where a decision has been taken to proceed to the issue of a RPN and prior to the issue of same, the Enforcement Officer shall check via email with the Revenues & Benefits team whether or not Housing Benefit (HB) or Local Housing Allowance (LHA) is payable in relation to any property affected by the notice.
6.1.5 The Revenues & Benefits team will check and reply within 14 working days confirming whether or not HB or LHA is payable in relation to any property.

6.1.6 Where a RPN is subsequently served, the appropriate Revenues & Benefits team will be notified via email with a copy of the RPN attached. The Revenues & Benefits team must acknowledge receipt of this notification within 2 working days.

6.1.7 The Revenues & Benefits team will email the Enforcement Officer prior to commencement of the Notice to confirm that it has not been revoked. The Enforcement Officer will respond within 2 working days.
Where the Notice has not been revoked, the Revenues & Benefits team will suspend the claim from the relevant date of commencement stated on the Notice. At this stage, Revenues & Benefits will issue a letter to the claimant, and landlord, if payment is made directly to the landlord, confirming that the HB or LHA has been suspended, the effective date and why.

6.1.8 The claim will remain suspended until the Enforcement Officer notifies Revenues & Benefits via email, with a copy of the Rent Penalty Revocation Notice attached (See Appendix K), that the RPN has been revoked, and from what date rent charges will become payable again. A letter will also be sent to the tenant informing them that the RPN has been revoked (See Appendix L). It has been agreed that to make this process easier to manage for the Revenues & Benefits team, RPN will always commence on a Monday and end on a Sunday where possible.

6.1.9 Where a RPN is subsequently revoked, a Rent Penalty Revocation Notice shall be sent to all of those persons mentioned in Sub-section 2.2 above stating the date of revocation. In the case of the tenant, the date from which rent payments to the landlord should commence from shall also be specified.

6.2 Preparation of Case for submission to Procurator Fiscal

6.2.1 Where after the commencement of a RPN, no application for registration has been submitted following the period of 28 days, the Enforcement Officer shall proceed to the stage of evidence gathering in order to compile a case for submission to the Procurator Fiscal.

6.2.2 Full statements shall be taken from all relevant witnesses and copies of any documentary evidence pertaining to the renting of property by the subject landlord should also be obtained along with any other information deemed relevant to the case. At this stage any witness will be informed that the content of the statement will remain confidential however should the matter lead to criminal proceedings the defence would be required to be provided with a copy of any statement provided.

6.2.3 Any statement or interview which is required to be taken under caution may have to be taken by Environmental Health Officers, ASB Officers and the Police, as legislation does not give these powers to the Enforcement Officer.
6.2.4 The Enforcement Officer will ensure that regular contact is maintained with all witnesses in relation to any subsequent proceedings against the subject landlord or agent, keeping them up to date with the progress of the case and their requirements should the case go to trial. Suitable advice and assistance shall also be offered in compliance with The Private Landlord Registration (Assistance & Advice) (Scotland) Regulations 2005 along with contact numbers of other departments and agencies that can offer assistance and advice, e.g. Homelessness Services, Victim Support, Citizens Advice, and Shelter.

6.2.5 Following the completion of evidence gathering a case shall be presented to the PLRWG with the recommendations of the Enforcement Officer. With the support of the PLRWG the case will then be submitted to the Procurator Fiscal.

6.2.6 The subject landlord has the right to appeal to the Sheriff against a refusal to register or a decision to remove them from the register. The subject landlord will be advised by the Enforcement Officer of the correct appeal process.

7. Potential Issues

7.1 Media Enquiries

7.1.1 Where a case has gained the attention of the media, any enquiries received from media sources should be directed to Corporate Communications and brought to the attention of Group Manager, Housing Strategy and Services, Cathie Fancy and Director of Social Work Andrew Lowe.

7.2 Malicious Complaints

7.2.1 On receiving a complaint, the presumption will always be that the complaint has been made in good faith and that the complainant genuinely believes that they are making a valid complaint. All complaints received will be investigated on this basis, however should an investigation reveal a complaint to be malicious; this will also be treated seriously. A complaint will not be regarded as malicious simply if it is considered to be unfounded, a deliberate attempt to mislead or dishonesty would require to be found. Where a complaint is found to be malicious, the person who is the subject of the complaint shall be advised to seek legal advice regarding the matter.

7.2.2 Care should also be taken in the instance of a complainant who has previously made a complaint that was found to be false. No assumption should be made that any subsequent complaint made is also false, and should be dealt with in the correct manner.

8. Registration Renewal Procedures
8.1 Renewal Reminders

8.1.1 Where a landlord’s registration is approaching expiry, a 1\textsuperscript{st} reminder letter is sent out 3 months in advance of the expiry date. This letter clearly states the date of expiry and explains that the registration must be renewed prior to this date. The letter goes on to explain the various methods for renewal and that failure to renew on time can result in additional fees being incurred of £110 and may result in enforcement action being taken. (See Appendix M)

8.1.2 Where a registration is not renewed following the issue of the above reminder letter, a 2\textsuperscript{nd} reminder letter is sent to the landlord approximately 3 – 4 weeks prior to the expiry date. This letter states the date that the previous reminder was sent and again explains the methods for renewing the registration. The letter also states "Failure to renew the application on time will result in an additional late application fee of £110 being incurred and may result in enforcement action being taken against you", and stresses the importance of renewing the registration prior to the expiry date. (See Appendix N)

8.2 Additional Fee

8.2.1 Where after the issue of the two reminder letters, a registration is not renewed and subsequently expires, the “Additional Fee” of £110.00 is added to the cost of the registration renewal in accordance with paragraph 8 of The Private Landlord Registration (Information & Fees) (Scotland) Amended Regulations 2008, (see Appendix P). The landlord is then sent another letter with a renewal application form which states the amount due and also that this amount includes the additional fee of £110.00.

8.2.2 Where a paper based application has been requested a few days prior to the expiry date a further 7 day period is then given before further sanctions are initiated by the enforcement officer, (see Appendix O). A 24 hour period will also be applied online.

8.2.3 If a landlord requests a paper application a few days after the expiry date the Additional Fee will be applied to that application. The Fee will also be applied to the online account.

8.3 Additional Sanctions – Rent Penalty Notice

8.3.1 Where after the further 7 day period as outlined above, the landlord has still not renewed their registration the enforcement officer will carry out enquiries and serve a Rent Penalty Notice for each property currently being let by the landlord as outlined fully in section 6.1 within.

9. Appendix

Appendix A: HST Referral Form
Appendix B: Complaint referred letter
Appendix C: Acknowledgement Letter
Appendix D: Final Response Letter
Appendix E: 1st Request Letter
Appendix F: 1st Reminder Letter
Appendix G: 2nd Reminder Letter
Appendix H: Rent Penalty Notice (RPN)
Appendix I: Landlord RPN Letter
Appendix J: Tenant RPN Letter
Appendix K: Rent Penalty Revocation Notice
Appendix L: Tenant Revocation Letter
Appendix M: 1st Renewal Reminder Letter
Appendix N: 2nd Renewal Reminder Letter
Appendix O: Expired Registration Letter

Appendix P: Private Landlord Registration (Information & Fees) (Scotland) Amended Regulations 2008
SUBMISSION FROM CIH SCOTLAND

1. CIH Scotland welcomes this opportunity to provide written evidence to the Local Government and Communities Committee on the Private Rented Housing (Scotland) Bill. CIH Scotland is broadly supportive of the content of the Bill and its drive to improve the quality and condition of management and property in the private rented sector (PRS). However, there are a number of areas that we believe require further development:

Registration of Private Landlords

2. Whilst CIH welcomes amendments to landlord registration, we feel that the following improvements still require to be made:

- **Expanding the fit and proper person test** – compliance with forthcoming tenancy deposit duties should also be included in the ‘fit and proper’ person test. If a landlord fails to comply with tenancy deposit duties, this should impact on their registration status or ability to be registered unless they comply. Likewise, unregistered landlords and agents should not be able to participate in a national tenancy deposit scheme; and where statutory overcrowding notices have been served, they should be taken into account.

- **Criminal record check** – CIH would like to emphasise that this should not be necessary for every application and should only be undertaken where there are serious concerns or on an adhoc basis to randomly check compliance.

- **Nominating unregistered agents** – CIH firmly supports the registration of all letting agents in Scotland. CIH is disappointed, given the legislation proposed in Patricia Ferguson’s Property Factors (Scotland) Bill, that similar legislation requiring registration has not been drafted for letting agents.

- **Offence to fail to notify local authorities about agents** – CIH would argue that there should also be some legislative responsibility for agents to notify local authorities when they are acting on behalf of landlords. To avoid confusion with this process letting agents should be required to register.

- **Additional information on register** – CIH supports the proposals but also thinks it would be beneficial to the public and tenants to know that:
  - A Rent Penalty Notice has been served and therefore the landlord cannot collect rent on a specific property
  - An Overcrowding Notice has been served on a specific property
  - A registered agent has been appointed for the property and therefore professional property management services are in place. The details of that registered agent(s) should be clearly identifiable on the website.

- **Increased fine to £50,000** – an increased fine would send a clear message that the cost of non compliance with registration (and, as in Part 2, with HMO licensing) will be high. However, the issue of limited enforcement and legal action being taken still remains.

- **Powers to ban a landlord for up to 5 years for failure to register** – this proposal is new and was not consulted on more widely. Whilst CIH sees
banning landlords for up to 5 years for failure to register as sending a very strong message, the implications and impact on landlords, tenants, residents and local authorities have not been fully debated.

3. Our major concern is that a ban would mean a landlord is banned from operating across the whole of Scotland – not just the area in which they are unregistered or have unregistered properties. This will have serious consequences for landlords and tenants, who could become homeless and could mean empty properties at a time of much needed supply. There are also a number of unanswered questions regarding the implications of a ban:
   o What would happen to the property(ies) should a landlord be banned?
   o How would a ban prevent a landlord from selling the property(ies) or passing ownership onto a family member or business partner etc and therefore problems or issues continue to be unaddressed?
   o If a landlord is banned, can the local authority appoint a registered letting agent to manage the property on the landlord’s behalf, the rent or a fee being paid to the agent and the tenancy therefore preserved?
   o The legislation does not make it clear, what would happen to the tenant nor how they would be consulted or informed of proceedings should a landlord be banned?
   o If an agent was appointed to manage the property, to preserve the tenancy, who receives the rental income? There is a risk that this will lead to mortgage default and repossession.
   o Would the local authority also have to ensure all the necessary works to, and maintenance of, that property are undertaken via the PRHP to ensure its fitness to let?

4. CIH feels a ban may not be the correct message to be sending out to the sector. The landlords that would qualify for a ban are unregistered anyway and are the very landlords, local authorities need to work closely with to improve quality of housing and tenancy management. We would also be concerned that a ban would mean issues with properties and tenancies would remain unaddressed.

5. As CIH is concerned about ensuring there is good quality and well managed supply in the PRS, we would recommend that a more positive approach is adopted. We would want to ensure any sort of ban would lead to remedial action, working with landlords and tenants, to ensure that the quality of stock and tenancy management improves. We would recommend clear criteria in the form of an action plan that landlords would be required to meet before being reconsidered for registration in these circumstances. We would also recommend landlords undertake training before they can be re-registered.

6. CIH is also mindful that there is a review of landlord registration being undertaken by the Scottish Government and the findings may suggest a need for further amendments to legislation.

Overcrowding in the Private Rented Sector
7. CIH welcomes the introduction of Overcrowding Statutory Notices. However, we are disappointed that the notice does not appear to explicitly specify the
maximum number of people that would be allowed to safely reside in a property (i.e. the universal application of section 144 of the Housing (Scotland) Act 1987). We feel that this would be essential for local authorities, landlords and tenants in order to enforce the notices. CIH would also argue that where letting agents are appointed, they must also be made aware that a notice has been served and must work to address/prevent overcrowding.

8. The legislation states that the overcrowding notice would cease to have effect if the landlord is no longer the owner of the property. CIH is concerned that ownership may change frequently but the overcrowding issues are likely to persist. CIH would recommend that overcrowding notices are registered with the land register to prevent this from being the case. Therefore, in the event of a change of ownership, the notice would still apply.

9. Where a landlord fails to comply with an overcrowding notice, this should have an impact on its registration status. However, it is also important to note that some tenants decide to overcrowd regardless of the landlord’s attempts to prevent this. CIH would urge that section 18 reads ‘local authorities will give the occupier and landlord of the house…..such information and advice as it considers appropriate …..’ In all of these circumstances it is important that the local authority works closely with tenants and landlords and associated agencies to prevent homelessness, provide housing options information and advice, and tackle financial inclusion. This would also include the provision of assistance to provide information in a variety of languages and formats where necessary.

Part 4: Miscellaneous

Tenant information packs

10. CIH Scotland welcomes the introduction of tenant information packs within the PRS. We see the pack as an opportunity to manage expectations and better inform landlords, agents and tenants of their rights and responsibilities. However, CIH would like this pack to state the maximum number of people legally allowed to occupy the property during the tenancy.

11. We would also like to ensure the pack is formatted in a way that is easily accessible and understood by all parties and does not overload tenants with information, nor is it prohibitive/costly for landlords to produce at the start of each tenancy. CIH would urge the government to make the much needed update to the Better Renting website to ensure it is a useful resource to all stakeholders in the PRS in Scotland.

Landlord application to the private rented housing panel (PRHP)

12. CIH welcomes the provision for the PRHP to assist landlords who are trying to meet the Repairing Standard but cannot access their properties to do so. However, CIH is concerned that the cost of the proposals - whereby panel members can opt to accompany the landlord to the property to gain access - could be high, given the vast geography of Scotland and the panel member costs. As good practice, CIH envisages the panel working closely with the landlord’s local authority to assist in making this process more cost effective and less resource intensive.
CIH’s Additional Calls

13. CIH would like to highlight that we support a number of additional recommendations that have not been included in the current Bill and urge the Committee to give these further consideration:

- Registration of letting agents

- Expansion of the role of the Scottish Housing Regulator to regulate local authorities’ duties in relation to landlord registration and overcrowding in the PRS. We feel this is key to ensuring enforcement of landlord registration and local political priority for the PRS

- Creation of a Scottish Housing Tribunal to oversee all private sector housing disputes and complaints, for example to assist in tenancy deposit disputes, homelessness disputes and failure to comply with landlord registration

- Investigation into whether there is a need for a Letting Code (as outlined in Part 8 of the Housing (Scotland) Act 2006) in the PRS to define management standards, as per the National Core Standards for landlord accreditation.

14. CIH Scotland continues to support these 4 proposals and hopes, as indicated by the Housing Minister, that a second Private Rented Housing Bill will follow next year to enable appropriate time for research, consultation and implementation.

The Chartered Institute of Housing

15. The Chartered Institute of Housing (CIH) is the professional body for people involved in housing and communities. We are a registered charity and not-for-profit organisation. We have a diverse and growing membership of over 22,000 people worldwide, with over 2,800 in Scotland. Our members work in both the public and private sectors. We exist to maximise the contribution that housing professionals make to the wellbeing of communities. We also represent the interests of our members in the development of strategic and national housing policy and aim to be the first point of contact for anyone involved or interested in housing.

Natalie Sutherland
Policy and Practice Officer
Chartered Institute of Housing Scotland

10 November 2010
About Consumer Focus Scotland

1. Consumer Focus Scotland started work on 1 October 2008. Consumer Focus Scotland was formed through the merger of three organisations – the Scottish Consumer Council, energywatch Scotland, and Postwatch Scotland.

2. Consumer Focus Scotland works to secure a fair deal for consumers in both private markets and public services, by promoting fairer markets, greater value for money, and improved customer service. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors’ clients, public transport users, or shoppers in a supermarket.

3. We have a commitment to work on behalf of vulnerable consumers, particularly in the energy and post sectors, and a duty to work on issues of sustainable development.

4. We have a long history of involvement in housing policy development. The Scottish Consumer Council (SCC) was a member of the Housing Improvement Task Force, and chaired the subgroup ‘Landlords renting property in the private sector (and the interests of tenants who occupy these properties)’. The SCC was also represented on the Single Survey Steering group and then the Home Report Implementation Group. More recently Consumer Focus Scotland has been represented on a number of Scottish Government working groups. We are currently members of the Scottish Private Rented Sector Strategy Group, the Ministerial Sounding Board on the Housing (Scotland) Bill, and the Tenancy Deposit Working Group. We are also represented on the Landlord Accreditation Scotland Advisory Group and the Housing Policy Advisory Group.

General Comments

5. Consumer Focus Scotland welcomes the opportunity to provide written evidence on the Private Rented Housing (Scotland) Bill to the Local Government and Communities Committee.

6. We are supportive of the general principles of the Bill which are to “improve standards of service for consumers in private rented housing and enable continued sustainable growth in the sector”. We are pleased that the Bill includes a number of proposals to improve communication between tenants and landlords and to enhance the information provided to tenants at different stages of their tenancy. In particular, we believe that giving landlords a statutory requirement to provide tenants with a standard information pack at the beginning of a tenancy, thus giving tenants essential information about a wide range of important issues, will bring significant benefits for consumers in this sector.

7. The majority of provisions set out in the Bill are designed to improve the functioning of the private rented sector (PRS) in Scotland as it currently operates, rather than signalling a comprehensive reform of the sector. We are supportive of many of the measures set out in the Bill, and believe that they will bring some
benefits for consumers. However, we realise that further, longer-term work will be required to help the private rented sector to continue to develop and grow for the benefit of both tenants and landlords in the future. Consumer Focus Scotland is a member of the Scottish Government’s Private Rented Sector Strategy Group which has been asked by Scottish Ministers to look at these longer-term issues, and we are keen to work with other members of this group, and other stakeholders, to help take forward this work. Specifically, issues that we believe will need to be considered in the longer-term include:

- investment in the sector and the affordability of privately rented properties for consumers on low incomes;
- the overall strategy for regulation in the sector to ensure that it provides the protection that tenants require;
- the mechanisms which exist to enable tenants to get access to redress if they experience problems when renting a property;
- the information which is provided to tenants about their rights and responsibilities in the PRS; and
- the opportunities available to private tenants to get involved in the design and development of the sector.

**Registration of private landlords**

**Tenant awareness**

8. The Bill provides that landlord registration numbers must be included in advertisements for properties to let, and information on landlords who have been found not ‘fit and proper’ or whose registration application is still pending should be included in the public register.

9. Consumer Focus Scotland supports both of these proposals. We have been concerned for some time that the web-based register of landlords does not provide enough information for current or future tenants about the registration status of their landlord. Including information on individuals who have been declared ‘not fit and proper’ to be a landlord, or who have applied to be a landlord but whose application is still pending, on the public register is therefore sensible.

10. Meanwhile, the Scottish Government’s Review of the PRS in 2009 found that only 40% of tenants had heard of the landlord registration system. Therefore we believe that including landlord registration numbers on advertisements for properties to let will help to enhance tenants’ awareness of the landlord registration scheme and will act as another spur to landlords to register.

**Tightening registration requirements**

11. Local authorities have to date experienced a number of challenges in using their powers to refuse applications for registration from landlords who they have
concerns about, or to de-register landlords\(^1\). The Bill attempts to address this situation by tightening up the registration system. It seeks to do this in two ways:

- By expanding the range of offences that local authorities must take into account when determining whether someone is ‘fit and proper’ to be a landlord, to include firearms offences and sexual offences.
- By specifying a number of particular issues that local authorities can also consider when determining whether a landlord should be deemed ‘fit and proper’.

12. We agree that it would be appropriate to require landlords to declare any firearms offences or sexual offences when applying for registration. This would provide greater clarity for local authorities about whether they can refuse registration or de-register a landlord in particular cases, and would offer greater protection for tenants.

13. The second set of proposals, which set out particular issues that local authorities should consider when determining whether someone is suitable to be a landlord or not, represent an important change in the nature of the landlord registration system. At present the system assesses whether or not someone is fit to be a landlord based on any previous offences they may have committed. The proposals set out in the Bill would widen this to take account of a range of issues which are more closely related to the landlord’s management of the property rather than their personal characteristics. We are sympathetic to this new approach, as it is likely that a regulatory system which focuses on the quality of service provided by landlords would bring improved outcomes for tenants.

14. However, we do have some concerns about certain aspects of the proposals. The Bill provides for local authorities to take account of anti-social behaviour on the part of the tenant as part of the process for determining whether a landlord is ‘fit and proper’. While we recognise that part of the original rationale for the landlord registration system was to help tackle problems of anti-social behaviour, we believe that local authorities will need careful guidance in applying this particular provision – in order to ensure that the registration system achieves the correct balance between addressing issues of anti-social behaviour and protecting tenants.

15. In addition, we know that many local authorities have limited capacity and resources to enforce existing landlord registration legislation, and this has contributed to the low number of landlords who have so far been de-registered or refused registration. It is therefore unclear to what extent local authorities will be able to enforce the new registration regulations which are set out in the Bill effectively, without additional resources. Finally, we are aware that the Scottish Government is currently undertaking a review of the landlord registration system and it may be that this review identifies further changes that are required to the system beyond those which are proposed in the Bill. Clarity is needed about the

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\(^1\) As of May 2009 only 10 landlords in Scotland had been refused registration and 1 had their registration revoked
extent to which it will be possible to make additional changes to the system based on the outcome of this review.

**Tougher penalties for landlords**

16. The Bill includes provisions aimed at tackling the behaviour of some of the worst offending, or ‘rogue’, landlords operating in the PRS in Scotland. One of the ways in which it seeks to do this is to increase the penalties available to the courts in cases where there has been a serious breach of the landlord registration requirements. The Bill proposes to increase the maximum fine that the court can impose for acting as an unregistered landlord to £50,000 and gives courts a new power to ban an individual found guilty of acting as an unregistered landlord from operating as a landlord for up to five years.

17. We are sympathetic to the policy goals behind these proposals and we agree that action is needed to tackle the problem of ‘rogue landlords’ in the PRS, and solve the problems that they can cause both for tenants and for landlords who provide a good service to their customers. However, while we agree that increasing the penalties which can be applied to those who do not comply with landlord registration legislation may act as a deterrent to some landlords who may have otherwise failed to adhere to these regulations, in general we believe that these changes will only have a limited impact. We do not believe that the problems with ‘rogue landlords’ in the PRS are due solely to the existing penalties for non-compliance being too lenient. These problems exist for many different reasons:

- as noted above, local authorities often have limited resources and capacity to enforce regulations to their full effect;

- the regulatory landscape in the PRS is complex and it can be difficult for tenants to be aware of the range of rights and protections that they have, and how these can be upheld;

- the civil court system is often perceived to be slow, inaccessible and expensive for dealing with disputes that may arise between tenants, landlords, and local authorities\(^2\), while the Scottish Government’s review of the sector found that only 10% of tenants had heard of the Private Rented Housing Panel (PRHP).

18. Therefore, while increasing the penalties that can be applied to those who fail to comply with the regulations is likely to have some impact, it will not tackle the problem in its entirety as there are a number of broader issues that also need to be addressed.

**Joining up regulation and gathering information**

19. We believe that as part of the longer-term approach to further develop and improve the PRS in Scotland, work will be required to improve links between the various mechanisms that are currently used to regulate the sector. The Bill requires the PRHP to pass the details of landlords who they deal with to the relevant local authority so that registration details can be checked. This

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\(^2\) Scottish Civil Courts Review, 2009
provision would enhance the links between the PRHP and landlord registration, which we welcome.

20. The Bill gives local authorities more powers to obtain information about a property from those associated with it, including the power to require letting agents to provide information on the properties they manage. We believe there would be benefits for tenants if local authorities were able to gather more information from letting agents about the properties that they manage, and the landlords who they are acting for. This would make it more difficult for landlords to avoid the requirements of the landlord registration system. We have real concerns, however, that the power may be used to compel tenants to provide this information. Tenants may be reluctant to provide information if, for example, they fear this may lead to them being evicted from their home. We believe that tenants must be given appropriate advice and support if they are asked for this information, and we do not believe they should be pursued or deemed to have committed an offence if they fail to provide it.

Overcrowding
21. The Bill gives powers to local authorities to serve a notice on a property which is overcrowded, where the local authority believes that this overcrowding is having an adverse impact on the health and well-being of those living in the property, or on the local area more generally. Living in properties which are overcrowded can clearly have a negative impact on tenants’ health and on their general standard of living. Therefore we are supportive of the aims behind these provisions if this enables tenants to move into better, less crowded accommodation which is more suited to their needs.

22. However, being served with an overcrowding notice, and being asked to leave a property, would clearly place tenants in a distressing and difficult situation. At present the Bill only requires local authorities to provide tenants in this position with “such information and advice as it considers appropriate”. We are concerned that this does not go far enough, and does not guarantee that tenants will be given the support they need to find alternative accommodation. Further, we would suggest that the Bill should include provisions to the effect that no tenant can be found to be intentionally homeless if they have been required to leave their home as a result of an overcrowding notice.

23. We also have some concerns about the process that would be used to issue and implement an overcrowding notice. Given the impact that such a notice would have on the lives of tenants who are affected, it is essential that the process is as fair, transparent and robust as possible. In particular, it is essential that if tenants are to be subject to an overcrowding notice then they clearly understand the number of residents that are permitted in a property in the first place. Therefore there must be a clear process for providing this information to tenants at the beginning of a tenancy. In addition, we are not clear how the enforcement of an overcrowding notice would work in practice – for example, what powers would landlords have to compel tenants to leave a property in order to reduce the number of residents; what course of action would be followed if tenants were reluctant to do so; and what protection would be provided to tenants in these situations? Given the impact that an overcrowding notice could have on the lives
of tenants affected by it, we believe that some form of dispute resolution mechanism should be available to tenants and landlords who are in this position.

The tenancy regime

Premiums

24. The Bill clarifies that all charges related to the establishment, renewal or continuation of a tenancy are illegal, unless explicitly specified otherwise in regulations. We support this proposal which we believe will bring more clarity and fairness to the process of renting a property. If certain charges are to be permitted by regulations, it is essential that these regulations also make clear that tenants must be informed about any charges before these are incurred, so that they have the option of going elsewhere if they are unhappy about the fees they are being asked to pay.

Tenant information pack

25. The Bill requires landlords to provide tenants with a standard tenancy information pack at the start of a tenancy. We strongly support this provision.

26. The Scottish Government Review of the PRS, published in 2009, found that tenants often have a very low level of knowledge and understanding of their rights and responsibilities as a tenant. We believe that the provisions to provide tenants with a standard information pack would be a useful and important first step in addressing this issue. A standard pack would ensure that all tenants across Scotland receive the same, consistent, reliable information from their landlord about their rights and responsibilities when renting a property, and would make it easier and clearer for landlords to know what information they must provide to their tenant at the beginning of a tenancy.

27. We believe that the pack is likely to be comprised of a mix of information that landlords are already required to provide to tenants, and new information which is not currently provided. Examples of information that could be included within the information pack might include: the tenancy agreement; an inventory; information about the landlord registration scheme and HMO licensing (if relevant); the Energy Performance Certificate for the property; the name and contact details of the existing gas and electricity suppliers for the property; and information about tenants’ responsibilities, including paying rent, paying Council Tax (if applicable), keeping the property in a good condition, the number of occupants permitted in the property, and obligations under anti-social behaviour legislation.

28. However, it is essential that the standard information pack is not simply a conglomeration of all the different documents that are currently provided to tenants when they rent a property from a private landlord. A new approach is needed, to ensure that tenants are given the information that they require in a format that is clear, straightforward and easy to digest. Work will be required to produce a standard information pack that meets these requirements, to distil down the information that tenants need and present it in a way that tenants will be able to use and understand, rather than simply including a host of formal documents which they are unlikely to read.
29. To ensure that all tenants across Scotland receive the same consistent and reliable information from their landlord about their tenancy, we believe that the Scottish Government should take a lead role in producing a standard template for the information pack that landlords can use and provide to their tenants.

Douglas White
Senior Policy Advocate
Consumer Focus Scotland

11 November 2010
SUBMISSION FROM SCOTTISH COUNCIL FOR SINGLE HOMELESS

1. The Scottish Council for Single Homeless (SCSH) is the national membership body for organisations and individuals tackling homelessness in Scotland. This evidence has been produced after consultation with a reference group of our stakeholders on private rented sector matters. SCSH is represented on the Private Rented Sector Strategy Group chaired by Professor Douglas Robertson. We note that the Committee was interested in hearing from members of that group.

General Comments

2. SCSH believes that legislation on the private rented sector was overdue. Whilst we welcome the main provisions in the Bill, we share the concerns of many in the Group that the focus has changed. Members of the Group are all committed to developing an environment which encourages a thriving good quality private rented sector with well informed tenants and landlords. We recognise that there are some appalling landlords. However, the vast majority operate their business without any major problems. We are united in wishing to drive ‘rogue’ landlords out of the system, but believe the overwhelming emphasis on rogue landlords undermines the good work and reputation of the majority of landlords.

3. SCSH views the current legislation as the first stage in improving the private rented sector. We believe that the provisions improve the current system. However there are significant issues which we believe are likely to require further legislation in future which will have more fundamental effects on the sector (for example relating to streamlining the regulatory regime in the private rented sector and ensuring that the tenancy regime is appropriate for a sector which is expected to house a greater proportion of vulnerable people in the future.)

4. We also have a general concern that the level of criminality of a very few landlords means that the changes proposed in the Bill on their own are unlikely to tackle that particular group of landlords effectively. The most extreme elements are likely to need to be addressed in a wider strategy to tackle organised crime. However, the proposals are likely to have a beneficial effect on the less extreme landlords who are acting irresponsibly.

5. In general the current Bill sorts out a number of specific issues which need attention. However the Strategy Group intends to look more fundamentally at the future of the private rented sector and SCSH would not wish the current Bill to preclude more significant reforms at a later date.

Specific Areas of Concern

Fit and proper person

6. SCSH is generally supportive of the proposals to extend the list of offences to be taken into consideration in relation to the ‘fit and proper person’ test. We have some concerns about the reference to ‘anti social behaviour’ either by the landlord or relating to tenants in the property.
7. In our view, in relation to an anti social behaviour order on the landlord, only those issues which could be related to their activities as a landlord should be taken into consideration. ASBOs may be granted in relation to a wide range of activities.

8. In relation to an ASBO concerning behaviour of tenants in the property, it is important to recognise that it is hoped to make more use of the private rented sector in housing more vulnerable individuals, who could include people against whom ASBOs have been granted. This element should not be able to be used to restrict the use of the private rented sector from housing a broad range of households or from assisting in meeting the objectives of housing people with a variety of needs.

9. Whilst we acknowledge the intention of ensuring that landlords who have a history of deliberately obstructing common repairs or not paying factors are brought to account, we are aware that common repairs and factoring can be quite complex matters, and there may be legitimate reasons for withholding payment in some instances.

10. It is therefore important in all of these ‘fit and proper’ person tests that the issues are seen in context. It is also important that there is some means of ensuring that a local authority is not able to use the powers, for example, to prevent housing of ex offenders in a particular area, or people recovering from addictions.

**Overcrowding Orders**

11. SCSH recognises the unacceptable situation which this provision seeks to address. Our particular concerns are that the full implications of their use have not been fully explored. SCSH wishes to ensure that if a local authority uses such an order, it will have duties towards those who are displaced by it and that any household removed from premises is removed legally.

12. The main areas of concern we have are about how the people displaced by an overcrowding order will be treated under related legislation. Given that our homelessness framework in Scotland seeks to provide a safety net for all, SCSH believes it is important that the legislation makes clear that a household displaced by such an order could not be found ‘intentionally homeless’ simply because they had been in that situation.

13. We are aware that some households affected by the legislation may not be eligible for support under the homelessness legislation (for example depending upon their migration status). We believe it is essential to ensure that no-one affected by such an order is left homeless or destitute and that, even in a situation where the homelessness legislation does not apply, the local authority should have a duty to ensure the re-housing of any household affected by an overcrowding order. We recognise that some households may be eligible for assistance under Children’s legislation or Social Work legislation, but in our view it is essential to ensure that no household could slip through the safety net.

14. More fundamentally we are unsure how a landlord could legally evict a tenant if he was subject to such an order. If the tenancy is a Short Assured Tenancy
appropriate notice would need to be given. However, many tenancies are likely not to have been formally created as SATs, in which case they are likely by law to be Assured Tenancies, where there are only limited grounds for legal eviction. The grounds for repossession specified in the Housing (Scotland) Act 1988 Schedule 5 do not include any which refer to overcrowding. SCSH is concerned that there could be an anomaly where a landlord would be ordered to comply with the overcrowding order but could not do so without performing an illegal eviction.

Pre tenancy charges
15. SCSH is very supportive of the proposal to define more clearly which pre tenancy charges are permissible. It has been a very positive feature of our legislation that the charging of ‘key money’ or ‘premiums’ has been against the law for decades. However, a number of different fees have been introduced by agencies over the years, some of which are justifiable and others of which are at best questionable. It is therefore a welcome development to define much more clearly those charges which are permissible, and for all others to remain against the law.

Tenant Information Packs
16. SCSH supports the provision of better information to tenants. We recognise that many landlords already provide good quality information and tenants’ handbooks. The level of information which is statutorily required should not be too onerous, should be manageable for tenants and not too expensive or bureaucratic for landlords to provide. We believe that sanctions against landlords who do not provide the information should be proportionate.

Robert Aldridge
Chief Executive
SCSH

10 November 2010
Summary

- Shelter is broadly supportive of the changes that are proposed to the Landlord Registration Scheme which we hope will provide greater clarity to local authorities. However, it is expected that further refinements will emerge from the Scottish Government’s review of Landlord Registration which has only just started.
- Shelter supports the measures put forward to HMO licensing in principle. However we do not agree that the planning system should be used further to control HMOs. In our view this will make management and conditions worse, not better.
- Shelter does not support the measures to deal with overcrowding which we think are hastily-conceived and likely to simply displace the problem, at best, or result in homelessness, at worst. We would like to see the issue of overcrowding examined more comprehensively, with full consideration of the impact on tenants of any proposed new powers.
- Shelter is happy with the measures made relating to the tenancy regime in particular the requirement for a pre-tenancy information pack and clarification of the law around charges for setting up a tenancy.

Introduction

1. The private rented sector (PRS) already plays an important role in meeting housing need in Scotland, but it could, and must, do more. As we get closer to meeting the 2012 commitment, we must ensure that all housing sectors in Scotland help people find and keep a home. Local authorities will be increasingly looking to the PRS to find solutions for people who are homeless. We must also ensure that private landlords do more to prevent homelessness.

2. Shelter has campaigned for improved standards of management, more informed and empowered consumers, and better regulation in the PRS. As a member of the Scottish Government’s PRS Strategy Group, Shelter has been involved in developing proposals relating to the PRS which were submitted to the Minister as legislative recommendations in January 2010. In general, therefore, we support the measures contained in this Bill in so far as they contribute to developing more effective regulation of the PRS, more competent landlords, and better informed tenants. However we have some particular concerns about the impact on tenants of measures to deal with overcrowding.

3. Given the timescales involved in developing this Bill, we appreciate that the measures are relatively modest in scope. They seek to bring about incremental changes to the existing policy arrangements for the PRS, rather than comprehensive reform of the sector. Shelter sees these legislative measures as a ‘halfway house’, the first phase in a longer process that we believe will lead to more strategic reform of the PRS. The PRS Strategy Group is

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continuing to meet to consider longer term reform to enable the PRS to play a more significant role in meeting housing need. We are pleased to note the Minister’s recognition that the work of the PRS Strategy Group may result in further measures to improve the sector, including further legislation. Key changes that Shelter would like to see in the longer term include:

- Reform of the tenancy regime to help tenants view private renting as a longer term option, in the absence of social housing and in light of the risks and costs associated with home-ownership.
- Improvements in access to justice for private tenants.
- Strategic review of the systems for regulation of private landlords.
- Ways to encourage more investment in the PRS.
- A new approach to providing tenants with information and advice to ensure that they become better-informed consumers by knowing about their rights and responsibilities and how to get help when they need it.

Part 1 – Landlord Registration

4. Despite operating for nearly four years in Scotland, we have not yet seen widespread and consistent use of the powers under landlord registration to prevent the worst landlords from letting property. We hope the measures in this Bill will provide greater clarity to local authorities and go some way towards addressing some of the barriers that local authorities argue are preventing them refusing registration on the grounds that a landlord is not fit and proper to let. The Scottish Government has just begun a full review of landlord registration. It is a legitimate question as to whether these proposals, coming ahead of a comprehensive review, are being brought forward at the right time. The review may identify additional or better ways of enabling and encouraging local authorities to enforce their powers under the scheme. Nevertheless, Shelter supports the measures in this Bill as far as they go, though they will depend a great deal upon local authorities having the resources necessary to enforce them.

5. However, it is important to recognise the scale of the task in seeking to regulate 100,000 landlords. It is wise not to put all one’s eggs in the basket of regulation which, inevitably, will have limits faced with such numbers and diversity. This is why we believe that the flip-side of better regulation is empowered consumers. Both informed consumers and effective regulation are essential to a well functioning PRS.

6. The Government has indicated that the full review of landlord registration will go beyond looking at implementation of the scheme and consider whether it is meeting its objectives “to reassure tenants and remove the worst landlords from the market and encourage other landlords to improve standards in order to be registered, and stay registered”

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will be able to consider its conclusions as part of its ongoing work, and look more strategically at whether landlord registration, in its current form, is the best way of regulating the PRS in order to drive out rogue landlords and protect tenants. In our view the “genie” of regulation is out of the bottle and we do not agree with suggestions that registration should be scrapped. However, there are reasonable questions as to how registration in the future might dovetail with other forms of regulation such as HMO licensing and, indeed, how regulation as a whole can respond to new challenges such as improving energy efficiency and reducing carbon emissions.

**Part 2 – Licensing of houses in multiple occupation**

7. The licensing of houses in multiple occupation (HMOs) plays an important role in ensuring a high standard of rented accommodation and protecting tenants in this part of the private rented sector. In general terms, we support the measures set out in the Bill to bolster the ability of local authorities to enforce the current licensing regime, however, we have some misgivings about creating a link between the licensing and planning regimes in relation to HMOs.

8. Well managed and well regulated HMO accommodation plays a vital role in meeting housing needs in areas where there is a high demand for housing. Shelter recognises that in some communities HMOs can cause problems, but these problems often stem from poor management of an HMO rather than from planning implications – planning control should not be used to plug the gap caused by lack of proper enforcement of HMO licensing or anti-social behaviour powers. Indeed, it is difficult to see how being an HMO, per se, is a legitimate concern of the planning system.

9. We do not support the use of planning policies to restrict the number of HMOs – the rise in numbers of HMO property, particularly in city centres, is a symptom of increased demand for affordable housing in a restricted supply market. Where property prices are high and new development is limited, flat sharing represents an efficient use of existing housing stock to meet increased demand. For many people, entering the job market at a low wage, their only option is to share. With the changes recently announced in the CSR – to extend the shared room rate in housing benefit from under-25 year-olds to all under-35 year-olds – then, after 2012, many thousands more single people will be reliant on shared accommodation to meet their housing needs in Scotland. In that context, seeking to impose caps on shared flats is ill-conceived and risks greater number of rented properties seeking to evade licensing.

**Part 3 – Overcrowding**

10. Shelter considers that it is important for the Scottish Government and local authorities to tackle and reduce overcrowding given the negative consequences for the households concerned and for the wider neighbourhoods in which they live. Shelter believes that overcrowding is essentially a symptom of housing shortage and social and economic inequality. Attempts to tackle this
problem must avoid stigmatising vulnerable households by blaming the victims and making their living conditions worse.

11. We recognise the argument that overcrowding is a particular problem in some parts of the PRS, particularly in areas where migrants have sought to live and where low incomes coupled with high rents or house values can often lead to high levels of occupation. The data on overcrowding rates are not very robust; however, indications are that overcrowding is more prevalent in the PRS than in other sectors, with around 7 per cent of PRS homes overcrowded compared to 4 per cent in the social rented sector and only 2 per cent of owner occupied homes\(^3\).

12. The Bill sets out some very specific measures to tackle overcrowding in private rented housing in Scotland. We understand that this is to respond to problems in parts of Glasgow and in general, we do not believe that sufficient thought has been given to the full consequences of these measures. Legislating for powers to crack down on overcrowded flats may simply displace overcrowding, or lead to homelessness. These discretionary measures do not replace the need for a more comprehensive look at the problem of overcrowding in Scotland. This might involve a review of the standards for overcrowding as set out in Part VII of the Housing (Scotland) Act 1987 as well as research that looks at the nature and causes of overcrowding in the private rented sector in Scotland.

13. Our concerns about the proposals are as follows:

- It confers powers on local authorities to take action on landlords or properties with little thought as to what will happen to tenants as a consequence. The only provision is that the local authority may give the occupants information and advice.
- While an Overcrowding Statutory Notice cannot override statutory rights of tenants – in other words a landlord, by law, cannot use the Notice as an excuse to evict a tenant prematurely – we already know that landlords at the bottom end of the sector pay little heed to the letter of the law so summary or unlawful eviction is likely to increase. At best, the tenancy will be left to run to the end of its contractual period and the tenant then evicted.
- The result will be increased homelessness or simply moving the problem from one property to another.
- While official Code of Guidance on Homelessness makes clear that it is possible for households who are overcrowded to apply to local authorities as homeless there are a number of caveats to this:
  - Such applications can only be made if the health of the occupants is at danger (admittedly, this is likely to be the case where Overcrowding Notices are issued).

\(^3\) Scottish House Condition Survey 2008
- The options available to households who apply as homeless from being overcrowded may not bear any resemblance to the areas in which they want to live.
- To the extent that overcrowding is an issue linked to recent migration of people from central and eastern Europe, it is important to recognise that their entitlements to assistance under homelessness legislation are complex and contested.

14. Put simply, we do not see how a power to serve an Overcrowding Statutory Notice will do anything to address the underlying reasons why people live in such crowded conditions. At best, the power will be hardly used and, at worst, they will shift people around and cause homelessness.

15. We would urge the Committee to do two things
   - Say in the stage 1 report that the Committee is not satisfied that the Scottish Government has made the case for or put forward credible proposals for reform.
   - Recognising that overcrowding is a problem, request that Scottish Government comes back with fuller evidence on
     - The scale, nature and distribution of overcrowding
     - The reasons why people live in overcrowded conditions
     - The range of policy options that would help to address it – in all sectors.

16. If the Committee is minded to back the proposals in the Bill, we suggest that, at a very minimum, it is strengthened by giving local authorities:
   - A duty (not just a power) to provide occupants with advice and assistance if they are affected by a Notice.
   - A duty to rehouse a household or persons which lose accommodation as a result of a Notice, such rehousing to take account of any reasonable preference to live in a particular locality.

Part 4 – Tenancy regime
Pre-tenancy information pack
17. Shelter welcomes the introduction of a pre-tenancy information pack. The Scottish Government surveyed tenants as part of the Review of the Private Rented Sector published in 2009 and found a widespread lack of knowledge about rights and responsibilities. The pre-tenancy information pack would be a way of addressing this knowledge gap and promoting consumer awareness among tenants.

18. We also consider that it would support recent measures to regulate and improve standards in the PRS, such as the right of appeal to the Private Rented Housing Panel over repairs and the role that local authorities have in dealing with poor management standards. As well as raising awareness among

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4 [http://www.scotland.gov.uk/Publications/2009/03/23153402/0](http://www.scotland.gov.uk/Publications/2009/03/23153402/0)
tenants, the pack also offers the opportunity to promote good practice amongst landlords.

19. It should be a basic requirement of a pre-tenancy information pack that it is presented in a way that is accessible and straightforward. It is essential that tenants read and understand the pack. It should reflect the ethos of the Home Report and perhaps reflect the Model Scottish Secure Tenancy which contains a summary of core information as well as the full contract. As such, we think that all mandatory documents and information that a landlord or agent should provide to a tenant should be standard in a pack, and presented in a clear and distilled format. This information could include the landlord’s registration number or HMO licence, a simplified AT5, gas safety check certificate, a Repairing Standard statement and Energy Performance Certificate. This information should be at the core of a pack. However, we would welcome the opportunity to be involved in developing any additional discretionary contents further through subsequent discussions.

Pre-tenancy charges – payment of premiums to agents and landlords

20. We strongly support the move to make all pre-tenancy charges to prospective tenants illegal. This measure would clarify the existing situation which tenants, landlords and agents alike find confusing. In 2008 Shelter undertook a ‘mystery shopping’ exercise in which we contacted 23 letting agents around Scotland. This research showed that 18 out of 23 agents made some form of charge to tenants, often in the form of a standard ‘administration’ charge.

21. For tenants on low incomes, up-front charges can be prohibitive to entering a tenancy in the PRS. During the discussions that led to the Housing (Scotland) Act 1988 the rules around illegal premium were originally omitted and were put into the legislation as an amendment. The Government at the time accepted that pre-tenancy charges would affect those on lower incomes disproportionately. Consideration of charges that could be exempted from the prohibition should now be assessed in terms of how they would conflict with the Scottish Government policy to open up the use of the PRS to people on low incomes, including people who are homeless.

22. To complement this area of work Shelter has raised with the Scottish Government the possibility of immediate improvements to the availability of information to tenants.

Shelter Scotland

11 November 2010
The Convener: Under agenda item 2, we will take evidence on the Private Rented Housing (Scotland) Bill. I welcome to the committee Douglas White, a senior policy advocate with Consumer Focus Scotland; Rosemary Brotchie, a policy officer with Shelter Scotland; Natalie Sutherland, a policy and practice officer with the Chartered Institute of Housing Scotland; and Robert Aldridge, the chief executive of the Scottish Council for Single Homeless.

As was previously agreed, due to time, we will move straight to questions rather than hearing opening statements.

Mary Mulligan (Linlithgow) (Lab): I apologise to our witnesses for the fact that I might have to leave the meeting at some point this morning.

Part 1 of the bill deals with private landlord registration. What have been the advantages, if any, of having a registration scheme?

Douglas White (Consumer Focus Scotland): We have flagged up a number of problems with the registration scheme. I understand that you heard a bit about them last week from local authorities and landlords, but we can perhaps speak more about them today. There are difficulties in terms of tenants' awareness of the scheme and in terms of local authorities' capacity to enforce the regulations as effectively as possible, and we want improvements to be made in that regard.

Overall, however, the scheme has brought some benefits to tenants. It has clearly given local authorities a greater understanding of the sector in their area and has given them an opportunity to engage with the sector in a way that they previously have not done, which has helped them to identify which landlords in the area they need to follow up and take action against. I believe that, last week, a representative of Scottish Borders Council told you about work that it has undertaken to bring unregistered landlords into the system and to improve the service that those landlords offer tenants. That is obviously beneficial, and we encourage all local authorities to undertake that work.

Rosemary Brotchie (Shelter Scotland): I agree. Landlord registration has been operating for nearly four years in Scotland, but there has not yet been widespread and consistent use of its powers to stop the worst landlords letting property.
It is important to recognise the scale of the task. We are trying to register and regulate more than 100,000 landlords. It is important that there is registration, and I accept that there is the potential to do more with the scheme, but we should not put all our eggs in one basket. We should be looking at the other side of the issue and trying to ensure that consumers are better informed and more empowered so that they can contribute to the regulation of the sector.

Mary Mulligan: The bill contains some proposed changes. Are they sufficient or do they go too far? Are there other changes that you would like to see?

Rosemary Brotchie: We all agree that the measures in the bill go only so far. They were put together quite quickly to respond to concerns that came out of the review of landlord registration. We are supportive of the proposals, as far as they go. However, the Government is undertaking a full review of landlord registration, and we want it to take a much broader and deeper look at the objectives of registration, at whether the system is meeting those objectives, at whether registration can reassure tenants that they are letting from a responsible landlord who is managing to a high standard, and at the ability to remove the worst landlords from the market and improve standards. We would like there to be a much more thorough examination of the objectives of landlord registration. There is potential for further reform in the future to streamline or target landlord registration more effectively.

Mary Mulligan: Did you say that a review of landlord registration is being done?

Rosemary Brotchie: Yes. The Government has commissioned research into landlord registration.

Mary Mulligan: That is helpful. Thank you.

Robert Aldridge (Scottish Council for Single Homeless): Yes; that is part of what I was going to say. We are expecting a detailed report on landlord registration in the new year. The elements in the bill are important steps forward in landlord registration, and we do not object to any of them. They will make an improvement and a difference. However, the Scottish private rented sector strategy group, of which we are all members, wants to look in a lot more detail and more thoroughly at the range of regulation of the private rented sector, because a range of elements could be streamlined in one way or another, whether it be houses in multiple occupation licensing, landlord registration or landlord accreditation. A range of different issues has emerged over the years, and it is time that we took a step back and took a sensible, long-term view.

Natalie Sutherland (Chartered Institute of Housing Scotland): The CIH echoes the views of the rest of the panel. One of our main concerns is the inconsistency in enforcement and implementation across Scotland. We absolutely believe in the benefits of landlord registration, and in improving it to ensure that we have a high-quality private rented sector.

In our evidence, we have made extra calls about how we would like the situation to be progressed in future. One of the big issues is about enforcing the existing legislation and ensuring that there is the necessary evidence to take cases to court. The court system is slow, and there is a lack of specialisation in such cases. We would like those issues to be considered in more detail. We hope that the private rented sector strategy group will do that.

There is also the landlord registration review. Wearing a previous hat in a previous life, I was involved in the first review, and at that time no one had enforced anything. The powers were relatively new, and we were still trying to get people registered. I am interested to see how the powers are being used. Are there still barriers to serving penalty notices? I am interested to see the outcome of the review, but it is a shame that it has come now and not before the bill was introduced. The timing is unfortunate.

Douglas White: I echo most of my colleagues’ sentiments. The bill makes worthwhile improvements to the current landlord registration system. There is debate and discussion to be had around whether more fundamental reforms could be made, not just to landlord registration but to the whole regulatory landscape of the private rented sector, so that tenants get the protection and support that they need, and can understand how the regulatory system operates and can engage with it effectively. It should not place too great a burden on landlords, and it should be enforceable in a clear and straightforward way with the available resources. There is a discussion to be had around those issues, and I hope it will be ongoing. In the meantime, the bill will change the existing system, and that is helpful.

Mary Mulligan: That is useful, and it has kind of answered my question about other measures.

I have a quick question about enforcement, which I think you all mentioned. I am concerned about how we will encourage enforcement, even with the additional powers that the bill will provide. Do you share my concerns?

Natalie Sutherland: We do. The CIH argues that enforcement needs to be taken seriously across all local authorities, but it is not getting the required political priority. That could be tackled by ensuring that local authorities are regulated in some way in relation to their private rented sector duties, because it is our understanding that they
are not so regulated at the moment. I know that the Housing (Scotland) Bill that has just been passed, contains the Scottish social housing charter, and we argue that its scope should include regulation of the private rented sector in some form.

**Douglas White:** I would like to make a couple of points. One thing that the Private Rented Housing (Scotland) Bill tries to do, which is helpful, is improve the information that is provided to consumers about their engagement in the sector through tenant information packs, which we are extremely supportive of, and through the proposal to include information about landlord registration in adverts for properties to let. In trying to empower consumers in that way, the bill seeks to enhance the role that tenants and consumers are able to play in making the system work, in bringing to their attention issues of concern and therefore in supporting the enforcement of the system. It also increases the range of criteria that local authorities will take into account in determining whether someone is fit and proper to be registered. If local authorities have a clearer set of things that they know they have to look at, that might make enforcement easier for them. However, we know that local authorities are having difficulties with getting the resources to enforce the current regulations, so we might have to consider whether increasing the things that they have to take into account will increase their work and therefore result in more strain on their resources.

**Mary Mulligan:** That is helpful. Thank you.

**The Convener:** I want to go back to Mary Mulligan’s questions. The evidence that has been provided does not exactly enthusiastically endorse the bill’s principles. Many reservations have been expressed, there are many references to the review that is taking place, and it seems to me that there is a lot of expectation about further reform and legislation. Are you prepared to endorse the bill’s general principles on the basis that it is expected that there will be further legislation and reform? What gives you the right to expect that there will be further legislation and reform? When do you expect that?

**Rosemary Broatchie:** Your assessment of our views is right. We have been led to expect further legislation. The minister has committed to that in the future, and one of the possibilities from the work that the PRS strategy group is doing is that further legislation will be needed. The bill was developed in part by the PRS strategy group as an immediate response to some problems that were identified from the review of the private rented sector that the Government undertook. In the short timescale that we have had to develop the proposals, the Government has perhaps not been able to look strategically at some of the longer-term, more substantial reform that is needed in the sector.

**Robert Aldridge:** I think that we have all said that the bill is about improving the current system. That system has been considered, and the bill aims to mend things that are broken. However, we are all committed to looking at the private rented sector’s much longer-term future and at how we can make it thrive and allow it to grow while protecting consumer and tenants’ rights and creating an atmosphere in which good landlords can thrive. We are looking at a range of much broader issues in the private rented sector strategy group, and we expect that the conclusions will require legislation for their implementation.

**Douglas White:** The bill will make a series of improvements to the existing framework, which will be useful on the whole and we support them, but, like my colleagues, we hope to engage in a longer-term piece of work that involves taking a step back from the sector, considering it more strategically and coming up with further proposals that will lead to more benefits for tenants.

**The Convener:** Last week, landlords gave evidence on more legislation, benefits and so on. Will the private sector be able to provide, as we expect it has to, an element of social housing in an environment of such uncertainty about more reform and legislation? People in the private sector are concerned that we may be reaching a stage at which there is too much legislation and that will impact on the availability of homes for people who need them.

10:15

**Rosemary Broatchie:** I understand that view and appreciate that the amount of regulation and the disjointedness with which it has sometimes been implemented has created uncertainty among landlords and letting agents. However, the PRS strategy group contains stakeholders from all areas of the PRS, including landlords and letting agents. We hope that, by working together, we will be able to come up with recommendations that will improve the circumstances of both tenants and landlords across the board. Fundamentally, all of us have the same interests. Landlords would like to be able to provide more accommodation and would like to have a thriving sector. For tenants, the availability of accommodation is central. We are all working towards the same end.

**Natalie Sutherland:** The CIH is mindful of the need to raise awareness of the rights, responsibilities, legislation and regulation that are in place. Sometimes that information has not been sufficiently well known or disseminated. There is a duty on all professionals, the Government, local
authorities, mortgage lenders, insurance companies and so on to ensure that people are aware of the fact that they must be registered and regulated in some way. Such awareness has been lacking.

Given the current housing market and the economic crisis, more people will become private landlords by default, as they have properties that they may not be able to sell. The CIH is seeing more people entering the sector as individual or part-time landlords. We are concerned to ensure that they are aware of their rights and responsibilities and of the regulation to which they are subject.

Bob Doris (Glasgow) (SNP): You have given interesting evidence on the need for a longer-term strategy, but I return to the specifics of the bill. Throughout our evidence taking, the issue that has jumped out at me is consumer understanding of the current situation. The bill proposes that adverts should include a landlord registration number. Will the consumer understand what the lack of such a number on adverts means?

Douglas White: At last week’s meeting, there was some discussion about whether a number or a kite mark would be more appropriate. I understand some of the concerns that were expressed about what a number means. The general principle that an advert should include some kind of acknowledgment of the fact that a landlord is registered is extremely important and would help to raise awareness of the system among consumers. Whether a number or a kite mark should be used is open to discussion.

If such a provision is introduced, it must be accompanied by an awareness-raising campaign, so that tenants are aware of the fact that the number or kite mark that appears in an advert means that the landlord is registered, and that they should look out for that, be extremely wary of approaching any advert that lacks such a mark and, possibly, report such adverts to their local authority. Such a campaign would be hugely beneficial in raising tenants’ awareness of the system and helping them to ensure that it is properly enforced.

Rosemary Brotchie: Mr Doris is right to point to one of the key elements of the bill. Shelter supports the bill because, finally, there is to be an emphasis on information for tenants. One element that has been missing over the past few years, when we have focused on regulation and registration, is consideration of the role of tenants and consumers in this landscape. I agree entirely with Douglas White that although having a registration number on an advert is a key way of communicating with tenants, it needs to be accompanied by a much broader campaign of information, to encourage tenants to understand much more about their rights and responsibilities and how the sector is regulated. The pre-tenancy information pack, which the bill provides for, will go some way towards addressing such concerns, but it should be a catalyst for providing tenants with much more information.

Bob Doris: That is an interesting point. I have spoken to some good landlords who say that they make a big deal of the fact that they are registered when potential tenants come to visit properties; many of them already produce their version of a tenant information pack. They see that as a real selling point, although they tell me that is only half a selling point, because most potential tenants do not even know that there is a registration scheme.

It is about putting consumer choice into the system, but there must be consumer information first. I am sure that there should be some form of high-level Scottish Government awareness raising on the matter, but we often get high-level advertising campaigns with an initial big bang and the issue is then forgotten about. How do you propose to raise awareness of the matter at a local authority level? Who should do that?

Rosemary Brotchie: Picking out just one body to do the work will probably not be the answer. We envisage a sector-wide response. Yes, there is potential for leadership from the Government and local authorities, but we would like all organisations across the sector that have a stake or an interest in the private rented sector to contribute to the awareness raising.

Bob Doris: I have one final question. Given that a lot of adverts are placed in newspapers, is there a role for the media to play through working in partnership to raise awareness of the registration system?

Robert Aldridge: Yes, I think that everybody has a role to play. Once the number appears in adverts and people want to know what it is, the media will have a role in publicising that along with the range of advisers in the various sectors. Whether it is citizens advice bureaux or student advisers, a whole range of people are involved in advising potential tenants in the private rented sector, and they will all have a moral if not a legal duty to make it clear that people should look for the number.

Natalie Sutherland: As well as there being a duty to check what the landlord registration number means, people should be able to go to the public register or the local authority and check not only that the number is valid and accurate, but that there are no other concerns. The landlord might have a number, but they might have been deregistered since that number was allocated, they might be under review or there might be other concerns about them, such as a rent penalty.
notice having been issued. The registration number is a good and positive step in raising awareness of landlord registration, but there might still be underlying issues that the tenant must proactively check.

Bob Doris: Sorry—who should have a duty to check that the number is valid?

Natalie Sutherland: If the number is on the advert, the tenant—the public themselves—should check that it is valid.

Bob Doris: So it is about the responsible consumer as well as the informed consumer.

Natalie Sutherland: Yes. It is not just about consumers having the number; it is about their checking it.

Douglas White: We have heard from local authorities that they would go through newspapers, checking up on the numbers. We would expect them to do that to ensure that landlords in their areas comply with the requirements of their systems.

Jim Tolson (Dunfermline West) (LD): Good morning. I want to ask the panel’s views on part 3, on overcrowding statutory notices. As the witnesses will know, section 17 would give local authorities the power to serve an overcrowding statutory notice on the landlord of a house that was overcrowded. We all know of examples of that, such as where a landlord has subdivided a single flat into two or three flats. Overcrowding has an effect not just on the landlord’s tenants, but on adjacent tenants and owner-occupiers—indeed, in extreme cases, a property can be overcrowded with more than 20 or 30 people who are taking part in illegal activities.

We have received a number of submissions on the subject. The main concern is that tenants may struggle to find alternative accommodation so there is a risk that they will become homeless unless local authorities have a duty to help them to find alternative accommodation. We all know that there is currently extreme pressure to make accommodation available both in local authorities and in the private sector, and I am concerned about the huge impact that the bill could have. Do you share the concerns that have been expressed in the written evidence that the committee has received about the potential for people to be put at risk of homelessness as a result of a notice being served? If so, what do you think could be done to prevent that from happening?

Robert Aldridge: In our written submission, we say that we have concerns that people will be displaced by overcrowding notices and that some kind of duty should be placed on the local authority to ensure that such displaced people are rehoused. Not everyone might be entitled to assistance under the homelessness legislation, particularly in some of the areas that we are most concerned about, and in such cases we must ensure that people are not left on the streets. That is certainly not part of the progressive homelessness safety net that we have created in Scotland, and we want local authorities to ensure that those who are displaced are offered suitable alternative accommodation and that no one slips through the safety net.

Statutory guidance could set out for local authorities certain questions that need to be answered before issuing an overcrowding statutory notice. I point out that for people who do not have a formal short assured tenancy notice, the legal default is an assured tenancy, under which overcrowding is not a ground for eviction. As a result, a landlord would be unable to reduce numbers. We must ensure that there is some means of employing an overcrowding statutory notice legally, that the people who are displaced by it are not left homeless or destitute and that before any such notice is imposed people are aware of the implications of such a move.

Jim Tolson: You seem to be saying that although local authorities do not have a duty to find other housing for people who find themselves in such a situation, they should do what they can to make housing available, either directly or indirectly, through their services. Is that correct?

Robert Aldridge: They should have a duty to ensure that suitable alternative accommodation is made available.

Rosemary Brotchie: We need to be clear that overcrowding is a symptom of economic and social inequality. There are just not enough houses at the right level of rent to allow people to live in places that are not overcrowded, and in attempting to deal with the problem we need to be concerned about and consider what will happen to those tenants in a market in which such properties might be their only option.

Shelter’s view is that the powers have not been thought through as well as they might have been, and in fact have been hastily conceived. As a result, we ask the committee to consider asking the Government to go away and look again at overcrowding, local authorities’ current powers to deal with it and the reasons why those powers are not working. We simply do not know enough about the circumstances of the people who live in those conditions, what their alternatives are and why local authority action is not working to know whether the powers in the bill will solve the problem.

However, I accept that overcrowding is a significant issue that should be dealt with and, if the committee is minded to support the bill’s
proposals, we ask that at the very least the power to provide advice and assistance should become a duty and that there should be a duty to rehouse displaced households. A person in an overcrowded property has a right to apply as homeless to the local authority, but why do people in such situations not do so as a matter of routine? One might suppose that in certain cases people do not want local authority assistance or that, even if accommodation becomes available, such assistance will almost inevitably result in their being moved well away from their communities and links. We need to examine the alternatives for people in those circumstances much more carefully.

**Natalie Sutherland:** We echo and support concerns about the implications of homelessness, what happens to households served with overcrowding statutory notices and how people are informed about and consulted on the matter. A useful move that would link into the tenant information pack would be the provision of information on the maximum number of people who should be in a property. Indeed, such information should be provided at the outset of a tenancy and flagged up when concerns about overcrowding begin to emerge. Perhaps we need to look again at the definition in the Housing (Scotland) Act 1987 and decide whether it is outdated or whether the overcrowding standard itself needs to be reviewed. However, we support the provision of information on the maximum number of people in a property.

10:30

**Jim Tolson:** You make a good point about information packs; colleagues might want to follow that up.

Whether we are talking about overcrowding or any other issue, we often have huge problems in ensuring that the existing legislation is enforced. Does the panel think that the bill is strong enough in that regard? Is there more that we should do to ensure that that is dealt with adequately? I will ask Mr White to respond, because he has not yet had a chance to speak on this subject.

**Douglas White:** Are you asking about overcrowding or enforcement more generally?

**Jim Tolson:** I am asking about overcrowding and how the bill’s provisions on that will be enforced.

**Douglas White:** Our views on overcrowding are probably similar to those that have already been expressed. We are concerned about the impact that the serving of an overcrowding notice on a property would have on the tenants, and we fully support local authorities being required to provide advice and support to those tenants and, if necessary, to rehouse them. Tenants should certainly be given information up front about the maximum number of occupants that a property can have. That is essential, and it is only right and fair.

As far as enforcement is concerned, it is my understanding that the power in the bill is a discretionary power and that local authorities will be able to choose the circumstances in which they would use it. You would probably need to ask local authorities about the extent to which they would take into account the resources that they had available for enforcement when they decided whether to serve a notice in the first place. Among the other factors that they would have to take into account, if they had a duty to rehouse tenants in such circumstances, would be the availability of housing stock. A range of issues would have to be taken into account in processing such a notice, and I imagine that councils’ ability to enforce it would be one of those.

**Jim Tolson:** At this stage, I would be interested—as would, I am sure, the rest of the committee—to find out what measures you, on behalf of Consumer Focus Scotland, feel should be in the bill to provide that protection to tenants. What do we need to do, if anything, to tighten up the bill and make it more effective on overcrowding and enforcement?

**Douglas White:** I suppose that it comes down to the three issues that I highlighted. Local authorities must give tenants advice and support to get the information that they require; they must have a duty to rehouse those tenants who have been subject to an overcrowding notice; and the information about the total number of tenants who are allowed in a property must be given to tenants up front, at the start of the tenancy.

**The Convener:** On the basis of what you have said, I presume that you are saying that, on balance, being in an overcrowded home is better than being homeless. That seems to be what you are saying, but I will allow you to come back on that.

The next step is to say that only X number of people are allowed in a home but, due to pressures of life, that is ignored and two people more than there should be are put in that home. The council comes along, says, “That isn’t allowed. You know that you shouldn’t be doing that,” puts two people out and rehouses them. Do we seriously expect such a plan to be enforced?

**Rosemary Brotchie:** I will address that question, but first I want to pick up on whether living in an overcrowded situation is worse than being homeless. Under the law, someone who is living in an overcrowded house is considered to be homeless. Someone who is living in such
circumstances has the right to apply for homeless status and to be dealt with as someone who is considered to be at risk of becoming homeless. Under the HMO licensing regime, local authorities already have powers to deal with overcrowding when a property is occupied by people who are unrelated. The powers in the bill have been designed to deal specifically with situations in which the members of a large family are living together or in which the occupants are not cooperating and it cannot be established whether they are related.

Let us assume that we are talking about families. It is not necessarily reasonable to expect two members of a family to go and find somewhere else to live. In other words, the entire family would have to be rehoused, and it could be difficult to find suitable accommodation for them. That is where the problem might lie.

You asked whether a local authority should be able to—I am sorry; I have lost my thread.

The Convener: I asked whether a local authority should be able to use its powers to bring the occupancy level of a house down to the agreed level.

Rosemary Brotchie: One of our concerns about the powers being brought in as they are is that we do not know why people are living in overcrowded conditions. Is it because that is the only choice that they have? If they are given the opportunity to be rehoused by the local authority, they might not take that up but might instead seek to move to another property nearby and remain in overcrowded conditions, if those are the only available options.

We share the concerns that colleagues raised earlier about the powers that landlords have to require occupants to leave under those circumstances. If the tenancy agreement has not been drawn up properly and the occupants are living in an assured tenancy, the landlord may have no powers whatsoever to end the tenancy and comply with the notice.

Patricia Ferguson (Glasgow Maryhill) (Lab): I want to pursue the overcrowding issue. My understanding is that the provisions are in the bill because of issues such as the present situation in Govanhill, where people live in appalling situations and are exploited by fairly unscrupulous landlords. I think we would all agree that we want that situation to be resolved.

Am I right in thinking that the landlords who indulge in those extreme practices are the very landlords who will not be registered in the first place? Is it the logical conclusion that such situations would continue, even under a strengthened landlord registration regime, and that the local authority would still find it difficult to have any kind of relationship with such landlords in order to try to bring about a more appropriate solution for people who are living in those conditions?

Robert Aldridge: You have hit the nail on the head. There is a very small group of appalling and criminal landlords who are not engaging with the system, and who may well put up a number of proxies as their representatives as time goes on. It may be difficult to get witnesses to come forward to give evidence against those landlords if there is a problem.

To deal with that small group of extreme landlords, we may need much wider action that is linked to tackling organised crime, which is more than a landlord registration system can manage. It is an issue of a different order of magnitude.

Natalie Sutherland: Our understanding is that the overcrowding notices will be used in extreme circumstances, in which 15 or so people are living in two-bedroom properties. That is where we see local authorities focusing their attention on using those powers.

Patricia Ferguson: That is certainly the case. Glasgow City Council and Scottish Borders Council said in evidence to the committee last week that they would use those powers only in extreme situations, and I understand why that would be the case.

If the bill’s proposals are taken to their logical conclusion, are we saying that the local authority should find alternative accommodation for people in that situation? That is not what current legislation says. If your organisations think that that should be the direction of travel, we would need to consider it carefully.

Rosemary Brotchie: We need to consider the consequences for tenants of using those powers and recognise why people are living in such circumstances. Some acknowledgement of that in the bill would go a long way towards reassuring us that local authorities would use the powers appropriately and responsibly.

Allied to that, our key concern is that those powers may not be effective, and may not get to the heart of or tackle the problem of overcrowding, which we identify as a significant problem with significant consequences for tenants, and for neighbours and communities. Our call for a much deeper and more thorough look at the issue reflects our concerns that the provisions might not fit the bill or solve the problem.

Natalie Sutherland: Our other concern is about the change in ownership of property. The way that the bill reads at the moment, the notice is served to the owner or landlord and, if ownership changes, I think that the notice does not apply.
The concern is about the property and the number of people who are in it. Is there a way of registering a notice on the property so that, if there is a change in ownership, the issue is addressed? People change properties quite easily and pass them on to business partners or associates. If the notice was applied to the property rather than to the owner, that might help to tackle the problem.

Patricia Ferguson: Do we need to be looking for a much closer tie to HMO licensing? We are talking about properties that will be HMOs, but they will probably not be licensed or registered in any way.

Rosemary Brotchie: I think that local authorities asked for the overcrowding statutory notice because, in some circumstances, they find it difficult to establish whether an HMO is in existence. Local authorities might find that difficult, because there are language and cultural barriers to identifying and working with the occupants.

That raises concerns for us. If local authorities are saying that they are unable to establish whether a property is an HMO, or they have established that a single family is living together in the property, that does not give us a great deal of confidence that the local authority will be able to work closely with those tenants to find a way forward and enable them to move on to more appropriate housing. The risk is that a notice might be served on a landlord and, when the local authority comes back a week later, the tenants will have disappeared. What means the landlord has used to remove the tenants and where the tenants have gone might be completely out with the local authority's control. That raises concerns for us.

I do not want the committee to go away with the impression that we are happy to accept and allow overcrowding—certainly not. It is a significant issue, and we want it to be addressed properly and appropriately.

Patricia Ferguson: Do you think that registering the number of people that could reasonably be accommodated in a property would help to get over the problem of transient occupation? I am aware of a number of issues in my constituency, and the problem is really hidden because people do not have the language or because they might be beholden to the landlord for employment and other support mechanisms. Do you think that registering the property for X number of occupants would help to get over that issue? Does overcrowding just go with the territory and lie beyond the scope of legislation?

Natalie Sutherland: It might help the situation; it would definitely be a positive step. However, if there are language and cultural barriers, we have to put information into the right language so that people can understand it and abide by it. As you say, in extreme circumstances, the problem seems to go with the territory, but that is not to say that it is not useful to pursue the idea.

David McLetchle (Edinburgh Pentlands) (Con): We are all familiar with the situation of an overcrowded household in which the family group has grown. We have all had people coming along to our surgeries who want to be rehoused in a larger property by their local authority or social landlord. We are all familiar with that, but that is not the only situation that can arise.

Do you accept that some people are overcrowded by choice? A group of workers might go to a city to work on a short-term project—they might be from this country or they might be migrant workers—and they might choose to live in circumstances that we might all regard as overcrowded and unacceptable because that is a rational and economic choice for them to make because it gives them accommodation at the minimum cost. It might not be of a particularly high standard, but their motivation is to maximise the amount that they can earn from that job, perhaps to support their family elsewhere in the country or, indeed, overseas. Legislation to stop that kind of overcrowding will not do them any good at all, as they would see it.

10:45

Rosemary Brotchie: No. In the circumstances that you are describing, where a group of people might be coming together to work, the conditions should be controlled under HMO licensing powers. The concern is about the safety of the occupants as much as it is about the conditions that they are living in, the nuisance to neighbours or any other aspect of the property being occupied in that way. The powers in section 17 specifically address situations where HMO licensing does not apply or where it is difficult to establish whether the property is an HMO.

You are correct in that large, extended families might choose to live in overcrowded circumstances in order to keep rents low. Those circumstances exist because there is a shortage of accommodation and rents are too high for people to afford. Simply enabling a local authority to require them to leave the property does not address that underlying problem. An additional factor is how the local authority will be able to assist tenants who are in that situation. Even though most people who are resident in Scotland have the right to apply as homeless, that right is contested or does not exist for certain categories of people. That certainly applies in some cases to migrants and migrant workers.

Douglas White: David McLetchle makes a fair point. As Rosemary Brotchie says, it might well be
that some people are living in overcrowded situations because the accommodation that they require is not available at a rate that they can afford. I hope that the strategy group will pick that up as part of our longer term discussion about the future of the sector and the extent to which it can meet different housing needs.

I will add just one point to what Rosemary Brotchie said about the impact that overcrowding statutory notices could have in such situations. Local authorities will need clear guidance and support on when they should issue such notices and what factors they must take into account in determining what an overcrowding situation looks like. Do local authorities throughout Scotland have a consistent process for determining the impact of overcrowding on tenants’ health and wellbeing and the impact on neighbours and the community? We need a consistent set of criteria that local authorities take into account when they consider whether to issue a notice. We want to see those criteria in guidance to ensure that tenants in such situations are treated in a fair and consistent manner.

Robert Aldridge: I agree with everything that has been said. I have just one point to add. Issuing an overcrowding statutory notice will always be an option for the local authority. It can choose whether to do that. If tenants have opted to live in overcrowded conditions but they are not creating a negative impact for their health or the community around them, the local authority might well decide that it is not in its interests to issue a notice.

David McLetchie: My next question partly relates to the previous one, but it is on the broader issue of how the law of contract and the private contractual relationship between the landlord and the tenant is affected by the bill, or the extent to which it should be overridden by the bill.

If there is a contract between an unregistered landlord—or, indeed, someone who has been banned from being a landlord—and a tenant, is that contract void as a matter of law? Is it overridden by the bill?

Rosemary Brotchie: My understanding is that the answer is no. The contract would stand. I tried to make the point earlier that it might present problems for the landlord in trying to remove the tenant or remedy the overcrowding if they did not have the means to do so.

David McLetchie: Right. So landlord registration is ineffectual in prohibiting the creation of tenancy contracts that create rights of occupation and security in favour of tenants. There is therefore no consequence as regards that particular let and that particular tenant. Is that correct?

Rosemary Brotchie: My understanding is that the local authority will have the option to prosecute the landlord, and if they have been deregistered and banned from letting, that would obviously be a good reason, but I do not think that the bill would override the contract between the landlord and the tenant.

David McLetchie: Even supposing that the landlord has been prosecuted and given the derisory fine that we heard about last week—£65 per house, in the only prosecution that has taken place in Scotland in four years—from what you are saying that would not affect the contract in relation to that property.

Robert Aldridge: I think that we are saying that we do not know. I do not think so.

David McLetchie: Right. So all this legislation is making no difference whatsoever to the creation of contracts for the letting of property, which remain perfectly valid under the general law. Is that correct?

Rosemary Brotchie: That is our understanding, but the contract is with the tenant, and the tenant is presumably the innocent party here. If they have been given a contract to live in a house, it should not—

David McLetchie: I am not suggesting that the tenant should be prosecuted. What I am saying is that the whole system does not void any given contract for the rental occupation of any house or flat.

Rosemary Brotchie: Perhaps that is a question to pursue with the minister. That is certainly our understanding.

David McLetchie: In that case, do you think that the law should intervene in that contract and override it? Do you think, for example, that the law should direct the tenant no longer to pay rent to the landlord but to pay it to a third party? To what extent should we interfere in such private contracts?

Natalie Sutherland: That is an area that CIH raised—

David McLetchie: Yes, that is why I raised it.

Natalie Sutherland: We raised it because we feel that there needs to be far more debate and consultation on the issue. You are talking about the banning of landlords—

David McLetchie: I think it applies whether a landlord is banned or not registered in the first place. Whether there is a ban is not material here.

Natalie Sutherland: The whole idea of the ban came in at the last minute. It was not something that the private rented sector strategy group
considered, and it is an area that we have concerns about.

You are right. If there is a contract in place, there are tenants and there is a tenancy. What are the implications for that tenancy and for the ownership and use of that property in future? Who enforces that? We have a considerable list of concerns about the existing contract and how it is monitored. I echo your concerns and I am afraid that I cannot give you an answer.

David McLetchie: Might it be a good idea if the Government thought through the consequences for the tenancies that have been created and the tenants of unregistered landlords before it introduces legislation in this area? We seem to be creating a regulatory scheme to do with registration, banning orders and—allegedly—fining people up to £50,000. Although we are being asked to approve all that, the most basic question, on the impact on the tenancy of any given house, has not been answered. All you good people, who are experts in the housing field, cannot answer that question or say whether the Government has provided an answer. Is that correct?

Natalie Sutherland: In some cases in which there have been notices or people have been deregistered, letting agents have been put in place to protect the tenants, but I do not know whether that happens throughout Scotland or in every case.

Douglas White: One point that may be worth noting is that if a landlord is banned or found to be deregistered and continues to act as a landlord, they presumably leave themselves open to further criminal prosecutions. If it is their second or third offence, presumably the actions that are taken against them become more severe, which would have an impact on their ability to continue providing that service.

David McLetchie: We heard last week that severe action resulted in a fine of £65 per house on the only person to be successfully prosecuted. It would have to get pretty severe to get up to the level of one month’s rent.

Rosemary Brotchie: The only point that I can add is that the evidence that the committee has heard—certainly at last week’s session, to which I listened—suggests that local authorities and the Government expect such measures to act as deterrents. I accept that the deterrent is not great if the fines that are imposed are small, but the idea that a fine could be imposed would be a significant deterrent and act as an effective means of keeping people from behaving in the ways that have been described.

The Convener: I am sure that David McLetchie will be able to pursue some of those issues with the minister at a forthcoming meeting. Indeed, the minister’s officials are scribbling away at the back of the room, so he will be well aware of the issues that have been raised.

John Wilson (Central Scotland) (SNP): I will ask briefly about overcrowding, because some issues still need to be examined. I was interested in Ms Sutherland’s response about the definition of overcrowding in the Scottish 1987 act.

I ask Ms Brotchie whether Shelter has put together any figures. I know that you compile useful homelessness figures organised by local authority. How many of the people who are not on the homelessness register and who reside with a local authority landlord are making applications under homelessness legislation because of overcrowding?

Rosemary Brotchie: You are asking what the overcrowding situation is in the social rented sector.

John Wilson: Yes.

Rosemary Brotchie: I believe that overcrowding is a factor. I do not have the figures at my fingertips, but I can certainly provide them after the meeting.

John Wilson: I asked the question because, although we are concentrating on overcrowding in the private rented sector, we as a committee must recognise the overcrowding issue in the public rented sector, where many landlords are failing to honour the 1987 act—never mind our focusing on the bill that we are examining today.

In much of the debate this morning and in much legislation, reference is made to fit and proper landlords. We do not seem to have concentrated on whether we have fit and proper letting agents. Many people who rent in the private sector never meet their landlord or the owner of their property—they deal with letting agents. Does the bill go far enough to assess the suitability of letting agents, which manage and let out many properties on behalf of owners who might not be in the country or even know to whom their properties are being let?

Natalie Sutherland: CIH made it clear in its submission and has made it clear since the start that the reason for the grey area and the patchwork of legislation that involves letting agents is that letting agents are not required to register in their own right. The position is unclear in legislation. Given that the Property Factors (Scotland) Bill is being considered, we were disappointed that the opportunity might have been missed to legislate to require letting agents to be registered.

We share the concerns that have been expressed. The Private Rented Housing (Scotland) Bill provides the ability to charge fees
for unregistered agents, because they must go through the fit-and-proper person test if a landlord appoints them. It is astounding that some letting agents would not be registered and would not want to say that they were fit-and-proper, so agents should be registered.

Rosemary Brotchie: It is probably in the interests of a letting agent that acts as a company and deals with the properties of more than one landlord to be registered, but it is not necessary for managing agents—who might be just individuals who operate to help out one landlord who is a friend—to register in their own right. However, I believe that landlords must nominate and give details of such agents when they register themselves.

Under consumer law, I think that whether it is in the Scottish Government’s power to regulate letting agents is a difficulty. Perhaps Douglas White can add to that.

Douglas White: I think that that has been debated and that the issue of property factors has been considered in the Parliament previously. I agree with the comments that have been made so far. Provisions are in place to bring in managing agents if they are put forward by landlords and have not previously been registered. That is helpful.

There are other provisions in the bill that relate to letting agents, particularly on the charging of fees. We certainly support the provisions in the bill to clarify the law in relation to the ability of agents or landlords—I think that the question particularly applies to agents—to charge fees at the beginning of tenancies. The bill clarifies that that would not be allowed and that tenants should not have to pay such fees up front.

11.00

John Wilson: Mr White raised the issue of pre-tenancy charges, which is what my next question is about. Last week, we heard from landlord representatives, who defended the right of landlords to impose pre-tenancy charges. How would those charges affect people who are applying for a private rented house, particularly those who rely on housing benefit? How would they affect people who are entering the private rented sector? Much of the thrust of this Government bill is about opening up the private rented sector to people who would normally be expected to be housed by social landlords, and protecting those tenants. Are pre-tenancy charges a viable way forward for many people who rely on housing benefit or support? Can they afford pre-tenancy charges? Do you want to see some form of regulation on the levels of pre-tenancy charges?

Robert Aldridge: The bill suggests that we define much more carefully which pre-tenancy charges might be allowed and that everything else should be illegal. That is the right approach. Certain administrative charges can be defensible, but you are absolutely right: if we are to use the private rented sector to house more people who are currently housed in the social rented sector—I think that we all want that—we must remove the obstacles to their gaining access to the private rented sector.

It is already quite difficult for a number of people to put together a pre-tenancy deposit. I know that other proposals are coming forward about deposits and that there are deposit guarantee schemes to assist people, but adding the further obstacle of pre-tenancy charges would make things even more difficult, especially in the economic circumstances that we face. People who rely on benefits will increasingly be competing for the same properties against young professionals who are unable to get a mortgage for the first time, for example. It is important that we do not exclude from the private rented sector people who would otherwise be in the social rented sector. I agree with John Wilson.

Douglas White: I agree with Robert Aldridge. There is definitely an issue to do with clarity and fairness. Different agents or landlords may charge different fee levels and they may charge tenants for different things at the start of a tenancy. Tenants are often unsure about what they should and should not pay and about what it is unreasonable for them to be asked for. Obviously, they will be trying to secure a property and they may feel uncomfortable about challenging a charge that it has been put to them is required of them. The bill is extremely helpful in clarifying that those charges will not be allowed, and there is provision to permit certain charges in regulations. The clarity that is offered to tenants will be extremely useful.

Rosemary Brotchie: The point is important to raise. I hope that the Government will consult on the charges that may be exempt from the prohibition and the levels at which they should be set. We are looking closely at whatever charges are exempted or prohibited to see how they line up with the Government’s intention to open up the private rented sector to people on lower incomes. It may be acceptable to have some charges that can be laid before tenants to set up a tenancy, but they certainly should be affordable and within everyone’s means.

There is perhaps another question to ask. A letting agent provides a service to a landlord, so why should they also charge tenants for that service?
The Convener: As members have no more questions, I thank the witnesses on behalf of the committee for their attendance and the evidence that has been provided.
The Convener (Duncan McNeil): Good morning. Welcome to the 28th meeting in 2010 of the Local Government and Communities Committee. I remind members and the public to turn off all mobile phones and BlackBerrys.

Item 1 is oral evidence at stage 1 of the Private Rented Housing (Scotland) Bill. I welcome today’s panel of witnesses. They are Alex Neil MSP, who is the Minister for Housing and Communities; Lisa Wallace, who is policy and consumers team leader in the Scottish Government’s private housing unit; and Colin Affleck, who is a policy officer in the unit. Thank you for your attendance at this morning’s meeting. I invite the minister to make some opening remarks.

The Minister for Housing and Communities (Alex Neil): The bill is part of my approach to building a stronger and more effective Scottish private rented sector. The sector has a clear role to play in helping to build mixed sustainable communities across Scotland, and in offering flexibility and choice in housing options.

Our review, which was published last year, highlighted high levels of satisfaction in the sector. I want to build on that good report card and to develop a strategic approach that sees the sector go from strength to strength. Last year I appointed the Scottish PRS strategy group to advise me on future policy direction for the sector. The group has considered a range of issues that were highlighted in the review, along with issues that have been raised by key stakeholders such as Glasgow City Council. It will continue to act as an important sounding board throughout the passage of the bill. The bill represents the first stage of that work, but broader reform of the sector is required. The group is taking a long-term view and will make recommendations to me next year on a future strategic direction that is focused on growth, sustainability, and quality.

In the bill, we need an approach to regulation that seeks to lighten the load on good lawful landlords and frees up local authority resources to focus on the relatively few unscrupulous players who are bringing the sector into disrepute. The bill will benefit both landlords and tenants. For example, it will give landlords access to the private rented housing panel to help them to carry out their repairing standard duties. Key provisions such as the mandatory information pack will encourage the existence of better-informed tenants who know their rights and responsibilities and are empowered to challenge bad landlord practice.

Many of the powers for which the bill provides have been requested and welcomed by local authorities. For example, it will improve the enforcement of landlord registration by improving councils’ evidence-gathering powers. It will allow them to request a criminal record certificate and it will strengthen attempts to catch unregistered landlords by requiring the PRHP to share information and by making the inclusion of registration numbers in adverts mandatory. The bill will put an end to agents charging unfair premiums by giving the Government powers to specify that only certain reasonable fees are allowed.

During the evidence sessions, stakeholders expressed concerns about the overall effectiveness of the landlord registration scheme. The scheme is not of this Government’s making, but we are intent on making it work better. We must enable local authorities to use their powers in a way that improves the sector and offers a degree of consistency for landlords, while allowing sufficient flexibility to take account of local circumstances.

There is a lot of good practice, which is being shared and encouraged via the local authority landlord registration group. An excellent example is co-ordinated effort within councils, where landlord registration teams and housing benefit teams share information. That can help to identify unregistered landlords and, at the same time, stop benefit fraud. It is not right that unregistered, unlawful landlords should gain from the public purse, so I want the good practice that I have described to be rolled out across Scotland. I intend to highlight its benefits in the new statutory guidance that we will issue on landlord registration.

The bill tackles important issues on which action is required now. We are carrying out a high-level review of landlord registration to consider what future improvements are needed. The bill will increase maximum fines to £50,000, which will act as a further deterrent for landlords, and send a strong message to the courts about the weight that we attach to such offences. However, I hear what is being said about difficulties in gathering evidence for successful prosecutions, and about the length of time and significant resource that it can take to progress through the courts. The
improvements in the bill around councils’ evidence-gathering powers that I have outlined will help with that, and I have instructed the strategy group to consider that further as part of its forward work plan.

I have also included provisions to tackle overcrowding, in response to local authorities’ calls and the strategy group’s recommendations. We know that there are serious cases of overcrowding in some parts of Scotland, affecting vulnerable groups such as migrant workers. People are living in dreadful and unacceptable conditions, and are creating serious risk for themselves and upset for neighbours. To allow local authorities to issue overcrowding statutory notices to private landlords will help to protect communities and tackle localised problems such as those in Govanhill in Glasgow.

During the consultation, local authorities stressed the importance of that power being discretionary, so that it can be used only in the most severe cases. I believe that that is the right approach to take. It is essential that vulnerable tenants are protected, so we will issue statutory guidance on the use of the overcrowding notice, and we will make it explicit that local authorities must give careful consideration to all the facts case by case before deciding whether to take action.

First, the local authority will need to be convinced that the overcrowding is having detrimental effects on tenants’ health, or an impact on neighbours. It will then be expected to take account of the tenants’ needs, the consequences for the local community, homelessness implications and the availability of alternative accommodation. It is neither my intention, nor is it that of local authorities, to ask for powers to swoop in and make people homeless. Rather, landlords will be given a period of time to comply, and the guidance will outline that tenants must have time to find another place to live. It is certainly not the intention that the provision should become a fast track for tenants to get on to social housing lists, although local authorities’ statutory homelessness duties will apply in some cases. The guidance will make it plain that we will expect local authorities to act sensitively and to take a proactive multi-agency approach to providing advice and support for tenants.

The majority of landlords are law-abiding and are simply trying to make an honest living. Unfortunately, a small minority are providing unacceptable accommodation and employing poor management practices. As a result, tenants and communities are suffering, along with the reputation of the sector. The bill sends a clear message that unlawful landlords will not be tolerated and it will strengthen landlord registration enforcement by adding to the toolkit of discretionary powers that councils can use flexibly. It will not place an unwanted burden on councils that have no need for such powers, so it should not create unnecessary expenditure or bureaucracy.

I am sure that many members will be aware from their constituency mailboxes that there is a real need to tackle antisocial behaviour among some private tenants. Such unacceptable behaviour might be endorsed and often made worse by negligent landlords. The bill makes it clear that local authorities are expected to take account of antisocial behaviour occurring in a landlord’s property when applying the fit and proper person test. We know that good and lawful landlords will take the necessary steps to ensure that their tenants do not cause problems for neighbours, but it is right and proper that local authorities should have legislative powers to take action on landlords who do not. Where honest landlords are taking steps to deal with the problem, it is only fair that local authorities should have discretion in the use of the powers so that they can provide an apposite response.

I have found the recent meetings with committee members to be helpful and productive. I hope that we can continue to work together to improve and enhance the bill.

The Convener: Thank you, minister. We move to the first question, which is from David McLetchie.

David McLetchie (Edinburgh Pentlands) (Con): Some would say that the present landlord registration scheme was introduced with unseemly haste under the Antisocial Behaviour etc (Scotland) Act 2004. It had a very specific focus in that context rather than being focused more generally on the private rented sector. How would you assess the efficacy of the scheme as a whole?

Alex Neil: It has now been operating for three years. The first registrations took place in 2007, although the legislation was passed in 2004.

A number of clear issues have arisen during the first three years. The main one is the lack of proper enforcement in some local authority areas. In the bill, and in our review of the registration scheme, we want to consider, for example, ways of ensuring better standards of enforcement throughout the country. There are some very good examples of enforcement, but there are also some local authorities which, to be frank, have taken a more laissez-faire approach to enforcement than is desirable. There are variations across the country. We have learned lessons during the first three years, and through the bill and the review—and through the continuing work of the private
rented sector strategy group—we are, I think, making improvements to the system.

**David McLetchie:** A review of the registration scheme is being undertaken by the group to which you referred. Why is it necessary to enact interim measures to tinker around the edges of the scheme before we have a report on the scheme as a whole? That report might lead to more comprehensive legislation.

**Alex Neil:** The bill is largely based on the recommendations of the review of the private rented sector that we carried out last year. That review ranged widely across the whole sector; it dealt not only with issues of registration and enforcement but with wider issues related to the development of the sector. The vast bulk of the provisions in the bill arose from that review and from consequent consultations on its conclusions and recommendations.

The review of the landlord registration scheme, which we are now undertaking, focuses specifically on issues such as enforcement. As Mr McLetchie knows, we are asking in the bill for powers to provide statutory guidance; at the moment there is no statutory guidance procedure. Such a procedure would allow us to build in best practice, and that will be possible once we have received in March the conclusions and recommendations of the review of the specifics of the landlord registration scheme.

The bill is about much more than landlord registration; it is about the consequences and conclusions of the very substantial review that was undertaken last year. Some of the bill’s measures on overcrowding, for example, arose from those consultations. Glasgow City Council asked us to reinstate provisions on overcrowding—provisions that had been in law before, but had been taken out. The council believes that it needs such powers.

**David McLetchie:** That answer wandered slightly off the issue of the landlord registration scheme. At its inception, the scheme was an adjunct to a bill that was intended to deal with antisocial behaviour. Some piecemeal reforms to the scheme have now come up in the context of a wider review of private sector landlords, which the minister has mentioned. Another review, of the registration scheme itself, is pending. Instead of having all these bits and pieces, which has been our experience since the inception of the scheme, would it not be better to have a focused review of the registration scheme, followed by focused legislation, if required?

**Alex Neil:** I would agree with you if we could turn the clock back to 2004. Rather than considering landlord registration legislation as an adjunct, as it were, to antisocial behaviour legislation, we should have considered it in its own right. I think that most of us would agree with that. However, 2004 was six years ago, and we are where we are.

A strategic approach was outlined as a result of the wider “Review of the Private Rented Sector”. A result of that was a highlighting of the need to do more on landlord registration and to improve the legislative framework. The bill makes improvements to the legislative framework for the landlord registration scheme. The March report will be more about operations: it will consider best practice, minimum standards, and so on.

If we require additional legislative measures through secondary legislation to further improve the scheme, we will have powers to do that through the bill, and we will be happy to do it. We are taking a strategic approach that has its roots in last year’s private rented sector review.

**David McLetchie:** Thank you for that. I have two specific questions for clarification. On the overcrowding provisions, I was interested to hear your comment in your opening remarks that the service of an overcrowding statutory notice will not be a fast track on to the housing list. Can I take it, therefore, that you would reject the proposal or suggestion by bodies including the Scottish Council for Single Homeless, Consumer Focus Scotland and Shelter that a duty should be placed on local authorities to rehouse people who are displaced as a result of the service of an overcrowding statutory notice?

**Alex Neil:** Absolutely, I reject it. I think that there are enough duties at the moment, and the main duty is the homelessness duty. In extreme circumstances, some people might be subject to that duty. However, this is one of the reasons why I am not in favour of a national scheme. It is important that the local authority, in its various guises, operates in a co-ordinated fashion. There will be a section dealing with homelessness, a section dealing with housing allocations, a department dealing with landlord registration, a department dealing with landlord enforcement, and an environmental health department. It is important that, before any action is taken on an overcrowding statutory notice, the implications and consequences of issuing the notice are catered for by all those departments.

Typically, the overcrowding that has been cited to us is in migrant communities. Migrant communities from outside the European Union are not covered by the homelessness duty, so overcrowding in those communities has to be managed in a different way from overcrowding in
other situations, where there might be a homelessness duty.

We imagine—our discussions with local authorities bear this out—that if there was a need to issue an overcrowding notice, the situation would typically be managed through managing down the numbers in the overcrowded accommodation by finding alternative accommodation, in many cases in other parts of the private rented sector, for the people who were living in the overcrowded accommodation. Local authorities will be wary of people trying in any way to abuse the system. We have designed the legislation in such a way as to avoid any such abuse. An overcrowding notice is not a fast-track way to jump the queue in the housing list.

David McLetchie: Lastly, I will ask you about the provisions on pre-tenancy charges. The bill is intended to clarify what charges are legal. Will you tell us what is legal and what is illegal at the moment and what changes you propose?

Alex Neil: That is actually a very grey area at the moment. The Govan Law Centre in particular has done a lot of worthwhile work on the issue. A couple of examples of legitimate pre-tenancy charges would be a rent deposit and a charge for a credit check. It is perfectly legitimate to pass on those expenses. However, to say, “We are going to charge you £400 for keeping this place open for you,” would not be legitimate. We will use the powers that the bill will give us to issue an order. Our approach will be to list legitimate charges, and any other charges will be deemed to be illegitimate. We will do that as a result of the consultation.

It is not just the legitimacy of the charges that is important but also the level of the charges. The order will deal with both points—the legitimacy or legality and the reasonableness of the charges. It is clear from the excellent work that the Govan Law Centre has done that there are certain unscrupulous agents out there who are levying on fairly vulnerable people charges that, frankly, could not be justified under any circumstances.

David McLetchie: Are those placement charges for finding a tenancy in the first place?

Alex Neil: They could be. We do not regard large charges for that kind of thing as being legitimate.

Mary Mulligan (Linthgow) (Lab): Good morning, minister. Some of us believed that the introduction of landlord registration under the Anti-social Behaviour etc (Scotland) Act 2004 was the correct thing to do in dealing with a specific problem. I have some sympathy with Mr McLetchie’s query. In looking at the private sector as a whole, this may not be the time to introduce landlord registration as a subset of that. I heard the minister’s answer. I will reflect further on it.

My question is on the proposal for a registration number by which to identify landlords. We have heard in evidence that instead of a number something like a kite mark should be used. What is your view on that?

Alex Neil: I am very much in favour of using a number system. A number can be easily checked and would be unique to the landlord. Our experience is that it is very easy to copy a kite mark or to use somebody else’s kite mark, which makes it difficult to check whether the kite mark is legitimate. Obviously, we consulted on the proposal. Our view is that a number system is much more effective in enforcement terms; it is easy for people to check. I am always very conscious of the tenant or prospective tenant. If the landlord has a number, it is much easier for the tenant or prospective tenant to check the legitimacy and validity of the advert and the person who placed it than it would be using a kite mark.

Mary Mulligan: Having lodged and moved an amendment during the passage of the Housing (Scotland) Bill, in which I suggested the same thing, I have every sympathy with taking the numbers route. However, there is a problem that I did not think about at the time. For obvious reasons to do with reproduction and so forth, we will not put the landlord number on to let advertisement boards. That seems to remove the benefit that a number would have. Would not the kite mark be better in that regard?

Alex Neil: The crucial thing is that people can check the number with the local authority. It should be made as easy as possible for people to check whether the landlord is registered. As Mary Mulligan knows, we are introducing information requirements so that people can check whether the landlord’s application is pending or whether they have applied for registration and been refused. In terms of processing those enquiries through the local authority, the advice that we have received from authorities is that it is much easier, quicker and more effective to use a number than it is to use a kite mark.

Mary Mulligan: One difficulty in any landlord registration scheme is how to let people—landlords and prospective tenants—know about it. Has the Government any proposal to advertise the procedures? How will you make the landlord registration scheme better known?

Alex Neil: We will need to look at how to do that, which we will do once we see the committee’s stage 1 report. One constraining issue for everybody will, of course, be budgets.
There is a need to increase awareness among prospective tenants in the pre-information stage—I think that that is the stage to which Mary Mulligan is referring. The information pack, which will be a statutory requirement, will inform people about tenant rights, the availability of tenancies and so on. We will talk to the PRS strategy group and others about how we can increase awareness more effectively. That will be done on an on-going basis and not on the basis of a one-off advertising campaign. Obviously, there is a high churn in the sector, especially in some areas. We have to have an on-going way of making people aware.

We have now established a much closer working relationship with the Department for Work and Pensions in Scotland on a range of areas. As we know, a fair percentage of people in the private rented sector are on benefits. The DWP is therefore a possible way in which to disseminate information.

Mary Mulligan: I want to go back to your earlier responses to Mr McLetchie on overcrowding. Let me give an example. If there was a small flat with 10 Polish individuals, on which an overcrowding notice was served and some of the individuals had to be rehoused, would they be covered by the homelessness legislation as it stands and therefore offered accommodation in the public sector?

Alex Neil: That would depend on their status: they would need to fit the bill under the homelessness legislation.

I think that I am right in saying that there is a distinction between European Union and non-EU residents. By and large, EU residents have to be treated as if they are living in Scotland as part of the indigenous population, whereas non-EU residents do not. However, such people would also have to fulfil the requirements of the homelessness legislation, for example on whether they had made themselves deliberately homeless. We should remember that the overcrowding notice process is in stages. First, there is a pre-notice period during which the landlord has time to get everything sorted before a notice is issued, and then after that we would anticipate the local authority putting in place a plan to deal with the overcrowding. People may see an overcrowding notice as a way of jumping the queue, but if they deliberately make themselves homeless and are not compelled to do so, by definition they do not qualify under the homelessness legislation for the homelessness duty.

Mary Mulligan: I understand the difference between European Union and non-European Union nationals, which is why I used the example of Polish people. Clearly, if people are in a flat and the council states that there is overcrowding, they are not making themselves intentionally homeless. You are saying to us that they would be eligible for rehousing under the homelessness legislation.

Alex Neil: No. Let us say that there are 10 people in the house and the ideal figure should be six—there are four people too many. We anticipate that the local authority would then say that it and the people together need to find alternative accommodation for four people. I imagine that the first line of attack would be to find alternative accommodation elsewhere in the private rented sector. In most areas, there is enough capacity to do that. If that is not possible, there may be other sources of accommodation. One possibility is sharing with other friends who are not overcrowded.

Someone would be made homeless as a result of an order only in extremis. We envisage the local authority, with the landlord, managing the situation down rather than just saying that by next Tuesday, for example, the landlord has to get rid of four people. If the council did that, the four people would have a legitimate case for saying that they were unintentionally homeless.

Mary Mulligan: I want to explore that a little further. You are saying that we are not going to put people out on the streets, and I appreciate that, but can you say a little about the timings once the order has been served? How much flexibility will the local authority have to find alternative accommodation?

Alex Neil: The local authority will have maximum flexibility, both in the pre-order stage and once it has issued the order. This is one reason why it is so important that the issue remains to be dealt with by local authorities rather than there being a national scheme. A local authority would need to employ the resources of various departments within it to identify alternative accommodation. If there was a social work issue, the authority would involve social work as well as other normal services.

We envisage the role of the local authority being to manage down the number over time. It might take two or three months, and in the meantime the landlord would not be allowed to bring any additional people into the accommodation. In the example that we are using, once the four people had been found alternative accommodation, the landlord would be told that the number needs to stay at six. If the landlord defied the local authority, I think that that is the point at which it would come in with a slightly heavier approach.

Patricia Ferguson (Glasgow Maryhill) (Lab):

Good morning, minister, I had not planned to ask you this question, but it follows on from Mrs Mulligan’s questions about overcrowding. Do the
referral provisions under section 5 of the Housing (Scotland) Act 2001 not apply to overcrowding in the private sector? I understand that, where there is overcrowding, in certain circumstances, people are considered to be, in effect, homeless—at least, they can enter the housing list at that point.

Alex Neil: Nobody would be prohibited from entering the housing list. One of the conditions for entitlement is that someone is unintentionally homeless. I am sure that most local authorities would not put people in a position where they became unintentionally homeless.

Patricia Ferguson: I realise that. However, that might happen by dint of overcrowding. I understand that section 5 of the 2001 act treats people who are in that position as being, in effect, homeless. Does that apply to people who rent in the private sector?

Alex Neil: It does. As I said in my opening remarks, the key issue is whether the health and wellbeing of either the tenants or the neighbours are being affected. In those circumstances, the local authority may decide that it does not have time to manage the situation down and must take some people out of it. In that case, those people would be homeless and would qualify under the homelessness duty. However, we would regard that as a fairly rare and extreme circumstance.

Patricia Ferguson: That is what worries me slightly. There now seems to be a different definition of when someone is homeless in that situation. At the moment, someone is already deemed to be homeless if they are overcrowded.

Alex Neil: Colin Affleck can perhaps clarify the position.

Colin Affleck (Scottish Government Housing and Regeneration Directorate): It is true that, if people are overcrowded and the overcrowding is affecting the health of the occupants, that can be regarded as homelessness. However, the local authority is not under an obligation to do anything unless the people apply for housing. The serving of the overcrowding statutory notice does not affect the existing position. The local authority does not have to serve a notice and, if it does not, the position is not altered. The people could apply for housing on the ground of being homeless because of overcrowding affecting their health. What we are doing here is giving local authorities an additional power that does not affect existing rights with regard to homelessness.

Alex Neil: That is my point. I do not see a local authority making people unintentionally homeless except in extreme circumstances. Let us say that there was a breakout of some infectious disease as a result of overcrowding and two people being in too close proximity, although that is probably a very unusual example. In those circumstances, the local authority would need to move quickly to rehouse the people in temporary accommodation. They would almost certainly be deemed to be unintentionally homeless. However, in the vast bulk of the cases that we are dealing with, the local authority would not act in such a way that it made people unintentionally homeless.

Patricia Ferguson: I would like to reflect on that area further. It is far more complicated—and is about to become even more complicated because of the provisions—than the minister accepts this morning. Perhaps he, too, would like to reflect on it.

Alex Neil: I am happy to get back to you with a legal clarification of which particular legislation kicks in if the bill is passed. That would clarify the matter. At the end of the day, it is about taking a commonsense approach. I think that it would be only in extreme circumstances that a local authority would serve overcrowding statutory notices in such a way that it ended up with more people on the homelessness list.

Patricia Ferguson: That is not my point, but maybe we can discuss the matter at another time.

What do you envisage would be contained in the tenant information pack?

Alex Neil: A range of information. The role of the Government is to provide almost a checklist of the minimal information. The really good landlords already provide tenant information packs, although many do not. I could sit here all day and list everything. It would include basic information on the tenants’ rights and responsibilities, such as where they can go with complaints; issues relating to health and safety, including fire safety; and what to do in the case of any disputes over rent or tenancy deposits. All that stuff would need to be included in the tenant information pack.

Patricia Ferguson: Would the landlord be required to give the potential tenant not quite a guarantee but an assurance that, for example, gas and electrical systems were appropriate?

Alex Neil: They should do that anyway, irrespective of whether there is a tenant information pack. If a landlord were not complying with health and safety legislation and the various bits of legislation that cover gas and electricity connections, they would be prosecuted anyway. That would happen not under housing legislation but under other legislation, most of which is reserved at the moment. The tenant information pack should advise tenants about where they can go if they believe that the landlord is not complying with such legislation.

I envisage that the tenant information pack will contain a section on useful numbers to phone, which will include everything from the number for
the local accident and emergency unit to Scottish Gas, Scottish and Southern Energy or whoever the energy providers are. After consultation, we will lay an order about the minimal list of things that the pack must contain. My approach is this: if in doubt, put it in. If there is a question about whether to include something, my approach is to put it in because many of the recipients of the packs will be from the migrant community.

One of the issues that we will promote is the need for the packs to be available not only in English but a range of other languages. I mentioned Govanhill in my introductory remarks. I think that I am right in saying that, at the last count, 51 different languages were being used there. I am not saying that we will produce the packs in 51 separate languages but, to make them effective, we will need to print them in quite a number of languages.

**Patricia Ferguson:** I understand the point that the minister makes and I agree about the comprehensive nature that the piece of paper—or pack of papers, as it sounds as though it will need to be—will be required to have. I also make the point that Govanhill is not the only community where there are 51 languages.

**Alex Neil:** Absolutely.

**Patricia Ferguson:** There was a proposal to allow rent to be claimed back in the case where a house in multiple occupation was unlicensed or did not fit the bill. Is that provision no longer being considered? If not, why not?

**Alex Neil:** No. It was dropped because it was too complicated. Part 5 of the Housing (Scotland) Act 2006 becomes active in August. That contains a number of provisions, which means that the measure does not need to be in the bill because part 5 of the 2006 act is already being enacted. Part 5 gives local authorities more enforcement powers on HMOs—in particular, the ability to prevent rent from being payable for an unlicensed HMO without the need to go to court.

**Patricia Ferguson:** I do not think that it goes as far as allowing rent that has been paid to be returned. I think that that is what you originally proposed, so I wondered why that provision had been dropped.

**Alex Neil:** The provision was dropped because, after consultation, we were advised that it was unworkable—difficult to implement and enforce. I am happy to provide you with details of the objections.

**Patricia Ferguson:** I am surprised—or perhaps not—that complication is becoming an issue.

**The Convener:** Minister, you offered some clarification of the legal issues to do with homelessness and the overcrowding trigger. You also mentioned in your introductory remarks that a local authority’s statutory homelessness duties would apply in some cases of overcrowding. Has any work been done on how big an increase those cases would equal in the number of people in Scotland who are defined as homeless and given rights under the homelessness legislation?

Housing associations approach me about the provision under the Homelessness etc (Scotland) Act 2003 on disregarding the definition of “intentionally homeless”, which will come into force in 2012. I do not know whether that will cause another impact or whether it increases the risk of people jumping the queue and getting access to social rented housing when there is an extreme shortage.

**Alex Neil:** This point is not particularly to do with the bill, but it is a general point that touches on the valid point that you have just raised. Six weeks ago, I had a meeting with the local authority housing conveners. Believe it or not, some of those conveners seemed to be under the impression that if, for example, someone has been evicted for antisocial behaviour, they have to go straight back on the homelessness list and the local authority has a duty to rehouse them. There is no such duty. If someone is evicted under antisocial behaviour legislation, they are deemed to be intentionally homeless. The duty on local authorities does not apply to people who are intentionally homeless. I issued a clarification letter to every local authority in Scotland as a result of that meeting, which I would be happy to circulate to the committee.

**The Convener:** We would be happy to see that, but it again makes the point that the “intentionally homeless” definition that would prevent people from getting access to social housing unfairly is not being applied uniformly across the board.

You have mentioned Govanhill a couple of times. We have evidence from Glasgow City Council that it clearly believes that the new legislation and new overcrowding criteria would give entitlement to a number of residents, given that a cockroach and bed bug infestation would give them good reason. It would be interesting to know how many of those people would be entitled to social rented housing as a consequence.

**Alex Neil:** Historically, the figures for such situations are not high at all. We will provide the committee with any updated estimates that we have from local authorities, particularly Glasgow, because it is keen on reinstating the overcrowding provision. We are happy to provide the committee with any estimate of the impact that that might have on the homelessness figures. However, I stress that we think that the potential impact is minimal.
Bob Doris (Glasgow) (SNP): I listened with interest to suggestions that the landlord registration issue should be put off pending the wider review of the sector. I am reminded that, just a few months ago, some members of the committee suggested that the whole thing should have been dropped and drawn into the Housing (Scotland) Bill. They wanted to bring it forward with one breath and kick it into the long grass with the next. There seems to be an inconsistency there.

However, I want to talk about how the sharing of information between the DWP and councils could help to secure prosecutions of unregistered landlords. In the private sector, how often does housing benefit go directly to the landlord, and how often does it go the tenant? That might have implications for whether the information can be used as evidence to secure a prosecution. Do you have information on that?

Alex Neil: On your first point, when I come before a committee, I never try to score political points.

I have two points on your second, more substantial question. I said earlier that we now have a good working relationship at operational level with the DWP in Scotland. Two or three authorities, one of which is the City of Edinburgh Council, are now working with the DWP and we intend to roll that initiative out, because all the evidence is that it has been extremely successful. Those authorities are comparing their databases, looking at landlord registration and claims for housing benefit. That is advantageous to both local authorities and the DWP because, by comparing their databases, they can identify properties where housing benefit has been claimed for somebody living there as a tenant but the landlord has not been registered. It is a very effective way of catching those unregistered landlords. It is also a very effective way of catching any housing benefit scams or fraud. Both the DWP and we are keen to roll that sharing of information out across the country because it has proved to be very effective in the two or three authorities that are doing it at the moment.

Alex Neil: That is a sensible point. If the DWP reverts to the old system of paying housing benefit to the landlord instead of to the tenant, it makes sense for us to work with the DWP and use that as another way of identifying unregistered landlords.

Bob Doris: I have a final question. Previously in the committee, I have raised the possibility of local authorities retaining the court fine arising from any successful prosecutions of unregistered landlords. You have expressed concern about whether local authorities would have a conflict of interest in seeking a criminal prosecution and trying to make a profit, with all the dynamics within that. However, now that we have proposals from the UK Government to give more powers to Scotland, would you be open to the idea of criminal court fines in housing matters, if not going directly to the landlord?

Alex Neil: We have raised the issue, as I promised to do, with both the previous United Kingdom Government and the new coalition Government. I have to say that the prospect of the Treasury agreeing, even in the new Scotland Bill, to our retaining the revenue from fines as you described is not very high. However, we will continue to press on that. Although this is slightly different, cashback for communities is a good example of recycling back into the community funds that are sequestrated as a result of criminal activity. However, those are very substantial funds
that come from the assets, for example, of convicted drug dealers and so on. As things stand, even with the Scotland Bill, the chances of the Treasury agreeing to look at this proposal let alone implement it are not high.

Bob Doris: Perhaps the Treasury is not as open minded and progressive as we are. I will leave it at that.

The Convener: You have alluded to some general issues. The figures that I have suggest that all the 1,300 or so people who rent in the private sector in my area will lose out by some margin as a result of benefit changes. The issue of bad debt ratios and rent arrears will come into that. You mentioned that housing benefit is now being paid to the tenant, which is another disincentive. There is the further legislation that you are proposing and the previous legislation that was introduced by Gordon Brown. The witnesses who gave evidence to us last week expect the review of landlord registration to lead to further legislation in that area. With all that, how will we ensure that enough people are prepared to run businesses in the private rented sector to provide tenancies to meet social need? Some evidence that we have received suggests that that might not be worth a candle. Will the issues that I have described have an impact on your overall ambition to make available more houses for rent in the private sector, where we cannot provide new build?

Alex Neil: You make a fair point. All of us must be conscious of the need not to place financial or regulatory burdens on good landlords, in particular, that will act as a disincentive to people coming into or remaining in the sector. With one or two exceptions, our proposals have carried the support of the main bodies that represent landlords, including the landlord associations. They are not happy about some specific things that they would prefer us not to do or to do slightly differently. The Government must balance the interests of landlords with the interests of tenants. We cannot always take one side or the other—we must seek what is best for everyone, on balance.

In my view, the biggest threat to the sector is the benefit reforms, especially the reforms of housing benefit. I will highlight two or three areas of particular concern. The overall cap that the new Government has introduced is not a big problem in Scotland, because even the highest rent level in Scotland stands at only 60 per cent of the cap. The cap will affect people in London and the surrounding area, but it will not be an issue in Scotland. I am concerned about some of the more detailed and technical changes.

I will give members two examples of changes to housing benefit—in addition, there is the issue of to whom benefit is paid—that could be detrimental to individuals and the private rented sector. The first is the automatic withdrawal of 10 per cent of housing benefit from someone who has been on jobseekers allowance for a year. In the more remote parts of Scotland, in particular, but also in many urban communities, the prospects of getting a job even after a year are not great at the moment. Automatically taking away 10 per cent of housing benefit after a year on jobseekers allowance could be extremely detrimental both to the individuals concerned and to the private housing sector.

Secondly, the qualification age for the single room allowance has increased from 25 to 35. As we know, 60 per cent of the people who are homeless and rely on housing benefit are single people; another 25 per cent are single people with children. There are many potential downsides to forcing people to share up to the age of 35, which could have a negative impact both on the individuals concerned and on the private rented sector.

We have made two points to Lord Freud, Iain Duncan Smith and the other ministers in the department—indeed, Keith Brown and I had a meeting with Chris Grayling last month. First, given that housing is devolved, we should have been consulted before the housing benefit changes were introduced and, secondly, although we all share the ambition of getting people off welfare and into work, some of the reforms will be damaging and detrimental.

Mary Mulligan: You referred to the majority of responsible landlords who have taken part in the registration scheme. However, the committee heard evidence that some have become disillusioned with it and that those who are due their three-year renewal might not go through with it. Are you aware of the issue and, if so, how might you address it?

Alex Neil: I think that some of that disillusionment has arisen because of lack of enforcement on the bad guys. However, the bill will go after them without adding to the burden. Actually, I have tasked those reviewing the registration scheme to find ways of lightening the load on the good guys and free up resources to chase the bad guys. If any can be found, we should put them in place. I am not after the good guys, who are doing a good job and are providing a very valuable service in Scotland.

There is undoubtedly anecdotal evidence of landlords failing to reregister. We will not really have the total picture until about April next year, but the desk work that we have done so far and the available statistics suggest that about 20 per cent have not reregistered. However, we are talking about the big landlords who tend to reregister in bulk and, as a result, we do not think
that there is the kind of big problem that has been suggested to the committee. That said, we are keeping a close eye on the situation. After all, failing to reregister is in itself an offence and we will make that very clear to people.

It is a valid point. Some landlords have become disillusioned because they see the guys who have not stepped up to the plate getting off scot free while they have to pay the cost of abiding by the rules. Of course, after the bill is passed, the other guys will not get off scot free.

Mary Mulligan: I am grateful for that response and will be interested in the review panel’s suggestions on approaching the different landlords in the sector.

Finally, do you have any proposals for registering letting agents?

Alex Neil: Having considered the issue, particularly in relation to Patricia Ferguson’s Property Factors (Scotland) Bill, I have to say that the history of it is interesting. I understand that the previous Scottish Executive considered the registration of letting agents in the 2004 legislation but the legal advice was that the registration of such agents—and, for that matter, property factors—was reserved under consumer legislation. However, the penalties that we have built into the bill for letting agents who do not provide certain information apparently do not fall into that category. I am told that it is a very fine legal point. The Presiding Officer has, I am glad to say, given Patricia’s bill written certification that it is within the Parliament’s competence and, assuming that the Advocate General raises no objection to that bill, I see no reason why the registration of letting agents should not be in the same position.

Being realistic, I do not think that the issue can be tackled in the bill—it will need to wait for the next session of Parliament. However, as I have said, the previous Executive considered the issue and took the advice that it was not within the Parliament’s competence.

10:15

The Convener: That response seems to have encouraged Patricia Ferguson herself to ask a question.

Patricia Ferguson: But not on that issue, convener.

Going back to the earlier discussion with Mary Mulligan about whether there should be a registration number, some form of kite mark or whatever, I believe that certain trade bodies have kite-mark-type logos for approved individuals that also incorporate a registration number. I presume that the purpose is to enable people to check the registration, but those of us who look through “Yellow Pages” for a good plumber simply want the reassurance of the kite mark. Would it be possible to have such an approach, which would allow people to check easily whether someone is registered while also allowing the local authority to dig deeper and check who the person in question is, where they have been registered and so on?

Alex Neil: I am not going to go to the barricades over this issue. I will be happy to take any guidance that the committee might provide in its stage 1 report and lodge any necessary amendments at stage 2. If the committee feels that a combination of a kite mark and a number is the ideal solution, I am perfectly open to that suggestion.

Alasdair Morgan (South of Scotland) (SNP): The problem that has been highlighted to the committee is that, unfortunately, the circulation area of the local newspapers in which these landlords might advertise do not neatly coincide with local authority boundaries and, because the registration number is unique to each local authority, adverts might have to carry several such numbers.

I hear your comments about making it easier for people to check details but, leaving aside allegations that the national website is never available for people to check numbers anyway, I wonder whether the problem is that the vulnerable people who are more likely to be exploited by landlords will simply not be familiar enough with the procedures or will not have access to information technology facilities and that, no matter how many numbers are on the advert, they will not be able to check them.

Alex Neil: It is the same old story: you can take the horse to the trough but you cannot always make it drink. No matter what provisions you make, there will always be people who will not use them to most effect.

If having listened to all the evidence on this—and quite rightly so—the committee thinks that our approach is slightly wrong, I will be happy to take whatever recommendation it makes on these very valid points. We think that we can overcome the issue of individualised local authority numbers but, as I have said, if the committee feels that it would be better to have a combination of kite mark and number I am perfectly open to that suggestion.

Patricia Ferguson: I understand the deterrent intention behind the proposal to increase the potential fine with regard to HMOs but wonder whether, on this issue and on landlord registration, you can do anything to encourage sheriffs to understand that the fine in any situation is potentially £50,000—or whatever figure is decided—and not simply to fine these people £200 or £300, which seems to be the policy of Glasgow
sheriffs in relation to the current legislation. I guess that this comes back to my usual complaint that although people can be evicted for drug dealing, sheriffs seem very reluctant to take that course of action when cases come to court. How can we collectively influence those who take such decisions? I ask because I genuinely do not know the answer.

Alex Neil: The issue is extremely delicate because the judiciary are extremely jealous guardians of their independence and the last thing they want is for us to tell them what to do. Indeed, such a move would be likely to cause a counter-reaction.

Patricia Ferguson's point is valid not just in relation to HMO legislation but throughout housing. Many local authorities tell me that they often do not pursue legal action because they "know what the result will be." As you know, in his report last year on reform of the court system, Lord Gill recommended the introduction of a dedicated housing court. After considering the various ways in which disputes in the housing sector are or are not settled, I personally feel—I stress that this is not current Government policy; whoever is elected in May will have to address it—that we should have not necessarily a dedicated housing court but a dedicated housing panel that would incorporate the private rented housing panel. It would be a kind of housing tribunal. That would be more cost effective, reach decisions more quickly and comprise people with expertise in the field and experience in case work who might be better able to consider the various aspects of a case, the consequences of decisions and so on. That is a debate for another day, but it might be useful for the committee to highlight the issue in its report and perhaps, in doing so, send a message to sheriffs that certain cases perhaps merit higher fines than are currently being imposed.

Patricia Ferguson: A panel that with any luck will be introduced in the near future might well be ripe for expansion into that very field.

Alex Neil: Absolutely.

Patricia Ferguson: But that is another story.

The Convener: Has the issue been raised with the private rented sector strategy group, with which, as we know, you have been discussing possible changes to the tenancy regime?

Alex Neil: That is a separate issue, convener.

The Convener: So what has been discussed with that group?

Alex Neil: As you know, Shelter has been arguing for changes to tenure legislation. The details of their proposals are not absolutely clear, but the gist of them is to ensure the provision of longer tenancies. I have asked the private rented sector strategy group to examine whether the proposals are viable and to come back to me with advice. However, as I say, that is separate from how we adjudicate disputes in the housing sector.

The Convener: Apart from longer tenancies, which Shelter has raised, is the group looking at anything else?

Alex Neil: I am not aware of any other specific proposals for tenure changes. It is primarily Shelter that is pressing for further changes and, as with any other organisation in the field, we should give due consideration to its ideas and proposals, even if at the end of the day we do not always agree with them.

The Convener: Would the group agree with meeting the cost of the tribunal that you described in response to Patricia Ferguson's question?

Alex Neil: Lord Gill recommended a dedicated housing court in his report. I am thinking more of a dedicated tribunal, which would not necessarily be confined to the private rented sector. For example, the eviction cases that at the moment go to the sheriff court might be better dealt with by that kind of housing tribunal.

The Convener: And the justice system would pay for that tribunal to deal with such disputes?

Alex Neil: A lot of the detail would need to be discussed. At the moment, it is just an idea that builds on Lord Gill's recommendation. I am sure, convener, that the manifestos of our respective parties will set out recommendations.

The Convener: Indeed. I am sure that your colleagues will have their own views, minister.

As members have no other questions, I thank the minister and his official for their attendance and the evidence that they have provided and I suspend the meeting.
SUPPLEMENTARY EVIDENCE FROM SCOTTISH GOVERNMENT

At the Stage 1 session on the Private Rented Housing (Scotland) Bill on 1 December, the Local Government and Communities Committee requested more detailed information on the relationship between the Overcrowding Statutory Notice provided for in the Bill and existing provisions on homelessness and eligibility for social housing. I attach a paper on this issue. I also enclose separately a copy of a letter of clarification I sent to local authority housing convenors about antisocial behaviour and homelessness, which I also said I would send to the Committee.

I hope that the Committee finds this information helpful in its consideration of the Bill.

I am copying this correspondence to the Clerk to the Committee.

Alex Neil
Minister for Housing and Communities
Scottish Government

December 2010
Overcrowding Statutory Notices, Homelessness and Social Housing

Local authorities will have a power to serve an overcrowding statutory notice (OSN) on the landlord of a privately rented house where statutory overcrowding is adversely affecting the health or wellbeing of any person or the amenity of the locality or the house. The power is discretionary and intended for use in only the worst cases, as local authorities have acknowledged in Stage 1 evidence to the Committee. In deciding whether to issue an OSN, and in exercising that power, a local authority will have to have regard to guidance issued by Ministers, as well as taking into account the particular circumstances of the case.

An OSN will require the landlord to take specified steps to ensure that the house is no longer overcrowded and will set out the period within which these steps must be completed, which must be at least 28 days. An OSN must include conditions requiring that, after these steps have been taken, the landlord must not cause the house to become overcrowded (for example, he or she must not bring in too many tenants) and must take reasonable steps to prevent it from becoming overcrowded (for example, by specifying the occupancy limit in the tenancy agreement and making adherence to that a condition of the tenancy). The notice may specify additional steps, such as those required to comply with the mandatory conditions.

The local authority will be able to give occupants appropriate information and advice. An OSN will be in effect for five years, unless it specifies a shorter period, which cannot be less than one year. A landlord receiving an OSN will be able to make representations to the local authority and to appeal to the sheriff. The local authority will be able to vary the terms of an OSN as appropriate and to revoke it at any time.

The Scottish Government will produce guidance on OSNs in consultation with stakeholders. Among the areas to be covered by the guidance will be the factors that local authorities should take into account when deciding whether to use an OSN, including the nature of the evidence suggesting that there is a problem (such as complaints from neighbours or police reports); the nature and seriousness of the adverse effect of the overcrowding; the views and circumstances of the occupants; the situation of neighbours; any homelessness implications; and the availability of alternative accommodation.

It is intended that the guidance will set out that local authorities should take a multi-agency approach when considering whether to serve an OSN and what the terms of one should be, involving all relevant sections of the local authority and any other interested bodies, as well as the landlord and occupants, in order to arrive at the best solution for all concerned. This would involve taking sufficient time to see if the situation could be resolved without serving an OSN and, if an OSN is served, setting an appropriate timescale for landlords to comply and tenants to find alternative accommodation.

It is also intended that the guidance will deal with the type of steps that it would be appropriate to specify in various situations. For example, the approach taken to a single family in overcrowded accommodation may vary from that adopted in a house that is suspected of being an HMO.

Implications of an OSN for homelessness

The overcrowding provisions in the Bill do not include any new homelessness duties; however, the interface between OSNs and homelessness legislation relates to a variety of factors, including the terms of the OSN, the reasons for the OSN and the circumstances of
the occupants. Whether occupants are deemed to be homeless will depend on the nature of these.

Terms of the OSN

The steps specified by an OSN will be a matter for the local authority, having regard to the circumstances of the case, although, as indicated above, the guidance will cover possible steps that could be taken. The particular steps set out in an OSN could have different implications for homelessness.

For example, if an OSN stated that there were to be no additional tenants allowed, and existing tenants were not to be replaced as they left, until the occupancy level fell to the statutory maximum, this should not lead to anyone being treated as legally homeless.

On the other hand, if an OSN specified that, in order to reduce the number of occupants to the maximum level permitted, the excess tenancies were not to be renewed when they reached their contractual end, this could mean that some of the occupants would be able to apply to the local authority as being threatened with homelessness. If an occupant were found to be threatened by homelessness, the local authority may in certain circumstances have to ensure that accommodation – not necessarily social housing – was available at the point when they had to leave their present accommodation. This could be temporary housing in the first instance.

The steps that are specified in an OSN could therefore affect the homelessness status of the occupants as outlined above; but the circumstances of the occupants would also have to be taken into account.

Reasons for the OSN

The reason for serving an OSN could also be relevant to whether any occupants might be deemed to be homeless. It could be that the reason implies that it is not reasonable for the occupants to occupy the house, which could lead to their being considered homeless; but they may not be considered to be homeless if they had, for example, relatives they could live with or resources to obtain alternative accommodation.

For instance, if an OSN was served because overcrowding was adversely affecting the health of the occupants, then that could in itself imply that the occupants were statutorily homeless under section 24(3)(d) of the Housing (Scotland) Act 1987 (ie, the accommodation is statutorily overcrowded and may endanger the health of the occupants), meaning that the local authority would have to ensure that accommodation was available, if the occupants had the right to this. However, in this situation it would not be the OSN that had created homelessness; the situation that had prompted the service of the OSN would in itself be the cause of homelessness.

Circumstances of the occupants

The circumstances of the occupants will determine their rights; for example, a number of groups are not entitled to assistance with homelessness These include – apart from some exceptions – people who are subject to immigration control and asylum seekers as well as some EEA nationals (ie, citizens of both some EU and non-EU countries). We want to ensure that occupants to whom this applies would receive as much help from the local authority as is legally possible to try to avoid their being placed in a worse position by service of an OSN.
Whether the occupants were regarded as being in priority need or unintentionally homeless would also be relevant to their situation. It is for the local authority to decide whether or not a household is homeless, in priority need and unintentionally homeless. To do this the local authority will look at all the reasons why a household became homeless and determine whether or not the household is intentionally homeless. The situation will, however, change on the abolition of the priority need test, which is intended to take place in 2012.

In summary, the implications of an OSN for homelessness will depend on the precise details of each case. That is why it will be important for a local authority to consider the implications for homelessness and re-housing before serving an OSN. Some local authorities have already indicated that, if they were considering serving an OSN, they would engage closely with the landlord and occupants, as well as involving all relevant sections in the local authority, such as homelessness and social work, in order to develop the best outcome, avoiding homelessness or the displacement of overcrowding. As stated above, Ministers intend to encourage this approach in the statutory guidance.

Flexible use of OSNs is encouraged by the fact that, although there is a minimum period for the steps in an OSN to be completed (28 days), there is no maximum period (apart from the fact that an OSN can be in force for up to five years). Local authorities will be able to use sensitive setting of the time limit to allow occupants time to find alternative accommodation.

**Access to social housing**

There are no specific duties as regards re-housing attached to OSNs. However, the guidance will make clear that local authorities should give appropriate advice and assistance to people having to leave accommodation as the result of an OSN. For example, a local authority could put occupants in touch with reputable private landlords or letting agencies.

In some cases, where occupants have homelessness rights, the local authority may be under a duty to provide accommodation, but this would not necessarily be social housing.

It has been suggested that people might deliberately overcrowd a house in order to be served with an OSN and thus obtain social housing. In the first place, overcrowding will not in itself be grounds for the service of an OSN. The overcrowding has to be contributing or connected to an adverse effect on health or wellbeing or on amenity. It will be at the discretion of the local authority whether to serve an OSN, taking into account all the circumstances. There is therefore no guarantee that deliberate overcrowding would lead to an OSN.

Even if an OSN was served, the possibility of occupants obtaining social housing would depend on their housing need. The reasonable preference categories set out within the legislation and the allocation policies of the relevant social landlord will determine the priority of the individual’s housing need. The fact that a notice is served will not in itself create a new right to social housing.

The Committee raised the question of whether a local authority that had served an OSN could use Section 5 referrals (under section 5 of the Housing (Scotland) Act 2001). If the service of an OSN resulted in occupants being found to be unintentionally homeless and in priority need, the local authority could use a Section 5 referral to have those people housed by a registered social landlord.

In considering whether to serve an OSN, a local authority will have to consider any implications for social housing, including its availability.
Extent of the use of OSNs

Evidence from local authorities has confirmed the Scottish Government’s intention that OSNs would be used only in the worst cases of overcrowding in the private rented sector. Glasgow City Council has specifically indicated that it would be likely to use OSNs in Govanhill. We estimate that under 100 OSNs would be issued annually throughout Scotland.

It is known that many people in Govanhill do not have homelessness rights, but not how many of them are living in conditions that would permit the service of an OSN. In Scotland as a whole, since it is not known how many of the occupants of houses in relation to which OSNs might be served would have homelessness rights, nor how many such houses there are, it is not possible to say how many additional cases of homelessness would result, nor how many people would have to be provided with accommodation by local authorities. However, in the light of the facts set out above, we expect the numbers to be minimal. To put this in context, in 2008-09 and 2009-10 2% of all homelessness applications were on the grounds of overcrowding (1,266 and 1,119 households respectively).
LETTER TO LOCAL AUTHORITY HOUSING CONVENORS

At our meeting on 4 October 2010, I agreed to investigate your concerns regarding a perceived link with homelessness legislation and anti-social behaviour, and provide you with my detailed view on this.

Specifically, some concerns were raised that homelessness legislation, which places a duty on a local authority to provide permanent housing to unintentionally homeless households in priority need, prevents sanctions used to address anti-social behaviour, non payment of rent and damage to accommodation, being imposed upon homeless applicants regardless of the applicant’s behaviour.

As you are aware, local authorities in Scotland have statutory responsibilities towards people who are threatened with or who are experiencing homelessness and are obliged by law to offer a minimum of temporary accommodation, advice and assistance to all homeless households and to those at risk of homelessness. In addition, homeless households in priority need are entitled to permanent accommodation where they are found to be homeless unintentionally.

Whilst I share your concerns about the need to address anti-social behaviour in Scotland, I am clear, that homeless applicants whom a local authority have assessed as having become homeless as a result of their own actions (including the type of anti-social behaviour referred to in our discussions) have no right be treated as unintentionally homeless by a local authority and therefore entitled to settled accommodation. There is no obligation to provide permanent or settled accommodation to homeless applicants that are not unintentionally homeless.

Under Section 28(2) of the Housing (Scotland) 1987 Act it is the responsibility of a local authority to establish whether a person making a homeless application became homeless or threatened with homelessness intentionally.

Intentionality depends on an applicant having acted, or failed to act, deliberately, and being aware of all the relevant facts, in a manner that has led to their homelessness situation.

Therefore, if after taking account of all the circumstances of an applicant, the local authority finds that an applicant is homeless intentionally, the duty they owe to the household becomes one of temporary accommodation and advice and assistance rather than permanent accommodation.

I would emphasise that should a local authority decide that a person became homeless intentionally, the person should not be considered to be intentionally homeless indefinitely or a fixed period of disqualification applied. If there is reason to believe that there has been a change of circumstance, for example if there is evidence that the behaviour of a person evicted for anti-social behaviour has improved, or if some genuine efforts are being made to reduce rent arrears, then there may well be sufficient grounds to merit a review of the earlier decision, taking into account the altered circumstances. Applicants should be given a clear indication of what change of circumstances would allow them to apply again or have their case reconsidered. Chapter 7 of the Scottish Government’s Code of Guidance on Homelessness sets out guidance on how a local authority should inquire into intentionality, and provides guidance on different criteria for deciding intentionality.
There is nothing in homelessness legislation nor the Code of Guidance to suggest that homeless applications should be assessed with no regard to the applicant's conduct in a previous tenancy or indeed having displayed anti-social behaviour that has directly resulted in their homelessness. The legislation does not operate regardless of behaviour.

There are however provisions set out in the Housing (Scotland) Act 2001, which allows the use of a Short Scottish Secure Tenancy where an applicant has previously been evicted for anti-social behaviour within the last three years or if they or a member of their household is the subject of an anti-social behaviour order.

This ‘probationary’ tenancy, which will be for at least 6 months and can be for up to 12 months, enables tenants to be given a second chance to sustain a successful tenancy and has a double effect. Firstly, of landlords being able to downgrade a tenancy from the full Scottish secure tenancy for tenants who are anti-social, thereby making it easier for the landlord to end the tenancy should unacceptable behaviour continue. Secondly, and importantly, it allows tenants with anti-social tendencies to receive support to enable them to sustain a tenancy in a responsible manner and to convert to a full Scottish Secure Tenancy after a probationary period of up to twelve months. These measures compliment the range of powers such as Anti Social Behaviour Orders and closure orders, available to the police and local authorities, via the courts, under the antisocial Behaviour Etc (Scotland) Act 2004.

In a broader sense, local authorities should have regard to statutory guidance on the *Best Interests of Children Facing Homelessness* - published by the Scottish Government in June 2010, when considering ongoing action in respect of intentionally homeless households containing children.

I hope the information provided addresses your concerns and will be of assistance in allowing local authorities to address anti-social behaviour, while ensuring the sustainability of individual tenancies and the stability of the wider community.

If there are examples of specific cases that are causing the difficulties, which you do not believe are covered by this response, I would be grateful if you could forward this information for my attention and I will ask my officials to investigate further.

Alex Neil
Minister for Housing and Communities
Scottish Government

November 2010
SUPPLEMENTARY EVIDENCE FROM SCOTTISH GOVERNMENT

At the Local Government and Communities meeting on 1 December for the Private Rented Housing Bill Patricia Ferguson asked me about the proposal to introduce an order requiring the repayment of rent in unlicensed HMOs that we consulted on in the Consultation paper on a proposed housing bill: the private rented sector, licensing of mobile home sites and the twenty year rules, which ran from 8 March to 19 April 2010.

This provision proved to be very complex in the development stage and issues were raised during the consultation, particularly in relation to how rent repaid to tenants would interact with Housing Benefit and the impact repayment would have on any subsequent entitlement to Housing Benefit. Use of the Rent Repayment Orders would also give practical difficulties around who was entitled to the repayment where Housing Benefit covered some of the rent paid. It has therefore not been included in the Bill.

I hope that this further information is useful.

Alex Neil
Minister for Housing and Communities
Scottish Government

December 2010
ANNEXE E: OTHER WRITTEN EVIDENCE

Age Scotland
Amelia Andrzejowska
Confederation of St Andrews Residents Associations
Crisis
Electrical Safety Council
Glasgow and West of Scotland Forum (GWSF)
Hillhead Community Council
Mark Andrew
NUS Scotland
Scottish Federation of Housing Associations
Scottish Government
Scottish Independent Advocacy Alliance
Sustainable Communities Scotland
SUBMISSION FROM AGE SCOTLAND

Introduction
1. Age Scotland strives to represent Scotland’s older people and provide a united voice, and has the vision of “a Scotland and a world where older people flourish as valued and equal citizens”.

2. We welcome the opportunity to respond to the consultation on the ‘Private Rented Housing (Scotland) Bill’, hereafter referred to as ‘the Bill’. Age Scotland supports the aims and ambitions of the Bill, which will help ensure tenants across Scotland receive the consistently high quality of service which should be expected from landlords in the private rented sector (PRS).

3. Scotland’s demography is undergoing a seismic shift. By 2031 the number of people aged 50 and over is projected to rise by 28%, with the number of people aged 75 and over projected to increase by 75%. While older people presently constitute only a relatively small proportion of PRS tenancies, this number is likely to increase in the coming years. Changing lifestyle choices and the growing difficulties experienced by those aspiring to home ownership, in terms of access to credit for mortgages, could mean a greater proportion of tomorrow’s older people will be PRS tenants.

4. It is precisely because of the implications of these factors that we must ensure the services of landlords are regulated in a way which takes into account the particular needs of older people and vulnerable groups in society. By anticipating this shift in housing patterns we can ensure the legislative framework being set out today reflects the needs of tomorrow’s older people. If we are to realise our long-term goal of enabling older people to remain at home as long as possible, the PRS must be incorporated into the wider social care structure. Only by taking such a co-ordinated approach can we hope to ensure those who are unable to, or choose not to, own their own homes can expect to receive have the same care options as home owners.

5. Society needs to be fundamentally realigned to meet the needs of older people. This mindset needs to be mainstreamed to the heart of everything we do in Scotland, and the PRS will have an important contribution to make to the housing solutions available to us in Scotland going forward.

General Comments
6. Age Scotland supports the Private Rented Housing (Scotland) Bill and would welcome its introduction as legislation, with consideration to the following comments.

7. Effective communication of the outcomes of the proposed Bill is central to how it can positively affect older people. While many of the measures introduced in the Bill will improve the rights and information of tenants in the PRS, awareness of these rights and information are as important an issue in itself. Whether it is premiums levied against tenants, details that should be available within the Tenant Information Packs or tenants’ right to apply to the Private Rented Housing Panel with regards to the Repairing Standard, the key element of each of these is
tenants knowing they have these rights at their disposal. Case studies highlighting best practice would, therefore, be an effective means of communicating these options.

Register of Landlords
8. If we are to effectively make use of the PRS as part of our holistic strategy for the provision of low-level care for older people, which enables them to remain at home for as long as possible, we need to ensure we are making best use of all the resources at our disposal. With than in mind, Age Scotland believes a register of landlords within PRS housing should also incorporate information of adaptations within their properties. We feel this would be a valuable means of enabling care services to match an individual to a property that met their housing needs.

PART 4 – MISCELLANEOUS (PRIVATE SECTOR TENANCY REGIME & POLICY RELATED MATTERS)
9. The current economic climate and the implications of current care models mean the most cost-effective solution to meeting individual need will be those which enable older people to remain at home (and out of higher level care services) for as long as possible. In that respect, the role of the PRS will have a crucial role to play in achieving this model of care, and landlords must be enabled to play their part.

10. In the Bill’s Policy Memorandum, reference is made to the Scottish Government’s review of the PRS in Scotland, which found that “a minority of tenants would prefer a longer minimum tenancy”. While this may only be a minority, we know that in general, older people who live in the PRS will typically live in their homes for longer.¹

11. This, in conjunction with our comments above on emerging social trends, mean we need to think carefully about the implications for increased use of the PRS by older people upon whom there will be a greater expectation to live their later lives outwith higher level care services. If this future is to materialise, there will need to be greater co-operation between the PRS, their older tenants and the wider care services.

Supporting investment in PRS infrastructure
12. While we understand the current Bill does not cover issues relating to housing adaptations and energy efficiency, we feel greater thought needs to be taken about the emerging patterns for home ownership and future care options.

13. In our recent submission to the Scottish Government consultation on the ‘Wider Planning for an Ageing Population’, Age Scotland highlighted the need for landlords in the PRS to have access to funding to implement adaptations and energy efficient initiatives. This is because we need to look at effective means of delivering all services, across all sectors, more efficiently – as this will ultimately have a greater saving for society. While private landlords should be expected to meet the needs of their tenants and fund adaptations themselves, there will,

¹ [www.scotland.gov.uk/Resource/Doc/265015/0079353.pdf - p84]
however, be a limit to the extent to which private landlords could be expected to voluntarily undertake adaptations work on their properties.

14. One option could be preventative spending initiatives by national or local government to pay the upfront cost of adaptations in private sector properties. Under this model, adaptations equipment would remain the property of the administration for redistribution to another service user should the needs of the initial tenant change or if they move home.

15. Alternatively, landlords could be given guarantees of future customers as a means of encouraging them to undertake adaptations within their properties. This would ensure they had revenue beyond the initial use of any adaptations by reducing the likelihood of additional service costs from repeated fitting and removal of adaptations.

16. It is within this wider context that we feel incorporating a register of adaptations in PRS properties within the present Bill would be a valuable means of ensuring the sector was better prepared to contribute towards future housing and care solutions.

**Premiums & Tenant Information Packs**

17. As noted above, Age Scotland would welcome clarity in the areas of premiums and information available to tenants in the PRS. However, ensuring the emerging policies in the Bill are publicised as widely as possible will be key to their success. Assuming the Bill proceeds to law, Age Scotland looks forward to contributing to the development of secondary legislation on appropriate charges and the information to be contained within Tenant Information Packs and how this might best be communicated to tenants.

18. Recognising that charges will be agreed in future legislation, it is worth highlighting some initial comments. For example, in terms of credit checks and what would be termed ‘reasonable administrative charges’, it would be necessary to ensure agents were not double-charging both tenants and landlords for these services. Additionally, as credit checks can be sourced online for free, it may be worth allowing tenants to provide their own checks from approved suppliers.

19. Furthermore, charges around the provision of Tenant Information Packs must be absolutely clear and not lead to tenants being inappropriately charged. The costs of Home Reports for the sale of private properties were intended to be borne by the seller, however, in spite of this – and as a result of the detail not being explicitly stated in legislation surrounding Home Reports – it has been possible for estate agents to charge fees to prospective buyers for certain aspects of the Reports. It is, therefore, important that any legislation emerging around the provision of Tenant Information Packs must not contain any ambiguity that may lead to profiteering by unscrupulous agents charging both landlords and tenants.

**Section 30 & 31: Notices required for termination of a short assured tenancy & Landlord applications to the private rented housing panel**
20. With older people more likely to say they do not understand the legal processes associated with tenancy termination, Age Scotland would welcome the clarification provided around these aspects of the legislation as well as clear and concise information being made available to tenants. While respecting the right of landlords to gain access to their properties for legitimate reasons, tenants must be adequately protected. Again, ensuring information is readily available and promoted to older people, including tenants’ right to apply to the Private Rented Housing Panel, will be key to the success of the policy.

The Wider Legislative Context
21. It is interesting to note that in the Policy Memorandum to accompany the Bill, the Scottish Government have stated:

“a minority of rogue private landlords in Scotland are providing very poor levels of service to their tenants and letting out accommodation which is in an unacceptable condition… Rogue landlords and unscrupulous agents who act on their behalf bring the reputation of the private rented sector into disrepute and undermine the work done by the many good landlords in the sector who provide good quality, flexible housing. They create misery amongst tenants who often are afraid to challenge bad practice for fear of bullying, harassment or eviction.”

22. We are pleased the Scottish Government appreciate the effectiveness of legislation in dealing with rogue landlords in the PRS. However, Age Scotland strongly feels that, for these same reasons, the Government should also support the proposed legislation on the Property Factors (Scotland) Bill. We feel the introduction of legislation in both of these key areas of housing policy would serve to demonstrably improve living conditions of both tenants in the PRS and home owners more generally. A key consequence of legislation in each of these areas would be to raise attainment amongst PRS landlords and property factors not currently meeting the standards which should be expected of them. Age Scotland, therefore, considers that with respect to both the Private Rented Housing (Scotland) Bill, and the Property Factors (Scotland) Bill, legislation would make an important contribution towards improving tenants’ rights and housing quality.

23. It is also worth stating that, should the Property Factors (Scotland) Bill proceed to legislation, there are aspects of that Bill which could impact on the resource implication of the Private Rented Housing (Scotland) Bill. As it currently stands, the Property Factors (Scotland) Bill proposes the establishment of a panel for disputes. Age Scotland supported this proposal in our submission to the consultation on the Property Factors (Scotland) Bill and argued that, in light of the expected cuts in public expenditure, utilising an existing body could be an efficient solution and agreed this may be a role for the Private Rented Housing Panel (PRHP).

24. With all this in mind, we would urge the Scottish Government to support the introduction of the Property Factors (Scotland) Bill to ensure legislation in both areas are streamlined. This would mean any future expanded role for bodies

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3 www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-prm.pdf
such as the PRHP could be viewed within the context of wider legislative requirements and serve to ensure their resource capacity matched any changes to their remit.

**Conclusion**

25. Age Scotland supports the Private Rented Housing (Scotland) Bill and would welcome its introduction as legislation in the Scottish Parliament.

26. As much of the detail contained in the Bill will be established through secondary legislation and the consultation process surrounding those stages, Age Scotland would welcome the opportunity to contribute the older people’s perspective. While older people constitute only a small proportion of the PRS, the demographic changes taking place in Scotland mean it is important that careful consideration is given to these issues if we are to realise a long-term goal of enabling older people to remain in their own homes for as long as possible.

27. Age Scotland would be happy to facilitate any requests for input from our membership, such as their experience of living in the PRS. If you have any questions in relation to our submission, please do not hesitate to contact us.

Age Scotland

11 November 2010
1. A demonstration against “bad landlord” took place, on Monday, 25 October 2010 in Edinburgh. Our gathering on Chambers Street, just in front of Sheriff Court House, was aiming to give a voice to people who are affected by rogue landlords. We marched down to the Scottish Parliament where at 1.30 we put forward proposals for changes in the Private Rented Housing Bill.

2. Personally, I was a tenant in one property for four months. During that time I faced a lot problems with my landlord. In April 2009 he illegally evicted me, what caused a lot of difficulties in my life for the next year.

3. We are protesting against: unjustly withholding deposits, long delays in repairs, abusive and threatening behaviour of landlords, illegal evictions etc. Moreover, we want demonstrate our evidences that changes within Private Housing Regulations in Scotland should take place as soon as possible.

4. Regarding to the Private Rented Housing (Scotland) Bill (SP Bill 54) we are presenting aspects, which should be taken into consideration by the Committee:
   - an open debate with stakeholders and tenants affected by private landlords should take place in Edinburgh
   - tenancy deposit scheme, which includes regulations about deposits within private housing sector, should be add to the Private Rented Housing (Scotland) Bill
   - law enforcement should be strengthen

5. We are hoping that this demonstration and reasons behind this event will be taken into consideration by the Committee.

Amelia Andrzejowska
Organizer of the demonstration and participators
HMO effects
1. Across Scotland there are communities where HMOs make up a significant percentage of homes in certain neighbourhoods. There are many issues surrounding their presence and functioning which must be dealt with by legislation to ensure that these problems do not continue to have undesirable effects upon the local community.

2. HMOs meet essential housing needs for students and mainly young single people. However, their tenure is usually temporary, causing rapid changes in the community. When this type of accommodation is concentrated in a particular area, the community becomes unbalanced demographically and this is an accelerating process. Mixed, sustainable communities are lost as commercial forces force up house prices and families move away to be replaced by more HMOs.

Planning controls
3. Allowing planning controls to deal only with some types of HMOs (mainly those in flats) will encourage landlords to purchase other types of properties (mainly houses) not subject to planning controls. In St Andrews, an area of severe housing pressure, the previously affordable family housing—mainly former social housing—is already targeted by the buy-to-let speculators who are now the major operators of HMO properties.

4. We welcome the link between planning and licensing in the bill, but this needs to be more robust and apply to all properties and to all council areas. The present confused situation will continue unless there is a mandatory requirement for **all HMOs to require planning permission** before a licence application can be made. A consistent approach across Scotland will be of immeasurable advantage to landlords, tenants and neighbours of potential HMO properties. We consider that any minor expense involved for landlords, or work for planning departments, will be justified by the social benefits of achieving a system which is seen to be fair and effective in avoiding high concentrations of HMOs.

Enforcement
5. Failure to register as a landlord or the operation of an unlicensed HMO needs to be treated far more seriously. The prime mover for the introduction of HMO licensing was to close down unsafe premises. The record of successful prosecutions is abysmal and there is a culture of laissez-faire in licensing authorities and one of impunity in the ranks of rogue landlords, encouraged by an officially promoted policy of light touch regulation.

6. There needs to be a comprehensive programme to identify, prosecute and shut down unlawful landlords. This is in the interests of the tenants of illegal HMOs who are frequently at risk through poor maintenance of gas appliances and other fire...
hazards. A licensing system which only taxes the compliant and allows the rogue landlords free reign is not meeting its legislative intentions or providing the safeguards intended.

Fines
7. We consider that serious consideration should be given to applying fines for illegal operation of an HMO or failure to register as a landlord to the enforcement activity of local authorities. The necessary level of compliance activity should be funded from increased licensing fees from responsible landlords, producing a self-funded licensing system. **Councils must be given powers of closure** and tenants allowed to withhold rent in the most serious cases.

8. The **transfer of enforcement procedures to civil penalties** is a move which would also simplify the collection of evidence to the less onerous civil standard. We note that appeals against refusal of a licence, and prospectively against overcrowding orders, are dealt with in the civil courts. If there are strong arguments for keeping illegal operation of an HMO as a criminal offence, funding should be identified so that prosecution costs do not deter local authorities from taking such action, nor should any increased costs fall on law abiding landlords.

Resident community
9. We consider that insufficient attention has been given to the affect of concentrations of HMOs on the social cohesion and long-term sustainability of communities where HMOs tend to congregate, and the health and welfare of long term residents of these areas. These concerns must also be addressed in any forthcoming legislation.

10. We would ask the Local Government and Communities Committee to give serious consideration to these issues. The relatively simple remedies identified above would produce a significant improvement for affected communities, at low cost, or no cost to the administering authorities.

Dr Angela Montford
Secretary
CSARA

11 November 2010
1. Crisis, the national charity for single homeless people, broadly welcomes the provisions contained in the Private Rented Housing (Scotland) Bill. We believe that reform of the private rented sector (PRS) is long overdue and are pleased with the progress of the new legislation.

2. However, we share the concerns of many others in the Private Rented Sector Strategy Group that the focus of the Bill has become too narrow. The aim was to create legislation which would help the development of the PRS as a housing option for an ever growing group of tenants and to encourage quality and good practice. We feel that the Bill is too focused on tackling rogue landlords. Whilst this is undoubtedly an important issue, it is only a small part of the wider reform we would like to see take place. We hope that this legislation will be the first step towards much needed change in the PRS in Scotland as a whole.

3. We are pleased that the Bill will go ahead with the proposals to include sexual and firearms offences in the list of offences that a landlord must declare in order to be registered. Similarly, we agree that local authorities should have the power to request a criminal record certificate. We would, however, reiterate that we do not believe this is the most important issue to be tackled. We believe that the primary purpose of landlord registration is to drive up standards and quality. This could be achieved by developing a more robust enforcement mechanism and increasing tenant awareness.

4. We believe it is right that landlords will be required to display their registration number on official documents, but agree that there is a strong case for exempting To-Let boards.

5. Pre-tenancy charges are an important issue and it is welcome that they are receiving further attention. We are concerned about any charges being incurred. However, if the Government feels that some charges are justifiable and legal, we welcome a debate to clarify this. We look forward to any opportunity to input further thoughts on this issue.

6. Crisis agrees that landlords should have the right to apply to the Private Rented Housing Panel (PRHP) to secure right of access to their property. The PRHP should also have the power to issue warrants should the tenant refuse entry. However, we feel that public knowledge of the PRHP is generally low and believe measures should be taken to increase understanding so that tenants and landlords are aware of its functions. The cost of these extra functions is also a concern – it is important that a model of funding is found which does not pass on the cost to the tenant.

7. Our position on tenant information packs is that they should be promoted as best practice but not necessarily legislated for. We would ideally like to see a proactive drive to encourage all landlords to provide important information to the tenant at the beginning of the tenancy period. However, if this becomes a statutory duty we are not convinced that it will be practical or enforceable.
8. It must be reiterated, though, that we are very pleased this issue is being taken seriously. We welcome the consultation on how this legislation will work and which document should be included and look forward to contributing to the decision making process.

About Crisis and the Private Rented Sector

9. Crisis is the national charity for single homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change.

10. Since 1997 Crisis has been working with partners across the UK to deliver Crisis SmartMove, a rent deposit and advice scheme model, which has helped over 14,000 people into a new home.

11. We also make the social and financial case for PRS access schemes and run a national advisory service in England and Scotland on the use of the PRS to house vulnerable and homeless households. This includes running a dedicated website (www.privaterentedsector.org.uk) which collects good practice guidance, information and research and providing in-depth support and training to local authorities and agencies to assist in the planning and development of services that tackle homelessness through working with the PRS.

12. Crisis works in partnership with Government to improve standards in the PRS and to promote its use to help prevent homelessness.

13. We also undertake research and campaign for change to make the PRS a better housing option for vulnerable and homeless people.

Willma Easton
Development Officer (Scotland)
Crisis

Katharine Sacks-Jones
Policy Manager
Crisis
SUBMISSION FROM THE ELECTRICAL SAFETY COUNCIL

Introduction
1. The Electrical Safety Council welcomes the Private Rented Housing (Scotland) Bill and supports the Government’s move to improve standards of service for consumers in private rented housing. In particular, the Electrical Safety Council applauds the focus of the Government on tackling significant inequalities in Scottish society and reducing the dangers people are exposed to. Our evidence suggests that tenants in the private rented sector are often more at risk than those in other dwellings and our submission focuses on the significant role that Periodic Inspections of electrical installations and the installation of Residual Current Devices could play in helping to redress those differences, while limiting the burden on landlords.

Who we are
2. The Electrical Safety Council is a registered charity committed to reducing deaths and injuries caused by electrical accidents. The organisation is supported by all sectors of the electrical industry as well as local and central government.

3. The Charity, through its activities and partnerships, aims to ensure that consumers’ needs are recognised and that issues of safety are given the appropriate priority.

4. This includes:

   - promoting changes in attitude and behaviour by raising consumer awareness of the issues and risks;
   - influencing other stakeholders to consider consumer needs;
   - campaigning in areas of risk;
   - and promoting best practice across industry.

5. As well as running general awareness campaigns and events to help educate consumers about the dangers of electricity, the Charity also runs campaigns and initiatives covering specific areas of risk such as product safety, fire safety and child safety.

The focus for our evidence: Part 4 and the provision of information to a tenant
6. It would not be appropriate for the Electrical Safety Council to comment on all aspects of the Bill, only those which could relate to aspects of electrical safety and protection of tenants. Our evidence therefore relates to Part 4 and provisions to require a private landlord to issue specified documents and information to a tenant at the start of the tenancy.

7. Every electrical installation deteriorates with use and age and over time the risk of failure increases. In our view it is therefore vitally important that landlords ensure the safety of their tenants by checking that electrical installations continue to be in a safe and serviceable condition between tenancies.

8. However, our research has shown that it is the private rented sector which tends to lag behind in ensuring the electrical safety of tenants. Recent research for our Plug into Safety Campaign which focuses on the life-saving and fire-preventing
role of Residual Current Devices (RCD), found that over 50% of PRS stock has no RCD protection, and there is empirical evidence which suggests that neglect in this area is often matched by neglect or ignorance of other electrical safety measures.

9. This is a particular concern given the low-level of knowledge tenants tend to have regarding what is and is not safe when it comes to electrical installations. Moreover, visual inspections which a tenant can conduct are unlikely to identify all risks or potential problems. It is perhaps for these reasons that 87% of people in Scotland believe there should be a requirement for electric checks in rented properties, versus a UK average of 78%.

10. The Electrical Safety Council therefore supports the introduction of a standard tenant information pack as a ‘first step’ to promoting tenant safety, and asks that the Government consider when making provision about the form of documents and the information to be included in them, that it require a Periodic Inspection Report (PIR) to be included and confirmation of whether an RCD has been installed in the consumer unit.

11. We wish to emphasise that including the Repairing Standard in the pack and increasing the emphasis on electrical safety, while helpful, would not be sufficient if the Government is serious about increasing tenant protection. Currently, the duty of the landlord to carry out repairs and maintenance on properties is only enforceable if the tenant informs the landlord, or if the landlord is made aware in some other way. Given the low level of knowledge of tenants, and the often ‘invisible’ nature, of electrical risks, a reactive regime is insufficient protection; tenants may not be in a position to recognise and notify the landlord that there is a problem until it is too late.

12. Periodic inspection of electrical installations in rented properties is the only way to ensure the long term safety of tenants throughout the PRS. Unscrupulous landlords who fail to meet the necessary and basic standards would be forced to comply with the standards or face dismissal from the landlord registration scheme.

13. We understand that the private rented sector may be concerned that this will introduce further costs and burdens, but we believe periodic inspections can be implemented in such a way as to minimise unnecessary bureaucracy. Indeed, in some areas of the PRS this will not be an additional burden. The Scottish Government’s guidance for HMOs already recommends that the electrical installation is examined every three years by a competent person to confirm it is functioning properly and is safe. A report specifying the results of the inspection and test must be submitted to the local housing authority within an agreed time.

The value of a periodic inspection report

14. A Periodic Inspection is an inspection on the condition of an existing electrical installation, to identify any deficiencies against the UK Standard, BS 7671, for the safety of electrical installations. In particular it should identify any damage, deterioration, defects, dangerous conditions and non-compliances with the UK standard which may give rise to danger, including:
• any electrical circuits or equipment that are overloaded
• any potential electrical shock risks and fire hazards in the electrical installation
• any defective DIY electrical work
• any lack of earthing or bonding.

15. Tests are also carried out on the electrical installation to check that it is safe. A schedule of circuits and the related test results will also be provided as part of the reporting process.

16. The frequency of periodic inspection and testing will depend upon the type of installation, its use and operation, the frequency and quality of maintenance and the condition of the electrical installation at the time of the inspection and test.

17. Although IEE Guidance Note 3 Inspection and Testing recommends 10 years as the maximum period, this relates to the period from the initial inspection (when the installation was first installed) to the first periodic inspection and test. Subsequent inspections may result in a recommendation for the interval between future inspections to be increased or decreased depending upon the condition of the installation, although an increase in the interval is very unlikely.

18. The inspector recommending the interval between subsequent inspection and tests must apply engineering judgement and consider the overall condition of the installation at the time of the inspection and test. IEE Guidance Note 3 also recommends that for domestic dwellings a periodic inspection is carried out on the change of occupancy, prior to the new tenant moving in.

19. For rented accommodation, the Electrical Safety Council recommends that periodic inspection and testing is carried out at least every 5 years. Housing organisations that keep an up-to-date record of the condition of their housing stock and work to a written maintenance programme and periodic testing regime may be in position to justify a longer period between periodic inspection and tests.

20. Where a change of tenancy occurs before the next full periodic inspection is due it is imperative that the landlord or a person acting on their behalf carries out an electrical safety inspection, prior to the property being re-let. This inspection should include checks to ensure there are no broken or missing accessories, no accessible live parts, no signs of overheating at accessories or electrical equipment and a manual test of any Residual Current Devices. Documented evidence of such an inspection should be retained for future use and for inclusion in the tenant information pack.

The value of installation of Residual Current Devices (RCD) in protecting tenants

21. RCDs are highly effective and simple devices that protect against dangerous electric shocks and reduce the risk of electrical fires. Much like smoke detectors,
where installed they save lives. They are designed to constantly monitor the electric current flowing through a circuit and almost instantaneously switch off the circuit if it detects that current is flowing down an unintended path, such as through a person.

22. Under normal circumstances the current flowing in the live and neutral conductors of a circuit should be equal but, when earth leakage occurs due to a fault in the circuit or an accident, an imbalance occurs and this is detected by the RCD, which automatically cuts off the power before serious injury or damage can result.

23. Less than one quarter of an amp leaking from a faulty installation through a human body for only a fifth of a second can cause heart fibrillation and subsequent death, or can generate sufficient heat to start a fire.

24. Although RCDs are required under Scottish Building Standards and Building Regulations in England and Wales to be included in all new build homes, more than half of all UK homes do not have an RCD in their fuse box. While electrical systems vary around the world, many developed countries, including Germany and Norway within Europe, have considerably more stringent requirements for the installation of RCDs in domestic properties, and regulations for electrical safety across the UK fall well behind those for gas.

25. Our research shows that more than 50% of private rented homes, that’s 1.65 million in the UK, do not have any RCD protection in the consumer unit. This is a particular concern in older housing stock where electrical installations will have degraded over time, or where design standards were lower when built and there are fewer measures to inhibit the spread of fire. It is estimated that at least 80 electrical fires in the UK – or 20% of fires of electrical origin – could be prevented every week by the installation of an RCD.

26. RCDs are relatively inexpensive and highly reliable, with a long life-span. An RCD safety switch built into the main consumer unit for controlling circuits in homes can be installed by a professional electrician for just a few hundred pounds. [It is usually necessary to replace the consumer unit – this costs considerably more]

27. Responsible landlords focussed on providing safe housing for their tenants will be persuaded by the arguments outlined above, but they should also recognise that RCDs can play a significant role in safeguarding their housing stock from fire and costly damage.

28. The Electrical Safety Council petitions the Government to require landlords to state in the tenant information pack whether or not RCD protection is installed. Explanatory information tied to the Repairing Standard should also be provided on good electrical safety. In this way, landlords will need to actively consider the issue of RCD-protection, and this should over time deliver a shift in landlords’ thinking and approach to electrical safety, as well as increase tenants’ awareness and encourage them to ask landlords about the absence of an RCD or PIR.
29. While less effective than introducing a requirement for periodic inspections, which under the IEE (17th edition) wiring regulations require a consumer unit RCD, this measure would allow for some degree of progress in the meantime.

Sam Thomas
Policy and Public Affairs Manager
Electrical Safety Council

3 December 2010
SUBMISSION FROM GLASGOW AND WEST OF SCOTLAND FORUM (GWSF)

Introduction
1. Glasgow and West of Scotland Forum (GWSF) represents 46 community-controlled housing associations and co-operatives in Glasgow and the west of Scotland.

2. Private rented housing exists in all of the communities our members work in. This is most common in traditional inner city and town centre areas, but the Right to Buy has created smaller-scale pockets of private rented housing in other types of neighbourhoods, too.

3. Standards of management in the private rented sector matter greatly to housing associations and co-operatives:
   - Tenants of private landlords are members of our communities
   - The lower end of the private rental market is very often home to some of the poorest and most vulnerable members of our society
   - Poor private landlord practice has, in some areas, had serious, adverse consequences for the neighbourhoods our members serve.

4. We recognise that many private landlords comply with their legal obligations and do their best to provide good accommodation and services. Equally, we have seen many instances where this is not the case.

5. For these reasons, GWSF fully supports the main proposals in the Bill for strengthening the enforcement of the law on landlord registration, HMO licensing and overcrowding. We are pleased that the Scottish Government has put forward legislative proposals that will help root out the worst practices of rogue landlords within the private rented sector.

6. We have described in this submission some further issues that could be addressed within the present Bill. We also recognise that there is an urgency to complete the legislative process during the current parliamentary session. Therefore, the Committee may consider that some of the issues we have raised could be addressed in the present legislation, or at a future date.

Landlord Registration Provisions
7. The Bill makes welcome additions to the range of matters that local authorities may consider when making decisions on registration applications.

8. Overall, however, landlord registration requirements remain considerably less demanding than those for HMO licensing. This may well be appropriate for landlords owning a single property, or those whose performance gives no cause for concern. However, we believe the Committee should consider whether a more stringent scheme of registration and regulation should apply to those landlords known to the authorities to fall into the “rogue” category.

Fines and use of proceeds from fines
9. The Bill proposes substantial increases in maximum fines for landlord registration and HMO licensing offences. The Policy Memorandum
accompanying the Bill raises interesting questions (paragraph 100) about this
in relation to HMO enforcement. In particular, the possibility of local
authorities retaining proceeds from fines, to fund their enforcement work.

10. The Policy Memorandum seems somewhat equivocal on how proceeds
might be utilised, and the issue is not addressed for fines relating to landlord
registration offences. So, it would be useful to explore these issues further,
for example:

- How could the use of civil penalties (as opposed to remedies under
criminal law) be promoted for lower-level offences under both landlord
registration and HMO licensing? Civil penalties could potentially
generate additional income that would stay with local authorities.
- How could the proceeds from civil penalties be ring-fenced by local
authorities for enforcement work? This may be critical, if the new
legislation is to be enforced with sufficient rigour, in the tough financial
climate local authorities will be working in.

Disclosure of information
11. The Bill provides for two additional categories of information to be made
available to the public. While welcome, this will not address the difficulty that
organisations dealing with the consequences of bad landlord practice have in
establishing details of a private landlord’s overall portfolio of registered
properties. The Bill could address this, by permitting local authorities to enter
into information-sharing protocols with appropriate agencies.

Enforcing the Repairing Standard
12. The Bill would allow local authorities to consider a repairing standard
enforcement order, as part of their decisions about registration applications.
We welcome this. But we also highlight that getting to the stage of an
enforcement order is often difficult in practice. Present arrangements rely too
much on complaints from tenants, and this is a significant obstacle to
enforcing the Repairing Standard in the way that tenants should be entitled to
expect.

13. Within the private rented sector, there are many vulnerable tenants and
groups being housed in the poorest quality accommodation. Tenants in these
situations may not have the knowledge or the confidence to present a case
to the Private Rented Housing Panel (PRHP). So, we would like to see the
Bill allowing for third party evidence (e.g. from local authority officers) to be
presented on tenants’ behalf to the PRHP.

Criminal Record Certificates
14. The Bill proposes a discretionary power for local authorities to require
production of a criminal record certificate. We believe this should be
mandatory. Disclosure certificates are required by many other businesses.
The costs and administrative burdens for landlords would be modest.

Charging for landlord registration
15. There is a good case for reviewing the registration charging system
established by the 2005 Regulations. The Regulations do not allow local
authorities to recover the additional costs incurred in investigating more
complex cases, where applying the “fit and proper person” test may result in substantially greater work. The present charging system places additional pressure on local authorities’ ability to enforce the legislation.

Overcrowding Provisions

16. In Part 3 [section 17(i)(b)], the Bill proposes that local authorities should consider as part of the statutory notice procedure the impact that overcrowding is having on the health and well-being of any individual or on the amenity of a house or its locality.

17. We welcome these provisions, but they are very broadly framed. It would be helpful to know whether guidance is proposed, and if so whether the requirement to produce this should be referred to in the Bill. We also seek assurance that local authorities will have sufficient powers of access to check whether there are breaches in terms of overcrowding.

18. Part 3, section 18 of the Bill states that local authorities “may give the occupier of the house in relation to which an overcrowding statutory notice has been served … such information and advice as it considers appropriate in connection with the notice”.

19. We would like to see the wording of this section strengthened. Local authorities should have a duty to provide information and advice in such cases. And landlords in receipt of a statutory notice should have a formal duty to notify the local authority homelessness or social work service.

20. At section 25, the level of fines for overcrowding offences (£1,000) is not sufficient to act as a serious disincentive to bad landlord practice. We are interested why this much lower level of fines should apply to overcrowding, compared with other landlord offences.

21. The Bill relies on the statutory definition of overcrowding provided in the Housing (Scotland) Act 1987. The 1987 Act definition of overcrowding needs to be updated in a number of respects. For example, in relation to:

- Ensuring that living rooms are not counted as a sleeping space where this is inappropriate (e.g. where there are open-flue gas heating appliances)
- Treatment of children under 10 years old, in determining overcrowding
- Tightening the loophole on “16 days” temporary absence provided for in section 141 of the 1987 Act.
- Ensuring that space standards requirements are updated to metric measurements.

22. The Bill is an opportunity to review whether present private rented sector tenancy conditions remain fit for purpose, in enabling prompt and effective responses to concerns about overcrowding. It is important that contractually agreed occupancy levels and that the remedies for any breaches should be clearly expressed.
Investment and Resources

23. We welcome the stronger package of enforcement measures set out in the Bill. But regulation and enforcement are only part of the solution, in areas where there are concentrations of poor quality private rented housing.

24. In this regard, we call upon the Committee to consider other approaches to help ensure that the necessary investment is made in the poorest quality stock. This could be achieved by:

- Providing for 75%-90% grants being made available to owners affected by works within a Housing Renewal Area (recognising that grants provided on this basis would have to be targeted carefully), and
- Revising the statutory procedures for compulsory purchase orders (CPOs), so that valuations reflect repair and improvement works needed, or
- Conducting CPOs on a discounted cash flow basis, rather than open market value. This would recognise that private rented accommodation has a business purpose, and would also factor in the condition and investment needs of properties as well as landlords’ responsibilities towards sitting tenants.

25. A revised CPO framework would be a powerful disincentive to private landlords buying poor quality housing in order to make profits at the expense of vulnerable individuals and communities. It would make the purchase of the poorest quality housing by housing associations for future improvement – a proven solution, over several decades - a much more realistic possibility than is presently the case.

Glasgow and West of Scotland Forum (GWSF)

11 November 2010
The points below received the unanimous support of the Community Council Forum in Glasgow on 6/11/2010.

The Content of the Bill
Though logical, the move of other HMO legislation from the Housing Bill at stage 3 to this bill changes the character of the bill, which has already been consulted on.

- Attention is required to other aspects of HMOs
- Evidence submitted by Hillhead and by SUSCOMS to the Housing Bill is not considered

Local authorities such as Glasgow are only able to give evidence to the committee on the topic of the original questionnaire, i.e. on landlords and tenants.

We are happy to give verbal evidence to allow questions to be asked or for clarification of the matters we raise below.

We address here:
A. The link between planning and licensing: uncertainties.
B. Serious omissions & possible solutions to these
C. Difficulties in enforcement and regulation of the bill
D. Delegated powers.
E. Tenants. Suggestions for improvement

Appendices give further evidence on 1 tenements and 2 environment.

A. The link between planning and licensing
We welcome this but ask for assurances that

- The bill will come into force the day after the royal assent is received.
- Renewals are also subject to the provisions of the bill, otherwise
  - the city plan will continue to be flouted
  - Licensing boards will continue to license criminal offences (e.g.; where the reporter has upheld refusal of planning permission
  - Concentrations of HMOs cannot be dealt with.
- We consider that it should be a duty on all local authorities or it may be ignored and less scrupulous landlords may take advantage of that.

B. Omissions from the Bill
Of great concern to communities are:-
1. The social and environmental impact of HMOs is being ignored.
   - Applications are not considered in the context of the building and its setting or curtilage.
   - Where flats are concerned, there is nothing, e.g.:-
     a) to prevent landlords from relocating kitchens and bathrooms above the bedrooms and living rooms of the neighbours,
     (we have examples of toilets leaking onto cookers and people kept awake night after night by noise, people losing insurance after repeated occasions of flooding, etc)
cf Appendix 1
b) To enable consideration of whether the house is suitable for HMO use
c) To enable consideration of whether the back court has the capacity to deal with the rubbish generated, without losing amenity space needed for all the residents. cf Appendix 2

Suggested solutions
- The licensing board should have powers to consider the suitability of the premises in context, including both flats and houses and those around.
- We suggest that the board should also be enabled to consider other planning enforcement on the property which has been ignored. e.g. replacement UPVC windows, routinely ignored by the owner, even when the enforcement notice has been upheld by the Reporter: (It is cheaper to pay a fine rather than reinstate the type required.)
- These solutions would overcome the problem of ignored enforcement notices, lack of resources, inability to take planning cases to court, etc.
- There appears to be a section of the Bill which might permit this under “other offences against housing”?

We agree that if the landlord complies with these requirements, only then could his application for a licence be considered.

2. There are no powers to close down HMOs where it is considered necessary.

How otherwise can enforcement be made effective, particularly where safety is concerned, unless there are powers of closure?

There are sufficient safeguards in place not to render tenants homeless.

C Difficulties in enforcing the bill.
1. Landlord registration will not control abuse. It has not worked in Glasgow since it began.
   - Will measures proposed still prevent examples such as the landlady who housed two women in a basement without heating, sanitation, water or internal doors from operating? They have not done so.
   - :Licensing boards should be able to take such evidence into account as well as criminal records.
   - How is the purely nominal transfer of ownership to be resolved?

2. Increasing fines to £50,000 is all very well, but
   - sheriffs in Glasgow only impose fines of £200-£300 as a matter of policy – less than a month’s rent for one room.
   - The only case where £4000 was awarded was, according to experienced observers, because the landlord annoyed the sheriff, not directly because the case merited it.
3. **Inadequate resources for enforcement.**
   - Money and officers for enforcement in planning and licensing are now under severe pressure.
   - It costs c £2000 to take an HMO case to court.
     - There have been no prosecutions in Glasgow for planning offences for 4 years
     - There have been no prosecutions in Glasgow for HMO offences since April (There used to be one a month.)

**Suggested solutions.**
   - Local authorities should be able to recoup costs of up to £2000 for each case on successful prosecution, as in other criminal courts.
   - Joint prosecutions by planning officers and licensing officers could be considered in order to promote efficiency and effectiveness. (Officers would have to visit the premises together to support evidence).

4. **Compelling witnesses** to give evidence is not effective;
   - If a tenant flees or returns home, Glasgow is hardly likely to extradite him/her from mainland Europe or Ireland or China.
   - No practical solution has been offered.
   - Hostile witnesses: where the tenant colludes with a landlord, because he/she gets on well with him, no matter how dangerous the premises. How can this be dealt with?
   - Students taking exams can be seriously disadvantaged.
   - **More effective solutions need to be framed.**

D **DELEGATED POWERS**

Another major concern is that the government is giving itself delegated powers to add measures, without returning to Parliament. Although this is clearly intended to enable government to deal with problems as they arise,
   - What if it decides to make HMO licences permanent, as they did with liquor licences? (These already cause us problems)
   - **We need cast iron guarantees that this will not happen.**
   - Who will advise the government? I.e. whose interests will be served?
   - Will there be any wider consultation?
   - Will these powers enable legislation to deal with premises which currently avoid regulation? (cf. Appendix 1 pts 3 and 4)

1. **Protection of tenants:**
   Information should include the number permitted to stay in the premises.
   Essential information should be prominently displayed in the premises.

We also wish to draw the attention of the committee to the increasing practice of appeal to the sheriff against refusal of a licence. If the matter is returned to the board by the sheriff, even if the grounds for refusal were based on an inspection report, the board faces a possible fine of £6,000 if it again refuses the application.
Government may not interfere with the judiciary, nor should it do so.

However, some discussion with the judiciary on the problems arising from judicial policy, as opposed to the law, is clearly needed.

Jean Charsley
Secretary
Hillhead Community Council

10 November 2010
APPENDIX 1

The problem
Tenements (and flatted dwellings) are a vital component of Scotland’s housing (60% in cities such as Glasgow.)

Problems affecting their sustainability cannot be addressed by existing means.

The Private Rented Sector Bill, stage 1, is now the only appropriate place to consider solutions.

There are 4 main issues:
1. Relocation of stacked services (kitchens, bathrooms, drainage)
2. Subdivision of main rooms to increase rental
3. Installation of extra kitchens and bathrooms to avoid HMO legislation
4. Back-packer hostels over which there are also no effective controls.

The impact of these unregulated developments on the other inhabitants, the community and on the buildings and services themselves is now serious.

1. Relocation of stacked services:
   • Kitchens and bathrooms are moved into cupboards or above main rooms in order to convert the former kitchen to a bed sitting room.
   • Problems: pipe work crosses other rooms, leaks onto the flat below over bedrooms, living rooms and prized possessions.
   • Other financial implications: insurance premiums go up and may be refused.
   • Noise is increased above and below. The occupant of the former kitchen suffers from noise from the traditional kitchen above.

2. Subdivision of main rooms.
   • Rooms may be divided into two or three to increase rental returns,
   • The original window is partitioned.
   • Noise impact on the flat below.
   • Additional burden on inhabitants, building and communal services.
   • Damage to interiors (never rectified even if an HMO licence is refused)
   • Discouragement of return to family use.

3. Installation of additional kitchens and bathrooms
   • To avoid HMO legislation and environmental health inspection.
   • When a toilet and baby Belling are installed in each room, no regulation is possible to ensure the safety of occupants or address the impact on the building.
   • We have instances where a lavatory installed above a kitchen has leaked onto the cooker and work surfaces of the flat below.

4. Backpacker hostels in residential areas cannot be regulated.
   • 8 beds to a room and other associated problems are common.
   • Kitchens are ill supplied and inadequate.
   • Electricity safety cannot be ensured/
   • Tourists burn as easily as tenants.
The majority of alterations to flats arise in HMOs, in order to increase rental potential.

- Planning only allows interiors of Grade A and B to be subject to planning control.
- Building Control only looks at the safety of structures such as partitions and not the impact of alterations or whether they are desireable.
- The Housing Bill is taking a more holistic look at the problem of housing in Scotland today to ensure the viability of housing. It will not be revisited for a long time.
- The petition PE 1261, heard on Tuesday 9th February with cross-party MSP support, raising the general point concerning relocation of services and subdivision, was sympathetically received and continued.
- The specific issues of tenements and flatted dwellings needs to be addressed further.
- We have the support of the HMO unit and environmental health officers in this.

Arguments.

- We are told by civil servants that to regulate this is to interfere with peoples’ right to do as they wish in their own home.
- This is not a valid argument:
  - Interiors are already regulated for category A and B listed buildings
  - It is a fundamental principle that the rights of one should not damage the rights of others, as it does in this case. It underpins housing law, anti-social behaviour, etc.
  - It is not the resident but the landlord who is doing this in order to increase rental return and accommodate more than the flat was originally designed to hold.
  - Failure to regulate increases the problems of the building and neighbours and ultimately of communities.

Conclusion.

Although tenements are a proven and generally good form of urban housing, the current situation is unsustainable.

Damage to property and the stress caused to both occupiers and neighbours in a tenement or flatted dwelling have long-term consequences for housing, allied services and communities. (We have lost buildings and long-standing residents)

The consequences for a large part of Scotland’s housing and its citizens are sufficiently grave to make this a matter which should be addressed.

Deficiencies in legislation should be remedied to enable proper, beneficial regulation of a major form of housing; avoidance of regulation should be curtailed.

The Private Rented Sector Bill is now the appropriate place for this.
Note
We would be happy to provide further evidence in support of, or clarification of, any of the points in this submission.

Jean Charsley
Secretary

EVIDENCE:

Hillhead Street
An elderly couple were forced to move from the house they had occupied for 35 years because an HMO opened above their flat, despite a provision in the deeds that the flat could only be occupied by a family.

The rooms above were subdivided; plumbing was installed above their sitting room and water ruined their furniture. This was so distressing to the woman, who suffered from Alzheimer’s that her family had to rehouse her.

No planning permission was given, a licence was received,

No action could be taken by the planning department because the interior was not subject to planning considerations. Enforcement action was taken twice but ignored.

2. Kersland Street
Two tenement flats had rooms subdivided, giving 1/3 of the window to half the room.

One room had remarkable plasterwork.

On being refused planning consent the management company was asked if it would ensure that the rooms were restored. “No: that’s business.”

Both flats now operate as HMOs

3. Buckingham Terrace
Student in converted kitchen complained to upstairs neighbours about the noise from their original kitchen, saying he could neither sleep nor study. The noise was the normal kitchen noise and not music.

4. Kersland Street
Toilet hived off from kitchen of HMO above leaked onto the cooker and kitchen table of the flat below. 4 buckets were needed on the table to catch the drips.

Hillhead Street
Similar subdivisions in an HMO with consent by default (claimed had existed 10 years) have driven out owner-occupiers because of the noise.

WE can give may more such examples.
APPENDIX 2.
ENVIRONMENTAL ISSUES

Effect on common amenity space: back greens
- Refuse is a problem which can affect the suitability of a building to be an HMO and the sustainability of a community.
- It is unreasonable that no provision is made for proper storage and that the number of HMOs in a building require so many bins that they overwhelm the amenity space of a back court or drying green.
- HMOs generally need two or three bins each. In a tenement of 8 flats, several HMOs can soon overwhelm the back court. It is particularly acute in corner properties.
- Cleansing department regularly has to clean up these back courts.
- Our streets and back lanes are repeatedly littered with mattresses, fridges, furniture (when landlords refurbish for new tenants) and spilled rubbish bags.
- Failure of landlords to remove their rubbish or to look after their property in a responsible fashion is at the expense of the council tax payer.

FRONT gardens are equally neglected and filled with rubbish.
Landlord Registration
1. I do not consider that it is appropriate for the Private Rented Housing Panel (prhp) to advise a Local Authority that an application has been made against a Landlord within their jurisdiction as such advice could be premature. The application may be rejected by the Chair in accordance with the provisions of the Clause 23 of the Housing (Scotland) Act 2006. As applications are being made within 24 hours of the complaint being made to the Landlord the potential for the complaint to be dealt with between application and the appointment of a panel increases and it is not until a panel carries out an inspection that a complaint can, realistically, be considered to be valid in terms of a failure of the landlord to provide a property that complies with the ‘repairing standard’.

2. I can see merit in the prhp advising a Local Authority of the issue of a ‘repairing standard enforcement order’ (rseo) as this is a failure of the landlord to comply with the repairing standard and that if a ‘rent relief order’ (rro) is subsequently imposed this could be reported to a Local Authority as evidence that a Landlord has failed to comply with the terms of an rseo. To report cases prior to such orders being issued is premature and inequitable.

Fit and Proper Person Test
3. It is also inequitable that a landlord should be penalised if his Agent, in whom the Landlord has entrusted the management of the rented property, has been found to be not a fit and proper person. The Landlord is likely, in such circumstances, to have suffered financially as a result of poor management and it seems unduly harsh for the additional penalty of the removal from registration and all that can result from that penalty.

Tenant Information Packs
4. It is important that the Government provides the ‘information about the rights and responsibilities of tenants, landlords and agents’ as this must be consistent. It should be the responsibility of a Landlord to distribute such information only. It is important that a Landlord is not put in a position of giving, or appearing to give, advice to a tenant.

M H T Andrew FRICS FAAV

11 November 2010
NUS Scotland
1. NUS Scotland is a federation of local student organisations in Scotland, comprising over 60 local campus student organisations that are affiliated to the National Union of Students of the United Kingdom (NUS). NUS Scotland is an autonomous, but integral, part of the National Union of Students. The students’ associations in membership of NUS Scotland account for 85% of students in higher education and over 95% of students in further education in Scotland.

2. Students’ associations affiliated to NUS retain autonomy over all policy areas, and may choose to make individual students’ association submissions based on local policy. NUS Scotland operates a democratic forum for policy and debate on national issues affecting students, and NUS Scotland’s role is to reflect the collective position.

Private Housing (Scotland) Bill
3. NUS Scotland, through our students’ association members, represents over 500,000 students at colleges and universities throughout Scotland. Prior to giving this evidence, NUS Scotland consulted with members regarding the changes proposed for private sector housing. The vast majority of students living outside of institution accommodation live in the private rented sector in Scotland. Changes to landlord registration and, in particular, HMO licensing would therefore have a huge effect on students in Scotland and on Scotland’s college and university sector.

4. NUS Scotland was a member of the Private Rented Sector Strategy Group. We were very happy to be involved in the Group however it is clear that given the range of representatives and interests on the group, progress was sometimes less strategic and slower than would otherwise have been hoped.

Welcome measures
5. NUS Scotland supports proposals in the Bill for changes to the landlord registration regime. A pre-tenancy information pack will be a great step forward for tenants, if implemented in the correct way, as will additional clarity around pre-tenancy charges. The requirement to publicise the landlord registration number of a landlord on property advertisements is a great step forward and should not only bring greater protection for tenants but also reinforce the landlord registration regime. The additional information that will need to be provided to the register will also be a good step forward.

Measures of concern
HMO proposals
6. Where NUS Scotland has concerns is around the changes to HMO legislation and to some extent around overcrowding statutory notices.
7. In particular, we believe the discretionary power that would be given to local authorities to refuse an HMO application has potential unintended consequences. This power would mix safety and planning law, in direct contrast to the primary original intention of mandatory HMOs – to protect the safety of occupants, keeping safety issues and community issues separate.

8. This power could also give local authorities the ability to reduce the number of HMO properties in a given area. If local authorities use other powers they already have to require planning permission for HMO properties, this new power to mix planning and safety would allow them to use safety legislation to reduce HMO numbers. This risks an increased number of black market properties, risking increased numbers of rogue landlords, and risking the overall enforcement of the HMO licensing regime where this power is used.

9. Furthermore, this power could also act to increase rents for the remaining HMO properties, and push students and other HMO occupants further away from city centres. Given we have already seen accommodation costs increase by nearly 20% in the last four years while student support has not increased in real terms, and given that student hardship levels and commercial credit levels are already through the roof, any proposal that would increase student living costs further could clearly have serious unintended consequences.

10. If legislation was being considered that limited where a whole section of society could and could not live, there would quite rightly be serious concerns inside and outside of parliament. We believe limiting HMOs will limit where students, young people and young professionals can live, restricting their freedoms without clear basis or evidence. This is unfair and unjust.

11. Furthermore, we believe the problems communities have with neighbouring HMO properties – real or perceived – are not ones that can be legislated away. While the temptation among legislators is to attempt to address problems through action in parliament, seeking to encourage and develop better community relations through acts of parliament is not likely to be successful. Instead we believe investment in activity to foster better community relations and placing a duty on institutions and local authorities to better manage change (through for example young people’s accommodation strategies – see below) would be far more effective.

12. NUS Scotland is against proposals to mix planning and safety legislation because:
   - Mixing safety and planning is wrong in principle and directly contradicts the original primary intention of mandatory HMOs – to protect HMO occupants.
   - It will potentially reduce numbers of HMO properties risking increased black market and increased risk of rogue landlords, undermining HMO enforcement.
This power could increase accommodation costs for the remaining HMO properties and push HMO occupants further away from the city centre.

The measure would infringe on the freedom of whole groups of society, restricting where they can and cannot live, without clear basis or evidence. This is unfair and unjust.

Any real or perceived problems regarding HMO properties cannot be legislated away. Fostering better community relations is not likely to be successful through acts of parliament.

13. Changes to housing legislation should not risk the safety of students or other tenants and we therefore believe proposals which would give local authorities the power to mix safety and planning in this manner should be reconsidered.

Overcrowding statutory notices
14. NUS Scotland also has concerns regarding the powers for overcrowding statutory notices contained in the Bill. While we are supportive of the intentions of the notices, we again believe there are potential unintended consequences of the notices. Tackling overcrowding is crucial and we are fully supportive of that aim, however these notices could have the unintended consequence of increasing levels of homelessness. Unless further thought is given to the potential responsibilities placed on local authorities issuing notices then tenants could find themselves homeless with no notice, and no option for a secured tenancy.

Enforcement
15. Finally, we believe that enforcement is key to the powers contained in the Bill. For example, increasing penalties for breaching the HMO or landlord registration regimes are to be welcomed, but whether penalties are £5,000, £20,000, £50,000 or more, the focus for this legislation must be enforcement. As stated above, we believe the power to mix planning and safety legislation could have the perverse consequence of undermining enforcement of the HMO regime where the power is used.

Additional suggestions
Young people’s accommodation strategies
16. NUS Scotland supports the idea of placing a duty on local authorities to bring forward young people’s accommodation strategies. With house prices still prohibitively expensive and a lack of affordable accommodation in many areas, there is a gap in planning for and provision of accommodation for young people. This problem is only likely to get worse as the economic downturn hits mortgage lending and job security. We believe ensuring that young people’s accommodation needs are properly planned for and provided for will be crucial over the next few years.
17. Young people’s accommodation strategies could also ensure that students are properly planned for to the benefit of permanent residents and of students themselves. We believe many of the perceived problems around HMO properties and students can be attributed to unplanned change. If change is planned for and managed – in partnership with students, permanent residents, institutions, housing providers and local authorities – then greater community cohesion could be fostered.

18. Participation at colleges and universities has increased greatly over the last 10 or 15 years. However too often little thought has been given to where these increased numbers of students would live. Placing a duty on institutions and local authorities to work together to bring forward young people’s accommodation strategies would ensure that the housing needs of young people are met and that change within communities is managed and planned for.

Conclusions
19. NUS Scotland welcomes the measures in the Private Housing (Scotland) Bill which would reinforce and strengthen the current Landlord Registration Scheme for the benefit of tenants in the private rented sector.

20. However, we are concerned that measures to restrict HMO licences, by mixing planning and safety legislation, could jeopardise the safety of tenants – in direct contradiction to the original aims of HMOs – push up already high accommodation costs for students and others on low incomes, or force them out of certain areas altogether, whilst failing to tackle the real or perceived problems with HMO licensed properties.

21. NUS Scotland does not believe that legislation is the most effective way to improve community cohesion and we are also concerned that proposals for changes to overcrowding statutory notices may have the unintended consequence of increasing homelessness.

22. NUS Scotland believes consideration should be given to placing a duty on institutions and local authorities to develop young people’s accommodation strategies to manage changing communities across Scotland and to plan ahead for future housing needs in a way which will ensure communities (permanent residents and students alike) are able to live by side by side.

NUS Scotland

11 November 2010
1. The SFHA has reviewed the contents of the Private Rented Housing (Scotland) Bill.

2. The SFHA wishes to express its support for the views expressed by the Chartered Institute of Housing Scotland in its submission of written evidence. Scottish housing associations have an excellent track record in community regeneration and are hampered in this by those private landlords who fail to maintain their properties adequately. This is exacerbated where private landlords choose not to participate in housing investment projects and service contracts. We are therefore supportive of any measures that will put in place sanctions for those private landlords who fail to maintain properties to a reasonable letting standard.

3. We would wish to highlight that we share the CIH Scotland concerns about the new proposal to include powers to ban a landlord for failing to register. The landlords that would qualify for a ban are unregistered anyway and are the very landlords that councils need to work closely with to improve the quality of property and tenancy management. We also agree with CIH that a ban would mean that any unaddressed issues with the property or tenancy would remain unaddressed.

Maureen Watson
Policy and Strategy Director
SFHA

11 November 2010
On 27 October, the Local Government and Communities Committee met with officials from the Private Rented Housing (Scotland) Bill team to discuss the Bill informally. The Committee requested more detailed information during the meeting on the schemes for landlord registration and licensing of Houses in Multiple Occupation (HMOs) which my officials have collated and is attached.

I hope that the Committee finds this information helpful during its Stage 1 consideration of the Bill. I look forward to working with the Committee on the Bill during its passage through Parliament.

I am copying this correspondence to the Clerk to the Committee.

Alex Neil
Minister for Housing and Communities

November 2010
**Landlord Registration**

The Committee asked for an explanation of: what Rent Penalty Notices and Late Application Fees are; how these work in practice; the numbers issued and the amount of income generated from these to date. Further information was also requested regarding: the details of the cap on Late Application Fees and advice on the fee structure; the number of landlords deregistered or refused; and a list of offences or other elements that local authorities can take into account when applying the Fit and Proper Person Test.

**Fit and Proper Person Test - Offences**

When local authorities are applying the fit and proper test to landlords, the application forms ask for declaration of the categories of offence currently outlined in legislation, i.e. spent or unspent convictions for offences involving fraud or dishonesty, violence, drugs, discrimination or contravention of housing law, and court or tribunal judgements under discrimination legislation. Local authorities may also include other any other offences or material that it considers relevant. Therefore in addition to the mandatory considerations above the information taken into account can vary across the local authority network as authorities have discretion to capture good practice and local circumstances. The Government provides local authorities with guidance to help carry out these functions.

In order to improve protection for private tenants, the Private Rented Housing (Scotland) Bill expands the list of offences to be declared by landlords to include firearms and sexual offences, due to their serious nature. In order to offer additional support to make it easier for local authorities to gather evidence and make an informed decision about someone being fit and proper without imposing unnecessary additional duties on local authorities, the Bill gives additional specific examples of the information that the Government expects them to consider as a matter of good practice. This includes: antisocial behaviour; convictions and disqualifications relating to landlord registration and HMO licensing; breaches of the repairing standard and complaints and information from tenants, neighbours and others in relation to financial obligations (such as that the landlord has not paid his or her share of the cost of communal repairs, which have been properly agreed, or has not made payments due to property managers, all with regard to property let by the landlord).

Additionally, in order to encourage local authorities to give consideration to additional information which comes to their attention in the exercise of other local authority functions, for example health or the environment, in respect of the property included in the registration, the Private Rented Housing (Scotland) Bill gives Ministers power to put the landlord registration guidance on the discharge of these functions on a statutory footing. Local authorities must have regard to the guidance issued, the development of which will benefit from the outcome of the review of landlord registration and be subject to consultation with local authorities and others.

**Late Application Fees**

A landlord's registration is valid for 3 years from the point the application is approved by the local authority. When the expiry date is reached the landlord must have submitted a new application for registration if they are still letting property. If they do not do this and the registration expires (and the landlord continues to let property without having a valid registration or without having submitted a valid application for registration), then they are failing to comply with the legislation and enforcement action should be undertaken by the relevant local authority.
On expiry of the landlord’s registration, local authorities can apply a Late Application Fee (LAF) of £110 to the landlord. The collection of the LAF is an income stream for authorities. Local authorities have varying administrative processes to manage this, with most sending out two or three reminders prior to the registration expiry date to encourage the landlord to re-register on time. Equally some authorities apply and collect the LAF immediately on expiry whereas others offer an amount of discretion depending on the landlord’s circumstances or reasons for not re-registering on time. Application and collection of the LAF is usually effective in securing re-registration. To date, 2,049 LAFs have been applied giving a net income of approximately £225,000 amongst the relevant local authorities.

Rent Penalty Notices
Should the landlord continue to let property without re-registering, a second late application fee can be applied or the local authority can progress to instigating a Rent Penalty Notice (RPN).

RPNs are particularly effective in dealing with landlords who have been identified as letting property while unregistered. The RPN suspends the tenant’s liability to pay rent thus generating loss of rental income for the landlord. As no rent is paid, this is not in itself an income stream for local authorities but RPNs can be particularly effective in encouraging landlords to register with the majority of landlords subsequently coming forward to register generating the registration (£55) and property fee (£11) for the local authority. To meet this end, authorities who use the RPN option give notice to unregistered landlords prior to the RPN taking effect. To date, 1,398 Rent Penalty Notices have been issued (although the greater majority of these will not have become active as they will have served their intended purpose by encouraging the landlord to re-register.

Further Enforcement Activity
Enforcement action such as LAFs and RPNs are generally very effective tools and minimise the need to progress prosecutions. Further enforcement activity undertaken by local authorities when they determine that the landlord is found to be not fit and proper include revoking the landlord’s registration or refusing to register the landlord. To date, 8 applications have been revoked and 26 refused. Some examples of reasons applications are refused or revoked include convictions for rape, culpable homicide and drugs offences, failing to confirm gas safety and buildings insurance responsibilities, bankruptcy, evidence of fraud, and failing to comply with statutory notices or premises closed as sub-tolerable. This list is not exhaustive and will vary across local authority areas because as outlined above, the legislation allows discretion for local authorities to take account of any matters that they see fit.

Criminal Prosecutions
The Government’s approach to landlord registration is to encourage and support landlords to come forwards for registration. Criminal prosecution should only be progressed in the very worst cases as the Government wants to support the sector and retain the properties for let wherever possible rather than forcing landlords out of the market. If a prosecution was progressed, the likely offences would be as denoted above in the specific paragraphs regarding the ‘fit and proper person test – offences’ and ‘further enforcement activity’. Now the regime is established and enforcement activity is increasing, some local authorities have submitted reports or entered into discussion with the Procurators Fiscal. To date no case has yet been heard however, we are aware of at least one case currently pending. The Government is proposing to increase the maximum fine to £50,000 in the Private Rented Housing (Scotland) Bill to further encourage landlords to register and make it clear to the Courts the gravitas that we attract to such offenders.
Landlord Registration Fee Structure

Local authority income is generated by the landlord registration fee structure. The fees for an application for registration are capped and made up of principal fees of £55 for each landlord for each local authority that they apply to, a property fee for each property listed and where appropriate and applied the late application fee of £110. The fee rate was set by Ministers following a review of the legislation in 2008.

A root and branch Review of landlord registration has commenced, and will consider the suitability of the current capped fee structure and how local authorities might increase their income from fees to enable more effective administration of landlord registration, and support the self funding ambitions for the regime moving forward. In considering this, we must explore whether the removal of the cap for LAFs would generate a conflict of interest for local authority enforcement teams as a better financial return could be made from applying an inflated LAF rather than encouraging them to register and follow good practice.

Houses in Multiple Occupation (HMOs)

The Committee asked for further information on; the types of offences and penalties and the levels being charged; the numbers of prosecutions; and, any available information on trends of prosecutions.

Offences and penalties

Existing powers in the Civic Government (Scotland) Act 1982 and the HMO Licensing Orders are as follows:

- It is a criminal offence to operate an HMO without a licence – current maximum fine £5,000; to act as agent of an unlicensed owner of a licensable HMO – current maximum fine £5,000; for a licence holder to fail to comply with a licence condition – current maximum fine £1,000; for an agent to fail to provide the name and the address of the owner of a house that a local authority suspects is an HMO – current maximum fine £1,000.

- If a licence holder is convicted of an offence relating to HMO licensing, the sheriff can revoke the licence as well as imposing a fine. The sheriff may also disqualify the licence holder from holding a licence for up to five years.

- A local authority can suspend a licence if it considers that the licence holder is no longer a fit and proper person to hold the licence; the HMO is causing or is likely to cause undue public nuisance or a threat to public order or safety; or the licensing conditions have been breached.

- A local authority can vary the terms of a licence at any time.

- Other criminal offences include making false statements in licence applications, failing to obtain permission for or to inform the local authority of material changes, and failing to deliver the licence to the local authority when it has been suspended, varied, revoked, etc. (various maximum fines apply).

- Local authorities have rights of entry and inspection including inspection of documents. Failure to permit entry or to produce documents is a criminal offence - current maximum fine £1,000.
Preventing entry or search by a constable with a warrant is a criminal offence - current maximum fine £1,000. Failure to produce a licence is a criminal offence - current maximum fine £200.

Part 5 of 2006 Act

The new powers relating to HMO licensing in Part 5 of the Housing (Scotland) Act 2006 are:

- The maximum fine for operating an HMO without a licence (for the landlord or agent) is increased to £20,000 (proposed to rise to £50,000 in the Private Rented Housing (Scotland) Bill). The same applies to an agent not authorised by an HMO licence.

- A local authority can revoke a licence at any time, if the owner or agent are no longer suitable, the living accommodation is no longer suitable and cannot be made so by varying the licence conditions, or a condition has been breached.

- If an HMO owner or agent is convicted of any of these offences, the court may also revoke the licence. Where the owner is convicted, they can be disqualified from holding a licence for up to five years. Where the agent is convicted, they can be disqualified from acting as an agent for a licence holder for up to five years.

- A local authority can vary the terms of a licence at any time.

- When an HMO is not licensed or a condition is breached, the local authority can serve a notice so no rent is payable (like a Rent Penalty Notice).

- In deciding whether an applicant or agent is a fit and proper person in relation to HMO licensing, the local authority must apply the same test as for landlord registration, including having regard to convictions for various types of offence, such as breaches of housing law.

- The local authority may make a requirement for a licence holder to take action to rectify or prevent a breach of a licence condition. It is an offence for the licence holder or agent to permit any person to occupy the HMO while a requirement is in effect. The maximum fine is £10,000.

- A local authority can serve an HMO amenity notice, requiring work to make an HMO fit for occupation by a specified number of people.

- The maximum fine for a licence holder who breaches a licence condition or authorises an agent who is not specified in the licence and for an agent who causes a licence condition to be breached is set at £10,000.

- The maximum fine for an HMO owner who pretends that a licence is still in effect and for a person who prevents or obstructs someone exercising the local authority’s right of entry for various purposes is £1,000.

- A local authority has a general power, in order to enable or assist it to exercise its functions under the Act, to require a person owning, occupying or receiving rent in respect of land or premises to provide information about the land or premises, including the nature of that person’s interest and the name and address of any other person with an interest.

- When this is done to establish whether there is a licensable HMO on the land or premises, the notice may also require the person to state their relationship to other...
occupants. Failure to provide information or providing false information is an offence with a maximum fine of Level 2, currently £500.

- The local authority power of entry can be enforced by a warrant.

Number of prosecutions
As regards the number of prosecutions for HMO licensing, the Scottish Government does not routinely monitor local authority enforcement action. Scottish Government officials asked local authorities for assistance for this response to the Committee, and these responses have been combined with previously obtained information.

The distribution of HMOs is uneven across Scotland. There are currently 11,000 HMOs but the majority of local authorities have less than 100 HMOs, with only three having more than 1,000 HMOs. Three local authorities with over 1,000 landlords account for nearly three quarters of the HMO landlords in Scotland. They have obtained over 70 prosecutions with fines ranging between £130 and £4,000. Most fines are towards the lower end of this range.

Two local authorities with between 500 and 1,000 landlords responded to officials’ request for further information. One has made no prosecutions to date, but has met with the Procurator Fiscal to discuss evidence requirements and intends to prosecute. While the other has submitted 2 cases that were refused by the Procurator Fiscal, they have made contact with the new depute Fiscal and are seeking further prosecutions.

Fifteen local authorities with under 500 landlords responded. Most had not taken any prosecution action. However, one had served orders under section 155 of the Housing (Scotland) Act 1987 and another has had five successful prosecutions with fines of up to £360.

Where local authorities have sought prosecutions they report difficulties in obtaining sufficient evidence to satisfy the Procurator Fiscal, but generally report that engagement with the Fiscal has proved constructive.
About the Scottish Independent Advocacy Alliance
1. The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation which promotes supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

2. The right to independent advocacy for those with mental disorders or who are potentially vulnerable and in need of support is enshrined in Scottish legislation. However, independent advocacy can also have a key part to play in supporting other vulnerable groups such as black and minority ethnic groups and people with problem drug and/or alcohol use, amongst others.

3. Independent advocacy helps people by enabling them to express their own needs and to make their own informed decisions. Independent advocates support people to gain access to information and explore their options. They speak up on behalf of those who are unable to speak for themselves or choose not to. Independent advocacy is not about making decisions for someone, counselling or providing advice, it is about tackling injustice by enabling a person to have control over their life and to make their views heard.

4. Independent advocacy organisations do not provide any services other than advocacy. They are separate organisations in their own right, are financially independent, and all those employed in an independent advocacy organisation know that they are only limited in what they do by the principles of advocacy, resources and the law. This ensures they are able to assist vulnerable individuals whilst being as free as possible from any conflicts of interest.

The Private Rented Housing (Scotland) Bill
5. The SIAA is committed to the welfare of individuals who find it difficult to make their voice heard in Scotland. Independent Advocates often work with individuals at risk of becoming homeless and who have a limited knowledge of their rights.

6. Independent advocates do not take action unless their client asks them to and is comfortable for them to do so. Legislation can help individuals to feel confident about raising concerns about housing issues by providing appropriate protection and support for tenants, enabling independent advocates to help a person to improve their circumstances. The SIAA therefore welcomes this opportunity to give evidence on the Private Rented Housing (Scotland) Bill.

7. Overall the SIAA believes that the majority of measures contained within the Bill will improve the lives of private rented sector tenants in Scotland, particularly vulnerable groups such as those with mental health disorders (as specified under the Mental Health (Care and Treatment) (Scotland) Act 2003 which places a statutory duty on Local Authorities, NHS Boards, and other public bodies to provide the right of access to independent advocacy to any person with a mental disorder). However, some sections of the Bill do not include enough support for tenants and there is further scope within the provisions to do more to improve the confidence of individuals within the private rented sector.
Part 1: Registration of Private Landlords
8. The SIAA believes that by tightening up the regulations on landlord registration and making available landlord registration numbers on advertisements etc. tenants and prospective tenants will not only be safer but will be better able to identify rogue landlords and respond accordingly. However, we do have concerns about Section 9 of the provisions which makes an individual guilty of an offence if they withhold information about a property if approached by the Local Authority regarding their landlord.

9. Independent advocates work with individuals with mental health problems, learning difficulties, mobility and/or communication problems, language barriers, low literacy skills, acquired brain injury, asylum seekers and refugees and sensory impairment (including deaf and deafened people) amongst others. Sometimes independent advocacy clients are concerned that by speaking out against their landlord they will lose their housing, suffer from harassment or, in those cases where housing is provided by their employer, lose their job. Indeed, anecdotal evidence suggests that independent advocates have worked with people who have decided not to take action on a significant housing problem because of this threat.

10. Should the Bill require tenants to speak up against their private landlord then it should also set in place measures to protect tenants against reprisals from landlords. In extreme cases it should also place a responsibility on local authorities to provide alternative safe and affordable accommodation to the tenant. The Bill should also require local authorities to make additional support available to tenants where needed, including access to independent advocacy.

Part 2: Amendment of HMO Licensing Regime
11. The SIAA shares the concerns expressed by other organisations with relation to the linking of the planning and HMO licensing regimes. Whilst the SIAA acknowledges the pressure that large numbers of HMOs can place on amenities in an area, the SIAA also feels that it is important to ensure that there is a ready source of affordable accommodation close to concentrations of workplaces, shops and facilities so that they are readily accessible to those with physical, sensory and/or mental impairments who choose to live independently.

Part 3: Overcrowding Statutory Notices
12. The SIAA has grave concerns regarding the overcrowding in private rented housing statutory notice. Overcrowding in the private rented sector can occur for a range of reasons including: large or extended families staying together, lack of availability of larger affordable accommodation in the area and lack of knowledge regarding tenants’ rights and responsibilities. There appears to be little or no evidence available regarding those who will be most affected by the introduction of this notice and no provisions within the draft bill for those tenants who may struggle to find alternative accommodation because of, for example, low income or accessibility problems other than the ability of the local authority to specify a time period by which the matter should be resolved. It is possible that those who are least able to express their views or defend themselves will be those who will be most likely to be affected by this legislation and therefore be made at risk of becoming homeless.

13. The SIAA would like to see further research on this area before any legislation is put in place around overcrowding. The research should consider the potential impact on
individual groups and contain recommendations for how vulnerable tenants should be protected.

Part 4: Miscellaneous

14. It is clear that there is a general lack of awareness around housing legalisation and tenant rights and responsibilities. The Policy Memorandum for the Bill cites evidence (page 28, paragraph 139) that about 20% of tenants say that they do not understand their rights and that only 10% had heard of the repairing standard and the Private Rented Housing Panel. The portion of individuals who are unclear about their rights and responsibilities is likely to be higher amongst some of those who would commonly engage with, or benefit from access to, independent advocacy. The SIAA therefore welcomes the provision for tenant information packs within the Private Rented Housing (Scotland) Bill.

15. We note that the provision for placing a duty on landlords to provide information in the packs on the rights and responsibilities of landlords and tenants is by order of Scottish Ministers. Given the evidence of the limited knowledge many have about their rights, we strongly urge the Scottish Government to put this provision in place. We acknowledge that the order may have cost implications for the Scottish Government, Local Authorities and landlords; however, we consider the benefits of the provision to those in the private rented sector to be considerable.

Further comments

16. In responding to this consultation the SIAA approached several independent advocates regarding the many housing issues that they have worked with service users on. In addition to those already raised, advocates noted that within the private rented sector tenants in shared accommodation sometimes do not have choice on whom they live with. Whilst in the majority of cases this will not cause a problem, independent advocates had worked with tenants who had been diagnosed with a mental disorder who had lived with individuals with limited understanding or appreciation of their circumstances. On very rare occasions tenants have lived with, or rented from, individuals who have been discriminatory. The SIAA believes that more should done to protect vulnerable people who choose to live independently within the private rented housing sector.

17. Access to quality housing can have a significant effect on a person’s mental wellbeing. Johnson, R. et al (2006) found that:

• People with mental health problems are under-represented in owner-occupied accommodation, which is generally seen as the most socially valued and secure housing in the UK today.
• Compared with the general population, people with mental health problems are twice as likely to be unhappy with their housing and four times as likely to say that it makes their health worse.
• Mental ill health is frequently cited as a reason for tenancy breakdown.
• Housing problems are frequently cited as a reason for a person being admitted or re-admitted to inpatient mental health care.
• Housing sector staff (for example, Local Authority Homeless Persons Units) often lack awareness of mental health issues. Equally, some mental health support staff would benefit from greater awareness of housing issues.
18. Quality housing is essential to a person’s physical and mental wellbeing and the SIAA believes that, whilst the Private Rented Housing (Scotland) Bill will go some way to improving the lives of tenants, more could still be done.

Erin Elvin
Policy and Parliamentary Officer
Scottish Independent Advocacy Alliance

11 November 2010
1. Sustainable Communities Scotland (SUSCOMS) welcomes the decision to incorporate all HMO and Landlord Registration Issues in the Private Sector Housing Bill in order to produce cohesive and comprehensive legislation.

2. We have serious concerns, however, that this objective is not met by the provisions currently in the Bill. While the Bill is focussed mainly on the relationship between landlords and tenants, it does not provide sufficient safeguards for individuals families and neighbourhoods affected by concentrations of HMOs. We have identified below those areas where the Bill could be strengthened to meet the needs of communities, under the following headings:

**Planning Consent as a Precondition for an HMO Licence.**

3. The proposed linkage between planning and licensing is welcomed but we consider that it does not go far enough. The current situation is chaotic, and we consider that planning consent as a pre-condition for an HMO licence should be mandatory for the following reasons:

- Situations where an HMO can be legal under licensing law but illegal under planning legislation would be avoided.
- A consistent approach across the whole of Scotland would assist clarity for landlords, tenants and members of the community.
- Local authorities would be aware of changes in the demography of communities where HMOs begin to concentrate before an area reaches a point of no return in terms of being a mixed sustainable community.

**Note:** Planning consent is relatively inexpensive and involves a one-off charge, compared to the cost of the recurring licensing fee. Research has shown that concentrations of HMOs are damaging to the quality of life and sustainability of communities. Local authorities would be able to develop their own sensitive planning policies based on local needs. With clear local policies, decision-making would not be onerous.

**Definition of an HMO for Planning Purposes**

4. There is no logic in the present arrangements whereby some HMOs require planning consent and some do not.

5. Planning policy recognises the adverse cumulative effects of certain types of development. HMOs when concentrated in an area – because they house predominately young single people and most tenancies are short term with an average duration of about ten months - seriously affect community cohesion and amenity. The requirement (or not) for planning consent bears no relationship to the adverse affects of concentrations of HMOs on a community because:
HMO flats are sui generis – in a class of their own - in planning terms. Local authorities can set the threshold of resident numbers at which planning consent is required – different authorities set different thresholds. Glasgow and Fife for instance define three or more (the HMO licensing definition) while Edinburgh does not require a planning application until there are over five tenants in a HMO flat.

Houses need to have in excess of five HMO residents before they are regarded as requiring planning consent. Few HMO houses meet this threshold, so these HMOs are invisible to the planning system.

A serious and unintended result of the Bill’s current provision to require planning consent as currently required will be that houses rather than flats will become the focus for adaption to HMOs. This consequence can be avoided if all HMOs as defined in the Housing Act are made subject to planning permission, as is currently the case in Northern Ireland.

Enforcement Regime

6. We welcome the increase in fines for failure to register as a landlord and for the illegal operation of an HMO. However, increasing fines will not be a sufficient incentive to curb the activities of rogue landlords unless there is also an effective enforcement regime. The proposals as currently drafted are not likely to improve matters because:

- A major reason for introducing HMO licensing was the safety of residents. “light touch” regulation is not suitable for situations where safety is at stake. Yet, this policy informs current enforcement practice, at local authority level, and in the legal system.

- Enforcement can at present be only be funded through licence fees. At present enforcement is not well resourced and local authorities are understandably reluctant to engage on costly enforcement activities.

- Effectively resourced enforcement activity will result in increased licence fees for landlords. It is unjust that the cost of identifying illegal landlords and preparing court cases should fall on law abiding landlords.

- Criminal prosecutions are time consuming and costly to prepare. SUSCOMS has proposed that enforcement activity should be transferred to the civil courts. This would have the advantage that fines and court expenses could be applied to enforcement activity. This would also enable local authority staff to prepare prosecutions to the less onerous civil rather than criminal standard and improve the prospects of successful prosecution. We do not accept the premise that civil proceedings are only suitable for low level offences. Civil standards of evidence are applied in a large range of cases including those where the financial implications are considerable.
7. If civil proceedings are ruled out, there needs to be a credible and practical way to ensure that rogue landlords do not evade justice, as at present. The arrangements put in place would also need to provide a source of finance for compliance activity which would not place unacceptable burdens on landlords or constrained local authority finance.

Countering Avoidance of HMO Licensing Requirements

8. It has become commonplace for some landlords to seek to avoid the HMO licensing standards by installing cookers, toilets and showers etc., in individual rooms to make them self-contained. In tenement buildings noise and leakage from these facilities can cause considerable distress and damage to downstairs neighbours. Some conventionally occupied flats can become uninsurable after repeated flooding events. Traditional tenements have relied on their success as a popular housing option on the design and maintenance of stacked services with standard location for kitchens, bathrooms and toilets – minimising damage and hygiene problems when plumbing problems inevitably occur. In order to avoid this type of development becoming a “bad neighbour” it is essential that:

   a. Such “self-contained” living accommodation becomes subject to HMO regulation. In England self-contained flats which do not meet building standards are subject to HMO licensing. Specific standards should be set for such accommodation.

   b. A standard requirement should be that only ground floor flats would be deemed suitable for relocation of water services.

   c. Regulations should ensure that all new HMOs meet modern standards of space and amenity and that rooms in tenement blocks are not subdivided in such a way as to provide insufficient usable space. Access to opening windows as well as adequate ventilation for cooking and toilet facilities should be specified for self contained bed-sits which are described in (a) above.

David Middleton
For SUSCOMS
10 November 2010
Note: (DT) signifies a decision taken at Decision Time.

Private Rented Housing (Scotland) Bill: The Minister for Housing and Communities (Alex Neil) moved S3M-7770—That the Parliament agrees to the general principles of the Private Rented Housing (Scotland) Bill.

After debate, the motion was agreed to (DT).
Private Rented Housing (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S3M-7770, in the name of Alex Neil, on the Private Rented Housing (Scotland) Bill.

14:59

The Minister for Housing and Communities (Alex Neil): I am pleased to open the debate and I thank the Local Government and Communities Committee for its thorough stage 1 scrutiny of the bill.

The committee took evidence from many of the key stakeholders and has clearly taken careful account of their concerns in drafting the stage 1 report. I am pleased to see so much common ground in the stage 1 report and that the committee supports the general principles of the bill. I am delighted that the committee has recognised the efforts made to consult on the bill, from its conception and throughout its development and introduction. I am continuing to work with key stakeholders to improve the bill as it progresses through its parliamentary stages, using the sounding board that I established for that purpose. I thank its members and, indeed, the private rented sector strategy group, which has been instrumental in preparing the lead-up to the bill and in acting as a sounding board.

I reaffirm the Scottish Government’s support for the private rented sector in Scotland, which accounts for about 8 per cent of all households. There is great room for expansion in the sector, which has a major role to play in the future of Scottish housing. When we publish our white paper on housing next month, members will see that the sector is very much part of the Government’s philosophy and vision for the future of housing in Scotland over the next few years.

I acknowledge the excellent work of the many good landlords in the sector. I am keen to support them by ensuring that regulation is proportionate while protecting the rights of tenants and landlords, and by developing a long-term strategy for the growth of the sector. The private rented sector strategy group has been charged by me with developing that strategy, taking into account the various demands on the sector. I am keen to work with others, including the United Kingdom Government, which I hope to persuade to remove barriers to the expansion of the private rented sector and, in particular, of the need for the reform of the stamp duty regime and the real estate investment trust regime. We all want a modern, thriving, high-quality Scottish private rented sector that is responsive to the needs of tenants.
The bill plays a key part in the development of the long-term strategy by protecting the reputation of good landlords and tackling the minority of bad landlords who are acting illegally. In that way we believe that we can enhance the reputation and performance of the sector.

The bill responds to the concerns raised by a broad range of stakeholders and expert practitioners, as well as the concerns raised in the Parliament, particularly throughout the passage of the Housing (Scotland) Act 2010. In the main, the bill’s provisions originate from the strategy group’s recommendations, for which there was broad support. The bill improves the systems for landlord registration and the licensing of houses in multiple occupation, giving local authorities greater powers to tackle bad practice and penalise unlawful operators.

The bill gives new powers to tackle overcrowding, which can be a real difficulty in areas where problem landlords act irresponsibly when housing vulnerable tenants, such as migrant workers. It will improve tenants’ and landlords’ awareness of their rights and responsibilities and help landlords to carry out their statutory repairing standard obligations by enabling access to the private rented housing panel. It will crack down on the illegal pre-tenancy premiums that are often charged by unscrupulous agents or landlords, while clarifying the situation for responsible businesses.

I will deal in some detail with the key aspects of the bill, beginning with landlord registration and, in particular, the definition of a fit and proper person to be a landlord. I welcome the Local Government and Communities Committee’s support for the expansion of the fit-and-proper person test criteria. It is not an exhaustive list, and local authorities are able to use discretion to look at any material evidence that they consider appropriate. The criteria highlight the specific types of information that we expect to be taken into account as a bare minimum, such as antisocial behaviour by the landlord, or circumstances in which the landlord has not taken reasonable steps to tackle antisocial behaviour in his property, for example by one of his tenants.

The bill puts landlord registration guidance on a statutory footing, so that local authorities are required to have regard to it. It is my intention that the guidance will cover, for example, what should be taken into account when applying the fit-and-proper person test, such as how to consider antisocial behaviour.

The guidance will outline the benefits of the bill to the regime, along with showcasing the good practice and recommendations highlighted in the outcomes of the current evaluation of registration. It will highlight some of the existing good practice such as that at the local level between housing benefit and landlord registration implementation teams. For example, a number of local authority housing benefit teams are already not processing claims unless they have confirmation of the landlord’s registration number. The guidance will help to generate consistency across local authorities whilst allowing for flexibility in taking account of local issues. The statutory guidance will also cover the use of the new local authority power to obtain information from people who are associated with a house. That will include situations involving vulnerable tenants, which have been a source of concern to date. We are also extending the power to issue guidance on HMO licensing so that it can cover the same issue.

Johann Lamont (Glasgow Pollok) (Lab): I welcome very much the idea of sharing information that will mean that housing benefit will not be paid out unless the property where the claimant lives is registered. However, the minister said that there required to be “flexibility” for “local issues”. Why is that? Surely consistency is the absolute in delivering our shared aims in all this.

Alex Neil: It is more about the local process of how that is done. We already have two or three examples of local authorities where landlord registration teams are working closely with Department for Work and Pensions teams. As long as that happens, how things are done should be a matter for them. There are variations across authorities, including the size and the scale of the private rented sector in the area. The information that I have on places such as Edinburgh—I have visited the Edinburgh teams—is that people are helping each other. The landlord registration team is helping to identify housing benefit scams that the DWP can deal with and the DWP is helping to identify properties that landlords have not registered properly. There is mutual benefit in that system. Flexibility will be the modus operandi in achieving the consistency that we want at the end of the day.

One tortuous issue that we discussed with the sounding board and the committee is the registration number in advertisements. There was probably more debate on that subject than on any other aspect of the bill. We must be absolutely clear on the matter: the purpose of putting the registration number on the advert is enforcement—the number is an enforcement tool. If, in so doing, the number can also benefit the tenant, that is all well and good. However, the purpose of putting the registration number on the advert is to make it easier for landlord registration enforcement teams to ensure that whatever property is advertised is registered properly.

I know that the committee would like both the registration number and a kitemark to be used.
Obviously, we will consider the committee’s point of view before we move to stage 2. Landlords are concerned about the length of the registration number—some may extend to 16 digits—which makes the number expensive to include in adverts. We have found a way of identifying each local authority that is similar to the way in which car registration numbers identify the county from which a registration number emanates. We believe that the Scottish Association of Landlords is now satisfied that registration numbers with fewer digits limit the expense for landlords and can therefore be used in adverts. I have dealt with the issue in a bit more detail than I would normally have done as it has proved to be a controversial aspect of the bill.

Houses in multiple occupation provide an invaluable housing solution for many people, not least students. I welcome the committee’s support for the HMO provisions in the bill, which strike a proper balance between tackling the issues that stakeholders raised and maintaining supply in the sector.

Clearly, a major part of the bill is the increase in fines, which I think is welcomed in general. We cannot rely entirely on the threat of increased fines to achieve all our objectives, however. The bill contains other measures in that regard.

One major benefit of the bill to the consumer is the information pack, which will now be placed on a statutory footing. Landlords will have to provide a pack with essential information on the aspects of the tenancy as well as on health and safety issues, including in relation to electrical appliances and energy systems.

The provisions in the bill relating to overcrowding provide other major benefits, without leading to the unintended consequence of a massive increase in homelessness. I take the committee’s point that, in future, we may need to look at whether we should register agents, as well as landlords. Regardless of who is elected on 5 May, the new Administration should address that issue.

I recognise that there is probably more to do, but the bill is a major landmark in improving the performance of the private rented sector in Scotland and will help to pave the way for the sector’s further expansion and growth.

I move,

That the Parliament agrees to the general principles of the Private Rented Housing (Scotland) Bill.

Duncan McNeil (Greenock and Inverclyde) (Lab): I am pleased to take part in the debate as convener of the Local Government and Communities Committee. I am experiencing a bit of déjà vu, however, as it is not long since we debated the Housing (Scotland) Bill, which contained quite a few of the provisions that are before us today. I thank all those who gave us written and oral evidence, our committee clerks, Scottish Parliament information centre researchers and my fellow committee members.

The committee looked first at landlord registration. As the minister outlined, the bill expands the fit-and-proper person test that the landlord must meet. We will support that expansion, which provides focus and direction to local authorities about the issues, especially antisocial behaviour, that they must take into account when assessing someone’s registration.

The bill also provides for all adverts for properties to let to include the landlord’s registration number. As the minister said, it was important that we had real discussion about the measure, if it is truly to be a means of and tool for enforcement. In the evidence that we received, there was general agreement that it was a good idea. However, as has been mentioned, a number of concerns were raised about how it would work in practice. As the minister said, one issue was that, generally, registration numbers are pretty long, so the number would probably not mean much to the public unless there was some kind of explanation. To let boards would be exempt from the requirement, apparently because it was thought that it would be impractical to have different numbers on different boards. We look forward to hearing more about all that.

The alternative of having a symbol or kitemark was suggested, but we recognised that there were concerns that any symbol would not be unique and might be too easy to copy. For that reason, the committee suggested that we replicate the system that trade bodies use, under which the kitemark denotes registration but is backed up by a list of registered organisations that are given unique registration numbers. We also thought that using such a system could get round the difficulties with to let boards, so that they might not have to be exempt.

The Housing (Scotland) Bill proposed increasing the fine for non-registration to £20,000. This bill proposes that the fine should be £50,000. Although we support increasing fines as a deterrent to rogue landlords, we were concerned about the lack of prosecutions, which we saw as, in effect, allowing bad landlords to continue operating outwith the system. We heard in evidence on the bill that the City of Edinburgh Council successfully prosecuted a landlord who had failed to register three of his seven properties, but that the courts imposed a fine of only £65 per property. If we compare that with the amount that
it cost, according to the council, to prosecute the case, which was about £2,000 or £3,000, we find that there is hardly an incentive to deal with rogue landlords. The current level of fines is significantly lower than the current maximum, and there are a number of difficulties in pursuing prosecutions. That toxic combination left the committee doubting whether a fine could act as a deterrent whatever the level at which it is set.

Our report makes it clear that there can be a proper deterrent only if courts recognise and impose the higher fines so that local authorities are more prepared to pursue cases. It is vital that the courts give sufficient weight both to landlord registration and to HMO licensing schemes. The committee has suggested that it might be worth having either a dedicated housing court or a housing tribunal. That said, we support the increase in the maximum fine as a step in the right direction.

During our scrutiny of the Housing (Scotland) Bill, and again during our scrutiny of the Private Rented Housing (Scotland) Bill that is now before us, one issue that was raised time and again was whether the landlord registration scheme was working as it should, even with the improvements that were being made. There were also concerns that enforcement was not consistent across all local authorities. I am pleased to hear that the minister will be encouraging best practice in that regard, as we know that some schemes could be more proactive.

It seems that landlord representatives—the good landlords—were so disillusioned that they suggested that the registration scheme should be abolished. There was a worry about people not re-registering. We do not agree with that view, but we also do not think that the scheme is working as effectively as it should. When we scrutinised the Housing (Scotland) Bill, we said that we were not sure that the proposals in that bill were sufficient to tackle rogue landlords. We say that again with regard to the Private Rented Housing (Scotland) Bill.

We know that the Scottish Government’s private rented sector strategy group will review the current registration scheme, so we hope that the group will look at how to tackle those issues. We support the bill’s provisions on landlord registration, but we recognise that they will go only so far. Guidance that the Scottish Government will produce subsequently, and the review of the scheme, will be very important.

The substantive provisions on HMO licensing that were originally in the Housing (Scotland) Bill are replicated in the Private Rented Housing (Scotland) Bill. In our stage 1 report on the Housing (Scotland) Bill, we welcomed those provisions, as we felt that they could tackle the breaches of planning control that often result from landlords trying to maximise the letting potential of a property. We took the view that local authorities must use the tools at their disposal in housing and planning legislation to support sustainable communities and to maintain private sector housing.

The committee considered the Private Rented Housing (Scotland) Bill’s provisions to deal with overcrowding. We know that overcrowding is a significant issue in certain parts of Glasgow—there was a lot of discussion about Govanhill and about the migrant workers who live there, as the minister mentioned. Everyone who gave evidence to us agreed that overcrowding is an issue that needs to be tackled, but a number of concerns were raised about the approach that the Government was intending to take. For instance, some organisations suggested that there should be a duty to deal with anyone who is displaced as a result of their living in overcrowded conditions.

It became clear to the committee that this is a very complex area: existing legislation can already be used to deal with overcrowding and local authorities already have duties to deal with homelessness in certain situations. On that basis, we support the bill’s provisions in that regard, although we have concerns about their practical application. We certainly do not want situations to arise where an overcrowding notice is served, but all that it does is to make someone homeless. That would mean solving one problem, but creating another. Neither do we want undue pressure to be put on the social rented sector, with private landlords quite happily breaching the legislation, knowing that local authorities will have to deal with the problem.

We noted that the minister had given reassurances that the provisions in the bill were not intended to give rise to either of those situations, but I re-emphasise the fact that the current position is complex, and it is really not possible to predict with any certainty how many cases of homelessness there are likely to be across Scotland, and therefore whether or not there will be sufficient capacity in the private and social rented sectors to house people who have been displaced.

The powers in the bill will be used at the discretion of local authorities and are likely to be used as a last resort, but there is uncertainty about how things will play out in practice and we are concerned about that. That is why we recommended that the Scottish Government consult widely on its guidance on the factors that need to be taken into account before the decision is made to issue an overcrowding notice. We also recommended that the Government monitor the number of overcrowding notices and local
authorities’ reasons for issuing them. In that way we should be able to assess how effective notices are in dealing with overcrowding and what impact they have on levels of homelessness and the housing stock.

We need a fully effective landlord registration scheme to ensure that we weed out rogue landlords. We are not there yet. We welcome the improvements that the bill will bring, but it is clear that more needs to be done. Overcrowding is a serious problem that needs to be addressed. We acknowledge what the bill is trying to achieve, but we are concerned about the practicalities. With those caveats, we recommend that the general principles of the bill be agreed to.

15:21

Mary Mulligan (Linlithgow) (Lab): I welcome another opportunity to debate a housing issue and I am pleased to open the debate on behalf of the Labour group.

The private rented sector in Scotland is not big, particularly in comparison with the private rented sector in many other European countries, but it has the potential to grow, as the minister said. Given our current housing landscape, in which the public housing sector cannot meet demand and owner-occupation is often an unreachable aspiration, especially for first-time buyers, we need a private rented sector that provides good-quality housing at reasonable rents.

That is why the bill is a little disappointing. There is a need to ensure that tenants and landlords understand their rights and responsibilities in relation to renting property, and there is a broad discussion to be had on the private rented sector’s role in providing housing. I accept that not everything will need legislation, but I do not think that the bill has started to tackle the issues. It tinkers with existing provisions, for example on landlord registration, rather than taking on bigger issues. For that reason and others that I will mention, the bill is not quite what it might be. The Government has missed another opportunity in that regard.

I can be positive about the measures in the bill. I will concentrate on three areas: landlord registration, HMOs and overcrowding. Landlord registration was introduced through the Antisocial Behaviour etc (Scotland) Act 2004, as members will remember, when it was realised that in many cases it was impossible to deal with the antisocial behaviour of tenants in the private rented sector if we did not know who their landlord was. Registration was introduced for a particular reason, but it was always acknowledged that it could be expanded to provide a further service.

The first challenge that we faced was the way in which local authorities responded to the provisions on landlord registration. All members would agree that some local authorities have responded well and used registration to benefit tenants and their neighbours, whereas other local authorities have done little. Because of that inconsistency, many responsible landlords feel cheated.

The bill will strengthen landlord registration by expanding the fit-and-proper person test and increasing the fine for non-registration. I welcome the provisions. However, like Duncan McNeil, I ask the minister how the bill will make local authorities any more likely to pursue landlords and register them and whether it will encourage the courts to be stricter with errant landlords. I have doubts, and if the measures do not work many people will become even more disillusioned with the scheme.

Alex Neil: Is the member suggesting that local authorities’ discretionary powers in some areas should be made into statutory duties?

Mary Mulligan: I am suggesting that we need to work with the local authorities on how we incentivise them to be more proactive on registration than they are.

On HMO legislation, the bill again tries to build on what already exists. I suggested that the private rented sector may expand and, similarly, changes to housing benefit rules could result in increased demand for HMOs. The Westminster Government is wrong to propose to change housing benefit so that single individuals up to 35 years old—rather than 25—will be entitled to shared-room rate only. When people from the west end of Glasgow or St Andrews tell the committee that there are too many HMOs in their areas, we can only warn them and others that, thanks to the housing benefit changes, there may be more in the future.

However, I acknowledge the other side of that debate: demand is not being met, which leads to higher rents. I thank the National Union of Students Scotland for its briefing on that. There is an issue with how we share the spread of HMOs within our towns and cities. I also support the NUS’s call for a strategy to be developed to address young people’s housing needs.

Pauline McNeill will say more on HMOs, so I will move on to overcrowding.

The overcrowding measures are the minister’s response to particular issues in Govanhill—Frank McAveety will say more on that—but overcrowding is generally more complicated than that specific issue. It may include extended families or ethnic groups or may have a variety of random reasons. Current legislation provides for overcrowding to lead to a homeless designation and there was, as Duncan McNeil said, some concern that that could
lead to more pressure on housing waiting lists. Indeed, the Convention of Scottish Local Authorities has raised further concerns.

The measures in the bill are welcome as long as they achieve what is intended. We clearly have an opportunity to improve the bill at stage 2, and I look forward to working with the minister to do that. However, it will be disappointing if we again pass a housing bill while acknowledging that we will soon have to return to it to achieve what we intended in the first place.

15:27

Alex Johnstone (North East Scotland) (Con):
The Scottish Conservatives always welcome the opportunity to debate housing and I am pleased to say that we will support the principles of the bill at stage 1.

The debate is well timed, in view of the increase in buy-to-let mortgage approvals, which coincides with a report from the Association of Residential Letting Agents—ARLA—that void periods between tenancies are decreasing while demand for rental properties is on the up. It is clear that, as the Government appears to have taken a scorched-earth approach to social housing funding, the private sector is playing an increasingly important role in providing properties for rent.

Crucial to the debate is the fact that a substantially increased proportion of ARLA members’ offices—34 per cent in quarter 3 last year, as opposed to 19 per cent in Q2—believe that they are seeing an increase in property coming on to the rental market because it cannot be sold. That group is now often referred to as the reluctant landlords. Therefore, it is vital not only that any legislation clearly articulates a landlord’s responsibilities, but that the legislation be enforced.

I welcome the substantial increase in fines for non-registration that the bill introduces, but there is little point in the increase if someone who is found not to have registered as a landlord is not prosecuted. Such a substantial fine as is proposed would certainly be a deterrent, but the fact remains that, as at May last year, not a single prosecution had been brought for failure to register under the current landlord registration scheme. That suggests either that all is well in the private rented sector—in which case, there is little need for the bill—or that there is a reluctance to prosecute. I am inclined to suggest that it is the latter, given the fact that councils had issued more than 1,300 late application fees and more than 1,200 rent penalty notices by 31 March last year.

That said, a commonsense approach must be taken. We are extremely supportive of the introduction of tenant information packs, but there is considerable concern about the level of information that they will be required to contain. Some of the suggestions for inclusion in tenant information packs that I have heard are simply not practical or are superfluous. However, if the right balance is struck, I am certain that tenant information packs will be an asset in promoting sustainable tenancies. That is vital, especially for more vulnerable tenants.

I welcome the fact that a more holistic approach is now being taken to houses in multiple occupation. Refusing an HMO licence that would breach planning controls will be possible. It is therefore important that local authorities use planning controls and local housing policies to maintain balance in their communities and ensure that they remain sustainable, especially in areas in which the vast majority of HMOs are aimed at the student population.

However, there is growing concern about the variation in fees that councils across the country are charging for processing HMO applications. For example, a new application for a five-bed HMO in Angus, where HMOs are predominantly used to house migrant workers, may cost just £386 for the first year—the fee is reduced for renewal applications—but in the city of Aberdeen, the cost of the same HMO licence has risen from just £237 in 2006-07 to a staggering £1,500 in 2011-12, with no discount offered for renewals. I am aware that HMO licences in Aberdeen are for longer than one year, but that is still a substantial sum of money for a landlord to find in the first instance. Landlords must be assured that the fees that they are charged come to absolutely no more than the cost of processing the applications and running the system.

Given that the balance of tenure is shifting, with many people being forced to rent their home rather than buy because of stringent lending criteria, and more individuals becoming landlords because of a depressed housing market or a poor return on their savings, the Scottish Conservatives believe that the bill is a step in the right direction. It is certainly not, however, the comprehensive solution that may be required in the medium term. On that basis, we will support the bill at this stage, but we are disappointed that there is nothing in it to encourage greater investment in the sector by private institutions. In that respect it is, as Mary Mulligan would say, a missed opportunity. That said, I acknowledge the points that the minister made in his opening speech, in which he suggested that there are areas in which the national Government could help.

It is obvious that there is still a lot of work to be done. I urge the Scottish Government to remain open to the views of stakeholders in order to deliver a bill that is an important step forward in
managing the expectations of landlords and tenants, so that a better relationship between the two, and better relationships with the wider community, can be achieved. The Conservatives support the general principles of the bill, and I look forward to working on it in its later stages.

15:33

Jim Tolson (Dunfermline West) (LD): I, too, thank the committee clerks, the Scottish Parliament information centre advisers and fellow members for their work on the bill thus far.

The bill is an important part of the armoury to tackle the current housing crisis in Scotland. Underinvestment not just in affordable housing, but in affordable housing to rent has been going on for far too many years. We need to invest to tackle the overcrowding and poor housing in our communities. The Liberal Democrats will also agree to the general principles of the bill.

We have heard that one of the most controversial issues relating to the bill is the increase in the maximum penalty from £5,000 to £50,000. We believe that that increase is necessary to highlight to private landlords and the courts the seriousness with which the renting of poor or dangerous private rented housing should be treated. The vast majority of private landlords—large and small—run good establishments, and they have nothing whatever to fear from the measures in the bill because they currently follow most, if not all, of them. However, robust registration, review and—where required—penalties must be part of the package to ensure that the minority of private landlords who do not meet the prescribed standards either shape up or ship out.

I will look in more detail at some key areas of the bill. Part 1 deals with registration of private landlords. As has been intimated, landlord registration has been in place for a number of years, but it has not had the desired effect of weeding out the rogue landlords. Not only have rogue landlords not sought to register in some cases, but local authorities’ ability or willingness to enforce non-registration has left something to be desired. The proposals in the bill will do a lot to improve the requirements in relation to the eligibility and fitness of a person even to be considered as a private landlord. They will ensure that certain information is included in adverts to inform potential tenants that the landlord has met an approved standard, and the fine for breaching the registration regulations will increase tenfold, as I outlined earlier.

However, the first area of concern on which I seek clarification from the minister is local authorities’ ability to enforce the conditions in relation to registered properties and to check on non-registered properties. Only if local authorities can do those things will we be able to give tenants and honest landlords confidence that the system is robust and that it provides the necessary protection.

Part 2 covers licensing of houses in multiple occupation. HMOs are most common in our university towns and cities, although Alex Johnstone outlined another perfectly good reason why they are used. I have received representations from both the National Union of Students Scotland and permanent residents who live in or near HMO buildings. Although the NUS does not want the number of HMOs to be limited or reduced, it does not want students to be limited in their areas of occupation, either. Having spoken to residents of mixed student HMO and permanent residential areas, I know that there are, at times, significant concerns from the permanent residents.

Mary Mulligan: Jim Tolson mentioned students in HMOs. Does he agree with his coalition Government at Westminster that the age for shared occupancy should be raised to 35, which will encourage not just students but young adults into that situation?

Jim Tolson: I do not recall Labour proposing an amendment in that regard. Maybe that is something that Mary Mulligan will want to consider at stage 2.

The concerns that I mentioned relate not only to noise from within the properties and parked cars outside them when the properties are occupied, but to the effect on the community and its long-term viability when the properties are not occupied, especially during the summer months. I ask the minister to clarify how he expects to reconcile those different views from permanent and student tenants in mixed areas at stage 2.

Part 3 is on overcrowding, which is often the issue that brings irresponsible landlords to the authorities’ attention. The Liberal Democrats welcome the Government’s proposal to widen the categories of accommodation that are classed as HMOs. Indeed, I note that Hillhead community council and the confederation of St Andrews residents associations welcome the link between planning and HMO licensing. The provisions on statutory notices and tenant information and advice are welcome, as is the requirement for better information to be set out on the conditions that landlords are required to meet, and the appeal procedures.

We believe that the bill will not only provide better quality housing for existing tenants in the private rented sector, but will help to encourage more people to become landlords. That is seen by public, private and voluntary organisations as a
key step in helping to tackle homelessness in our communities. The Liberal Democrats believe that there are some welcome proposals in the bill that will protect the rights of both tenants and landlords, but also believe that the Government has to do more work to protect the rights of permanent residents in HMO areas. With the minister’s assurance that he will help to improve the bill at its later stages, the Liberal Democrats will be content to support the bill at stage 1 at decision time this evening.

15:39

John Wilson (Central Scotland) (SNP): In speaking in this debate at stage 1 of the Private Rented Housing (Scotland) Bill, I should say first of all that I have examined the issue not only as a member of the Local Government and Communities Committee but as a member of the Public Petitions Committee, which considered a petition on a range of housing issues, particularly private rented housing sector problems in the Govanhill area of Glasgow. I should also at this point put on record that I would have preferred the various pieces of housing legislation to be covered in one comprehensive housing bill but, as a mere back bencher, my suggestion fell on deaf ears.

The main policy thrust behind the bill is to amend the private landlord registration scheme and to improve tenancy rights for private rented tenancies. The bill contains important provisions, particularly on addressing problems of overcrowding. On a Public Petitions Committee visit, I, along with the then convener and constituency member, Frank McAveety, and my committee colleague, Anne McLaughlin, saw at first hand the intolerable and frankly inhumane conditions that some families are having to endure in the private rented sector in Govanhill.

That said, the Local Government and Communities Committee’s report sets out concerns about whether local authorities have sufficient financial powers to make the legislation work in practice. The current maximum £5,000 fine for letting, or attempting to let, a property without being registered is not acting as much of a deterrent. Under the bill, however, the maximum penalty for being an unregistered landlord will increase to £50,000. In the past, local authorities have been less energetic in their approach to private landlord registration but the bill, I hope, indicates a desire to adopt a more proactive approach.

As a councillor in the past and now as an MSP, I know that many areas have been wrecked by the proliferation of buy-to-let landlords and their letting agents, who are not always concerned about legal statute and have no commitment either to other residents in the area or, indeed, to the area in which they let properties.

The fact is that we must address the issue of unregistered landlords. Indeed, in its report “Landlord registration in Scotland: three years on”, Shelter Scotland rightly highlights issues that are faced by many private sector tenants, including repairs not being carried out, problems with hidden fees, and illegal evictions. Evidence to the Local Government and Communities Committee made it clear that not all councils are properly using the fit-and-proper-person test that is set out in current legislation, and that enforcement action by local authorities is at best patchy and in some cases non-existent. The committee’s report on the bill states that the committee “remains ... concerned that there is a lack of consistency across the country” in that respect. For example, North Lanarkshire Council has not issued any penalty notices and, as has already been mentioned, in Edinburgh only one case involving a private landlord has been successfully prosecuted.

I also point out that, each year, a significant amount of housing benefit goes into the private rented sector. In the North Lanarkshire Council area, which I represent, there are 4,620 private sector recipients of housing benefit and it appears that, based on the average award, a total of £422,000 is allocated to the private rented sector in that area alone.

The bill proposes to provide detailed assurances for all private sector tenants. In committee, I was struck by how much the need for such a provision was evidenced by those who responded to the consultation on the bill, especially in relation to the quality, safety and impact of HMOs that breach planning law.

At this point, I caution members that they should not confuse HMOs with the issue of overcrowding; they are distinctly different matters. The committee report states:

“overcrowding is a significant and serious issue”,

and a number of organisations, including Shelter Scotland and the Scottish Council for Single Homeless, were concerned that the problem of homelessness might be exacerbated if local authorities do not have a duty to deal with people who are displaced through an overcrowding statutory notice. In its report, the committee seeks the Government’s assurance that it will assess and review any potential impact on homelessness.

The bill also attempts to address tenants’ concerns about what they can expect with regard to rent payments; the introduction of the compulsory tenant information pack will go some way towards achieving that aim.
I note from press reports on Monday that the minister announced the new Tenancy Deposit Scheme (Scotland) Regulations 2011, which aim to protect tenants in the private rented sector from having their deposits wrongly withheld by landlords and letting agents. I seek clarification from the minister about why that laudable aim is not part of the bill. I look forward to greater scrutiny of the regulations at a later date.

I welcome the stage 1 debate and the broad principles in the bill, and I look forward to its coming back to the Local Government and Communities Committee for further scrutiny. I thank all those who provided written and oral evidence on the bill, as well as the minister, the committee clerks and my colleagues on the committee.

15:45

Pauline McNeill (Glasgow Kelvin) (Lab): I welcome the committee report, the hard work that the committee has done on this important bill and the work that the minister has done to make some progress.

I would like to work with the committee and the minister at stage 2 to ensure that the bill becomes strong legislation. We have made considerable progress in some areas but, as Mary Mulligan said, it is important that we keep pace in the housing strategy with what is happening in the housing market as it begins to change. We need firm regulation, planning and enforcement; indeed, the committee identified that we need to consider how we can ensure strong enforcement.

I want to talk mostly about HMOs, primarily because the issue dominates my casework in Glasgow Kelvin. There are very good landlords and I want to put it on the record that I support the existence of HMOs, because they are needed for a variety of tenants and are an important part of our housing strategy. What concerns me in my community is that places such as Hillhead and Woodlands are now unsustainable; in fact, there is a moratorium on licences there now, because there is a concentration of HMOs and there are too many. Next door to my office, there is a tenement block in which six of the eight properties are HMOs—35 people are living in a block that I am sure was intended for far fewer people.

I will address a couple of related issues that I know the committee has examined. One is the relocation of stacked services, which has become an issue in my constituency because, as landlords try to cram more people into accommodation, they try to create more kitchens and bathrooms. Members will understand the problems that ensue when a bathroom is above a bedroom and there are leaks. There is a case for there being grounds for refusal by local authorities when those stacked services are relocated. I think that the committee heard some evidence about some horrible cases, including one case in which an elderly couple were forced to move out because water was leaking into their bedroom from a kitchen above. The tenements were not designed that way; they were designed, for very good reason, so that the kitchens were aligned. The issue has also impacted on students who have people above them cooking or living their lives in an ordinary way, but it means that they are unable to study or sleep. It is a genuine problem.

Related to that is the subdivision of main rooms. I have asked on many occasions—even before the creation of this Parliament—how we could address the issue. I am always told, “Oh, that’s for building control. Oh, no—it is planning,” and such like. It has to fit somewhere. Landlords are subdividing properties; they are dividing windows down the middle. That is not good for tenants; it increases noise and disturbances and it certainly discourages the return of the properties to family use. There should be grounds whereby that is deemed to be not suitable so that local authorities can refuse permission. There must be a provision in the bill to prevent subdivision or, at least, to have firmer controls.

On illegal HMOs, there must be stronger enforcement when landlords fail to comply with the law. Other members have said that stronger fines are important and I have argued for those, but they will not be enough in themselves. Part 5 of the Housing (Scotland) Act 2006 does not come into force until August. Alex Neil knows how I feel about the issue because, in 2005, when Johann Lamont was the minister responsible, I moved an amendment to the Housing (Scotland) Bill for higher fines. If I had thought that it would take until 2011 to get it enforced, I would certainly have tagged something on the end of that amendment. However, now the fine levels, which I support, will exceed the fines that we voted for in 2006. I accept that that is progress.

There is a proliferation of HMOs in some parts of Scotland, which is why there needs to be strong legislation in the bill for the 10 years ahead.

I want to be clear about what proposed new section 129A of the 2006 act will do. It is the link between planning and licensing. I understand that it is for local authorities to determine their own planning rules—in that sense, local authorities have discretion and I have no problem with that. Where there is an existing planning policy, a local authority can apply that. It can refuse to look at an application if it believes that it is in breach of planning control. Subsection (2) states:

“The local authority must, within 7 days of deciding to refuse to consider an
HMO application, serve notice of its decision on—

(a) the applicant,
(b) the enforcing authority, and
(c) the chief constable.”

My understanding is that the licensing committee does not even have to look at an application if it considers that it could be in breach of planning policy. In Glasgow, there is a planning policy for a limit of 5 per cent of HMOs in any given area—it is 10 per cent in the west end of Glasgow—and the maximum may already have been reached when an application comes before the licensing committee. Therefore, an application could be refused because that limit of 5 or 10 per cent had been reached. That seems to be the way forward. I want it to be made clear, however, that the licensing committees that choose to use that provision will not be challenged in the courts and that landlords will not find themselves before sheriffs. I want to make sure that, if a licensing committee chooses to use that provision, it is absolutely foolproof.

At stage 2, we will need to clarify whether objectors can submit evidence in that regard. Who will decide whether an application is in breach of planning policy? Can objectors say that they think that it is in breach of planning policy at that point? We may need to have a look at that to see whether the bill will do what it intends to do. For that to work, the planning procedure needs to be clear for those who want to give evidence, as there is a separate planning process in that regard.

On lawful use, when a landlord has had 10 years of operating already, they will get planning permission. However, there are cases in which landlords claim lawful use but do not have an HMO licence. I do not think that we should reward them for not applying for that licence—that should not be a way round the law.

We should think about other grounds for refusal. In effect, planning policy would be a ground for refusal. Local amenities and back courts being unable to support additional tenants should be a reason for a licensing committee’s being able to refuse an HMO licence, as granting such a licence would make a property unsustainable.

We are heading in the right direction. I look forward to stage 2 and welcome what the committee and the minister have done.

15:53

Anne McLaughlin (Glasgow) (SNP): I welcome to the public gallery members of Croftfoot housing action group. The bill came about in response to the growing problems that are faced by people such as them. By the time Parliament is finished with it, it should—and I am determined that it will—ensure that the law is on the side of people such as them and not on the side of the minority of unscrupulous landlords and letting agents who are currently making people’s lives a misery and being allowed to get away with it.

The bill will be better, stronger and more effective for the input of people such as those who are here today representing Croftfoot housing action group. If anybody knows the need for the bill, it is them. They are a group of individuals who have never been political in their lives, but whose experiences have forced them to become involved. They are, indeed, a force to be reckoned with.

I was invited by them to a public meeting. When I got there, not only were there around 200 local people in the audience, but they had also managed to get the local MP, two other MSPs and three councillors along. They have responded to the consultation on the bill and will submit evidence to the committee. They have visited Parliament several times and have spoken to Alex Neil, the Minister for Housing and Communities, on the telephone. They have met Government officials, they have referred many individuals to my office and they are here again today. They have become fearsome and effective campaigners in a very short space of time, and the reason is that they are highly motivated. After all, who does not want to be able to go home of an evening, shut the door and shut out the rest of the world?

I have gone into some detail about that group because they embody the strength of feeling that exists on the issue. If a person’s housing needs are not being addressed—by that I mean that, through no fault of their own, they are not living in a safe, secure and clean environment—it is extremely difficult for them to establish a decent quality of life. Croftfoot housing action group is one housing group in one area of one city, but the problems that it seeks to address are replicated throughout the country.

Given the importance of housing to our wellbeing, landlords have an extremely important relationship with their tenants. It is welcome, therefore, that the fit-and-proper-person test should be expanded to include sexual and firearms offences. Given the nature of some organised crime, where there is an accumulation of capital, investment in property might seem like a good way of hiding that capital and generating additional revenue. However, this Government has a strong record of going after the proceeds of illegal activity, and it is to be welcomed that all tenants will be able to have an increased sense of confidence in their landlord once the legislation is passed.
Going hand in hand with that are new powers for local authorities to deal with unregistered landlords and the agents who assist them in their activities. I believe that the existing powers—although they needed to be strengthened—have not been used nearly enough, so I urge local authorities, which are being consulted on the bill, to use the powers more often.

The bill will address not only the problems that are faced by responsible owner-occupiers in communal properties, such as those in Croftfoot, but will address the problems that are faced by private rented sector tenants who have to suffer the poor-quality housing and conditions that are offered by some private landlords.

I am sure that many of us here have experienced many of those problems ourselves. I have had significant problems in the past with neighbours whose landlords are absent and uncontactable. I should note that I rent out my old flat to a tenant and that I am, of course, fully registered—although, perhaps now that the legislation is being tightened, it might be decided that an MSP is not a fit and proper person.

I know that there are many good landlords, not just because I am one but because of my experiences during the 16 years of my life that I estimate have been spent as a private sector tenant. Although some of those experiences were first rate, I have had some pretty dreadful experiences, too. My colleague, Aileen Campbell, and I once shared a flat where water came out of the taps only on special occasions, but black gunge came up into the bath on what seemed to be a daily basis, and the landlord was in no particular hurry to do anything about it.

The problems that this bill seeks to address are myriad, but I argue that there is nowhere that is more representative of the entire list of problems than Govanhill in Glasgow’s south side. I know that my Croftfoot friends would want me to put on record the fact that Croftfoot is still a nice area in which to live and that the reason for their campaign is to ensure that they stop the growing problems before they escalate in the way that the problems in Govanhill have.

Govanhill is also a lovely area. It used to have plentiful affordable housing and lots of small retail outlets. It has many community projects and is handy for town. It has always been a vibrant place of many cultures, and people there are used to welcoming new communities from different backgrounds.

Today, however, Govanhill seems to have been taken over by unscrupulous landlords who are more than happy to let a two-bedroom flat to families of sometimes 25 people, and who allow their properties to fall well below tolerable standard. For example, in the case of a young family whom I visited with John Wilson and Frank McAveety, the letting agent—acting as a front for the unknown landlord—seemed to think it acceptable to have bare electrical wires sticking out of the wall in the bathroom. Those unscrupulous landlords do not explain to their tenants that they have communal responsibilities to their neighbours and simply refuse to meet their own communal responsibilities until, as happened two years ago, whole tenements eventually collapse.

Govanhill has the entire gamut of problems, yet local people continue to fight for their area. They do not want to leave; they want to stay and restore Govanhill to the thriving, vibrant area that it once was. However, they cannot do that without support, which is why I was delighted when Nicola Sturgeon announced last year that an additional £1.8 million would be invested in renovating properties and funding a special hit squad to take on bad landlords in Govanhill.

That is one example of the SNP Government listening. This bill demonstrates that the whole Parliament is listening, too.

I support the general principles of the bill and look forward to assisting my constituents in contributing to its development.

15:59

Patricia Ferguson (Glasgow Maryhill) (Lab):

I, too, have a slight feeling of déjà vu as I rise to speak this afternoon, as we have discussed a number of the provisions of the bill on a previous occasion. I argue that issues relating to houses in multiple occupancy, private letting or overcrowding deserve the attention of this chamber and require us to put in place sensible and practical regimes that work for the people who live in such properties and for people in the wider community.

We already have a system of landlord registration, but we would all accept that it could work better. The committee heard from local authorities where the system of registration is clearly working better than it is in other areas. Some of that seemed to be down to the level of resource that individual local authorities felt able to devote to registration. However, there was evidence to suggest that some local authorities—many, in fact—felt that there was little point in pursuing unregistered landlords because of the time that it takes to get a case to court and the fact that where convictions have been secured, the fine that the court imposes is minimal.

I appreciate that although the minister had proposed an increase in the level of fine to £20,000, he has now decided that £50,000 is more appropriate. However, the fact remains that unless
the courts are willing to use the new limit, the deterrent effect will be minimal. The same is true of the fines that are proposed for offences in relation to HMOs. The justice system needs to give more weight to housing issues, including the problem of evicting convicted drug dealers. I welcome the idea of a specialist housing court or tribunal, although it is clear that that will now be for a future Administration to develop.

I welcome the expansion of the list of offences to be declared by applicants for registration. Many, although by no means all, of those who rent privately are vulnerable people. They can be young and living away from home for the first time, or new to our country with limited language skills.

The minister and I have debated, in the chamber and in committee, the need for a landlord registration number or mark to be used in publicity material. I genuinely believe that such an identifier will be very useful indeed. The minister said that we had a very robust discussion at committee, and that the provision was one of the controversial elements of the bill, but I do not think that it is controversial. It is common sense and something that we all care about, and we just need to have a bit of a discussion about how to get it right.

I and other colleagues have raised the issue of HMOs in the chamber many times. I do not have time today to detail the problems that many of the communities in my constituency suffer as a result of an overconcentration of HMOs—Pauline McNeill has already done a good job in that regard. Suffice it to say that the measures in the bill that will improve the interface between HMO licensing and planning are very welcome. The minister might want to say something about how that relates to building control, for the reasons that Pauline McNeill outlined. Rooms and individual facilities are literally cut in half, sometimes with no access to natural light or with that access divided right down the middle of a room.

I appreciate that the problem is complex: if it was easy, it would have been solved a long time ago, but it requires that competing demands be balanced. We must have a thorough investigation that considers the difficulties that are faced by communities, the needs of those who rent and the ways in which the situation can be improved. It should also consider specifically the needs of young people in the housing market. Such an investigation is now overdue, particularly given the current financial situation and the changes in benefits, which mean that many more people will be seeking other types of accommodation. I very much hope that whoever is standing in the minister’s place after the forthcoming election will commission such research and take its findings seriously.

We need to ensure that our accommodation is safe, and that people are part of balanced communities in which it is pleasant to live—as Anne McLaughlin said—and safe for those who live in properties that are occupied by more than one family or individual. We must ensure that that is the case not only for the few, but for everyone.

As a Glaswegian, I am acutely aware of the problems that are experienced in the Govanhill area of the city, and I expect that my colleague Frank McAveety will address those in detail. However, I have some concerns that those issues may not be resolved by the bill, and questions remain—which I feel obliged to raise—regarding the overcrowding provisions in the bill. For example, will a legal requirement to reduce overcrowding in the private rented sector amount to much if there is no additional provision of alternative accommodation and housing for those who are living in overcrowded conditions? Will the burden fall on the social rented sector, and if so, can we be assured that it has the capacity to cope? Without answers to those questions and those assurances, a legal requirement to reduce overcrowding will—at least in my opinion—amount to very little.

I am afraid that the bill does not do much to address substandard accommodation, which also blights the Govanhill area. Anne McLaughlin rightly referred to the sums of money that Miss Sturgeon made available, but there has to be a balanced package in the area that takes account of the problems that are experienced by people living in Govanhill—newcomers and people who have lived there for longer periods—and gets things right. The problem will move into other areas, because Govanhill simply cannot cope.

The bill seeks to tackle significant problems, but I am not yet convinced that it will do that. Unfortunately, we will be able to judge that only at a later stage. However, I hope that it can, and for that reason, I am happy to support it at stage 1.

16:05

Sandra White (Glasgow) (SNP): I am pleased to speak in support of the bill at stage 1. I have long campaigned for and supported the tightening up of HMO licences, as other members have done. Like other members, I deal with a great number of cases relating to the granting of HMO licences and the problems that that causes. Pauline McNeill eloquently set that out.

Glasgow has a vast proportion of HMOs, particularly in the Hillhead area and in other parts of the west end, so we desperately need to deal with the issue. Page 11 of the Scottish Parliament information centre briefing on the bill mentions that three quarters of HMOs are concentrated in four
local authority areas—Aberdeen, Edinburgh, Dundee and Glasgow. Those are all university cities. The city that I represent, Glasgow, has three universities and numerous colleges and it has many HMOs and private lets.

I will return to that issue, but first I will mention the tenancy deposit scheme, which John Wilson talked about and which will come into effect in March this year. That is welcome, and I know that the National Union of Students welcomes it very much. I have had many representations—as have other members, I assume—from tenants who have had their deposits withheld by letting agents but have been given no good reason for that. We have challenged that head on. I hope that, in future, such tenants will get their money back. I have long campaigned for such a scheme. Away back in the 1999 election and in the election preceding that, I and other members who are present campaigned to get a tenancy deposit scheme. I thank the minister for pushing forward the scheme, which I am sure will be welcomed in various areas.

Some members have criticised the bill for not going far enough. I agree that we have to consider it at stage 2, and I am sure that amendments will be made. As members have said, the landlord registration scheme is to be welcomed. However, other members, including Mary Mulligan, representing the Labour Party, have said that the bill does not go far enough and is not good enough. Mary Mulligan will have a chance to lodge amendments at stage 2. I certainly look forward to seeing the amendments that she lodges. We should not completely rubbish the bill at stage 1.

The debate has been consensual and the speeches from members have been good. Basically, we are trying to work together with all parties, so perhaps Mary Mulligan was a wee bit out of synch with the other members who have spoken. The bill should be welcomed. After all, the current Government has not been in power for long, but her party was in government long before the SNP Government shared a commitment to find more resources to deal with the problem. Equally, the Labour authority in Glasgow and the SNP Government share a commitment to find more resources to deal with the problem. We have heard about numerous complaints—Jim Tolson mentioned Hillhead community council, charities and others. Sometimes people’s lives are made absolute hell when an HMO is right next to them and that property’s kitchen is next to their bedroom. The occupants of the HMO might be cooking, or up all night, when their neighbour is trying to sleep.

Patricia Ferguson mentioned building control, which is an important part of the picture. We need building control, planning and the licensing teams of local councils to work together to ensure that tenants have a decent home to live in and that residents can also live in peace.

As others have mentioned, we need to look at situations such as that in order to protect not just the tenants who move into HMOs, but the other residents of the buildings. We have heard about numerous complaints—Jim Tolson mentioned Hillhead community council, charities and others. Sometimes people’s lives are made absolute hell when an HMO is right next to them and that property’s kitchen is next to their bedroom. The occupants of the HMO might be cooking, or up all night, when their neighbour is trying to sleep.

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To return to the subject of HMOs, all members will have visited such properties. I certainly have, and I have seen good ones and bad ones. We need new legislation to tighten up the link between planning and licensing of HMOs. I have met councillors in Glasgow and officials in the council planning department. As Pauline McNeill said, we need an assurance that councils that do not grant an HMO licence will not be taken to court. Will the bill tighten up that link? Will potential HMOs need planning permission before they become HMOs? We also need to look at how we deal with HMOs that were granted a licence previously. We need assurances on that.

Patricia Ferguson and Pauline McNeill mentioned the petition. I add that some properties cannot be partitioned viably. I have been in a property that we in Glasgow would call a room and kitchen, but which is being advertised as a two-bedroom flat simply because the main room has been partitioned down the middle to make space for two bedrooms. What I would have called, many years ago, a hole-in-the-wall bed, has been turned into a kitchen. The landlord is charging £600 or £700 a month for what is basically one room rather than a two-bedroom flat.

We have to look at situations such as that in order to protect not just the tenants who move into HMOs, but the other residents of the buildings. We have heard about numerous complaints—Jim Tolson mentioned Hillhead community council, charities and others. Sometimes people’s lives are made absolute hell when an HMO is right next to them and that property’s kitchen is next to their bedroom. The occupants of the HMO might be cooking, or up all night, when their neighbour is trying to sleep.

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16:11

Mr Frank McAveety (Glasgow Shettleston) (Lab): There has been broad consensus on the subject of the bill irrespective of the political affiliations of colleagues on the Public Petitions Committee. The reason for our visit to Govanhill was to try to understand more about the situation. I have more knowledge about Govanhill than most because of the nature of the issues in my constituency, but we have built consensus. Equally, the Labour authority in Glasgow and the SNP Government share a commitment to find more resources to deal with the problem. However, those resources are not sufficient to deal with the scale of the problem. I hope that the contributions to today’s debate and whoever forms the Government after the May election will help to drive forward investment in housing and address the problems effectively.
Govanhill has been an important part of my life for three decades. I often tell the story of when I was eight or nine years old and I was packed away on the train to Govanhill when there was family turmoil. I arrived at Crosshill station, a part of Govanhill that has been most obviously affected in recent years. I used to see the beautiful sandstone villas and other tenemental property in markedly better condition than much of the Springburn housing before the demolitions kicked in the early 1970s. In the mid-1980s, I taught in Govanhill and in the late 1990s, I was given the opportunity to serve the area as part of a wide parliamentary constituency.

The area has seen a lot of change and I want to focus on how the bill can address that change. No one can claim brownie points for what they have done, because none of us has done enough to address the concerns of my constituents—until after May—on the south side of Glasgow. None of us—elected members and legislators—is quick enough to intervene to question the level of effective work done by landlords. Many landlords are good, but many of them are not good at all. Those landlords spend their time avoiding legislation and enforcement powers, because they know that it is hard to catch up with them as they move about the area.

We have heard from previous speakers about the scale of the problem. The Public Petitions Committee visited the area, but I do not think that any of us here can fully comprehend the scale of the problem. Constituents regularly send me images of the issues in Govanhill that are exacerbated by the behaviour of a minority of residents. I have a host of pictures that show refuse bags piled almost 4ft high from one back door to the end of a garden, because individuals who live in overcrowded properties have been dumping their stuff out of windows. Nobody should need to live in such conditions in this century.

What can we do about that? I welcome the cross-party support—whether from the Labour council or the SNP Government—for the hub that we have set up in the past year and a half. That is about co-ordinating activity in the area, so that the area can resuscitate itself.

The economics are pretty simple. The vast majority of Govanhill is a fantastic neighbourhood. As the elected member for the area, I stress that it contains good people who work hard and bring up decent families. However, pockets of the community have been badly affected by the explosion in private landlordism in recent years. We have a catch-22 situation. People who live in the affected areas must sell at such a reduced price that more private landlords can enter the housing market and make the position much worse. A pocket of the area is badly affected.

We need to deal with three issues, the first of which is a hard ask and applies not just to the bill. Do we have the leadership in the Parliament—now or after the election, if the Government changes—to address the concerns about resources that the minister has grappled with in an area such as Govanhill?

The second issue is the enforcement strategy. The local associations’ fear is that, if they have an obligation to deal with overcrowding, individuals might consequentially access housing at the expense of many others. That is a complex matter on which we must pick our words carefully, but I will talk about it today, because we need to be conscious that we must deal with that pressure.

The third question is whether we can work better. From the hub that has been developed in the area, can we work better with services to make a difference?

I welcome the measures in the bill, which many other members can speak about in much more detail, because they are members of the committee that is examining the bill.

I am concerned that we have not prosecuted many individuals. When we have tried to pursue them, their response has been challenging. I have received regular calls to my office and one or two abrasive visits from landlords. I welcome and can deal with occasional abrasiveness.

We need to have the powers to deal with the area because, if what has been described can happen in Govanhill, it can happen in any built-up urban area in Scotland. Twenty-five years ago, people in the Gorbals were loving the idea of getting a house in Govanhill. In a sense, the position has been reversed because of the regeneration in the Gorbals. Now, people want to get out of elements of Govanhill.

What can we say to a woman who has brought up her family in Govanhill and who no longer feels that she can walk along the main arterial streets there because of concerns at some junctions? That is the result of the massive explosion I mentioned, which all of us have failed to deal with.

I hope that the bill will address some of those issues, but resources are also involved—that is the bigger picture that faces all members. I welcome members’ speeches and I hope that the minister will take them on board.

16:18

Bob Doris (Glasgow) (SNP): I will consider landlord registration as contained in the bill. My lasting impression of landlord registration is of how committed and professional the vast majority of landlords in the sector are. The vast majority of landlords—those who contribute significantly to
addressing housing need in our country—sign up for registration. The landlords’ representative body, the Scottish Association of Landlords, typifies the professional and constructive approach that registered landlords take to meeting housing need.

However, the registration scheme’s strength should be its ability to tackle rogue landlords who do not bother to register and who provide accommodation for tenants that we would not consider to be safe or acceptable. I suspect that we all agree that the enforcement power against unregistered rogue landlords is a muscle that has never properly been flexed. I am well aware that barriers exist to potentially successful prosecutions by local authorities and I know that the minister has a working group that is looking at such matters. I would very much appreciate more information about progress on that.

As we heard earlier, the City of Edinburgh Council put effort, time, finance and commitment into securing the conviction of an unregistered landlord. The court imposed a derisory fine, which must have left the council thinking that there had been little point in pursuing the prosecution in the first place. Ironically, such an example is a real disincentive to local authorities to prosecute unregistered landlords. The bill will increase fines to a maximum of £50,000, which I welcome. There is now a potentially strong, financial incentive for rogue landlords to register. I say “potentially” because if convictions are difficult to achieve and rarely occur, and the fines that are imposed are tiny, raising the maximum fine to £50,000 may make little difference.

However, I take a far more positive view than that. I believe that increasing the maximum fine will send a clear message to courts about how seriously we expect them to treat cases involving rogue landlords. We must ensure that courts perceive landlords who refuse to register as being guilty of serious criminality. After all, councils indulge in prosecutions of unregistered landlords not as a first action but as a last option.

When councils are aware of a potentially unregistered landlord, they encourage the landlord to apply for registration, to register and to meet the minimum acceptable standards for private rented properties. The question that courts should ask themselves when prosecutions take place is why the landlord did not register in the first place and what a landlord who refuses to register has got to hide. What other forms of criminality might that landlord be involved in? Are some landlords trying to avoid the light that registration would shine on their business? That is why I welcome the bill’s extension of the fit-and-proper-person test criteria.

Our courts and our sheriffs need to be aware of such matters. Sheriffs who do not regularly deal with housing-related matters may not be aware of the social context and the damage that is done by rogue landlords—the misery that they can cause to tenants and the wider community, which we heard about from several members.

The fine increase should emphasise to sheriffs the importance that Parliament places upon the offence. Reform of the system of prosecution may also help. It has been suggested that we could have special housing courts involving people who are experts in the sector. Such courts could deal more appropriately and swiftly with a range of offences and disputes, including unregistered landlords. Perhaps that could be considered by the Government if it is re-elected. I seek the minister’s opinion on that.

We should make it socially unacceptable to use unregistered landlords. I accept that there will always be vulnerable sections of society, such as exploited immigrants or people who, for a variety of reasons, have chaotic lifestyles, that end up renting from unregistered landlords. That is unacceptable, but the rest of us, as consumers, should never knowingly accept accommodation from an unregistered landlord. Consumers would not knowingly buy a dodgy motor or a gas boiler, so why should they rent a dodgy flat? Consumers must exert a degree of responsibility for themselves. Indeed, the example of a dodgy boiler is quite pertinent because there is every chance that that is exactly what someone might end up with if they choose an unregistered landlord. However, we can expect consumers to make an informed choice only if they are given the correct information, which means a public awareness-raising campaign and the possibility of checking whether a landlord is registered. I would appreciate information on that from the minister.

I would also appreciate the minister’s views on whether newspapers should be allowed to advertise the properties of rogue landlords. Our newspapers can be great campaigning forces for social good, but they also have a social responsibility, which should extend to not advertising the properties of unregistered landlords. I am not suggesting that we require legislation on that, rather that we have a voluntary code and partnership with the newspaper industry. I have no reason to believe that the press would not sign up to that—in fact, I am sure that it would welcome such a code.

There is much more that I wanted to say but, given the limited time available, I will leave it at that. I will be delighted to support the bill at decision time.
Ross Finnie (West of Scotland) (LD): This has indeed been a largely consensual debate. The speech that brought together all members in the chamber was that which was made by John Wilson, who said how much better it would have been if we had had a single bill to deal with housing matters in a comprehensive way. Perhaps the only dissenting voice was that of the minister who harrumphed, albeit not very loudly. I think he realises that he could have done this better.

The bill is an important piece of legislation that addresses an important issue. As Frank McAveety pointed out, if we had been able to solve the problem over the years, we would not be here. It is not an easy problem. A number of conflicting interests are involved. That makes the behaviour of rogue landlords—a small but important minority—difficult to address.

As the minister correctly said, although the private rented sector represents some 8 per cent of the housing sector, there is no doubt that it could, should and ought to expand. There are a number of reasons for that, not least of which is the recent financial crisis. The crisis demonstrated that our previous housing model, which saw a rush to ensure that almost everybody owned a house, was not necessarily sustainable. We need to learn from the example of other mainland European states where the rented sector makes a much more important, and enduring and sustainable, contribution to the general housing market.

We have, of course, had landlord registration for some time and have rightly concluded that it is not working as it should do. The fit-and-proper person test is a welcome development in that regard. However, other forms of registration include the fit-and-proper person test and yet the test has not of itself resulted in things turning right. For example, there is a fit-and-proper person test as part of the registration process for those who sell alcohol. Regrettably, as members know, persistent breaches of the law have resulted in a disconnect. There seems to be a failure to understand that persistent breaches of the law give us the right to consider whether the individual licence holder has, by virtue of the breaches, rendered themselves not a fit-and-proper person to be a licence holder. Welcome though the test is as an extension to the present scheme, the important issue is how we apply it.

That takes us to the issue of raising the level of the fine. Again, the measure is welcome but it will not, of itself, necessarily produce a result. In the debate and the committee report, frequent reference was rightly made to whether the courts would apply the measure, or whether there would be more prosecutions. We should not blame the courts. Issues arise when a Parliament and a Government and its civil service introduce a range of complex measures. One wonders what liaison there is between the Government and its civil service and the courts and the prosecution service in order that they are properly informed and aware of the content and purport of what we seek. Ultimately, it is for them to decide, on the basis of the law, whether prosecutions should be brought. Nevertheless, they need to be appraised of the background to the new legislation.

I turn to the HMO provisions. There is no question but that Pauline McNeill and Patricia Ferguson made absolutely clear what the problems are. However, I was unclear and I remain unclear on the confusion about the linkages that ought properly to be made with the planning system. I was slightly confused by what Shelter said about this being only about land use. Except I have missed something, in the granting of planning permissions, particularly for residential occupation, planning conditions should apply that describe in clear terms the density that has been approved. Insufficient attention is paid to that when a property is altered. Indeed, properties can be altered without anyone knowing about it. The landlord is demonstrably in breach of planning conditions. That may have to be spelled out in clearer and more explicit terms. If an organisation as excellent as Shelter does not appear to understand the connection between enforcing existing law and using it to good effect, we have a communication problem regarding what the minister and the bill are trying to achieve. That is an issue.

As has been made clear, if we use existing law, we must take into account the other aspect—building control, rather than planning control—to deal with the stacking of services. That point was well made and has been made before, including in the chamber. It needs to be addressed if we are to deal with the general conditions that apply in properties that have been altered in such a way.

There is a complete distinction between HMOs and overcrowding. However, addressing the condition of properties and whether conditions of density have been breached may have the unintended consequence—this is the connection—of displacing people, if we deem a property not to be fit for the purpose for which it is being let. That creates additional demand. Unless we address that demand as part of wider housing policy, simply enforcing the law will not necessarily benefit every citizen, especially those to whom such properties are no longer available. The minister made that point in relation to overcrowding, although the point was well made in the debate that we should not confuse HMOs and overcrowding.
As my colleague Jim Tolson made clear in his opening remarks, it is clear to the Liberal Democrats that we are moving in the right direction in the three main parts of the bill. There are a number of issues—which have been well ventilated and articulated in the debate—that will need to be addressed at stage 2, but the Liberal Democrats are content to support the bill at stage 1 this evening.

16:32

David McLetchie (Edinburgh Pentlands) (Con): Many thoughtful, measured speeches have been made in this debate on the bill, especially by members representing Glasgow and Glasgow constituencies, who highlighted problems in some communities there. Graphic though those descriptions were, and horrendous as some of the problems that have arisen are, the lesson for those of us who do not represent the area is that those problems cannot come to affect communities that we represent.

As a member of the Parliament’s Local Government and Communities Committee until the end of last year, I had the opportunity of participating in the evidence sessions on the bill, before moving on to the arcane pastures of fiscal autonomy and the Scotland Bill Committee. So it was that I fell to my colleague Alex Johnstone to assist with the compilation of the committee’s stage 1 report to the Parliament. We have heard today that the bill is worthy, and worthy of support, but less than perfect. My experience of the evidence sessions supports that conclusion.

We might ask, for example, why we are making piecemeal changes to the landlord registration scheme in advance of the publication of the comprehensive review of the scheme that is under way and is due to be completed in a few months’ time, in spring of this year. I say that because landlord registration was introduced without a full and proper consultation, as an adjunct to the Antisocial Behaviour etc (Scotland) Act 2004. Without underestimating in any way the importance of dealing with antisocial behaviour—which, as all of us know, features heavily in our surgeries with constituents—we must acknowledge that the primary focus of a landlord registration scheme should be on housing, not behaviour. The primary test of the scheme is not whether it helps us to cope with the antisocial behaviour of a tiny minority of tenants but whether it fosters good relationships between landlords and tenants, and encourages both parties to fulfil the obligations that their leases impose on them. If it does, we will be able to encourage more landlords into the marketplace to provide people with homes that suit their financial and personal circumstances, which may vary from time to time.

I entirely agree that there is very little point in increasing the fine that is payable for a failure to register, bearing in mind the lamentable failure to police the existing legislation. There has been only one prosecution, which led to a derisory fine being imposed, as a number of members highlighted.

Although we would have preferred to await the outcome of the comprehensive review before passing new legislation, and although there is an element of tokenism in the way in which fines and other measures in the bill have been approached, there is no doubt that if we are going to have a registration scheme it must be properly administered and enforced. There needs to be joined-up government—to use that hackneyed phrase—to create an effective registration scheme that includes the sharing of information between departments. In that way, links can be established between properties that are the subject of housing benefit claims, and whether the homes concerned are owned by registered landlords can be determined. I was encouraged by the exchange between the minister and Johann Lamont on that subject, and by the fact that guidance is to be issued to councils to ensure that those things are done.

As members have highlighted, judges need to understand that serious breaches of the law in relation to failure to register are not trivial offences that arise because of naïve or innocent landlords losing their way in some bureaucratic jungle. Rather, they are serious offences against the good order of society and a frustration of our attempts to improve the quality and standard of housing in Scotland. Toleration of such failures is a slap in the face for good landlords and decent, responsible tenants. As Ross Finnie hinted, the Lord Advocate should be drawing to the attention of our courts and prosecutors how seriously we view such matters in the Parliament. We need to set some examples in the courts that encourage respect for the law, rather than contempt for it, which I fear is the case at the moment.

When we consider detailed proposed legislation of this nature, it can sometimes be easy for us to lose sight of the bigger picture. In this case, the bigger picture is that the private rented sector accounts for nearly 233,000 homes in Scotland, which is approximately 8 per cent of the total, as the minister told us. The sector has expanded, with many investors attracted into it through buy-to-let schemes and by the—now distant—prospect of capital appreciation in a booming housing market.

The Brown-Balls neo-endogenous housing bubble might have burst, but one beneficial consequence of that growth is that we now have
more privately rented housing to meet important housing needs and demands. It is not simply a matter of meeting the demands of mobile groups such as students, itinerant workers or young professionals; the private rented sector has been enlisted, through partnership arrangements with councils such as the City of Edinburgh Council, to provide affordable homes for the homeless in return for guaranteed rents and the factoring and management of those homes on behalf of their landlord owners and investors.

Although they have not been perfect, such schemes illustrate what can be done through partnership working by councils and the private rented sector to tackle social housing needs. We should build on Edinburgh’s experience and encourage other authorities throughout Scotland to do the same, particularly at a time when the affordable housing budget is contracting.

We need a good working relationship between the Scottish Government and Her Majesty’s Government to co-ordinate policies that will encourage investment in housing for social and market rent. I very much welcome the positive comments that the minister made in that respect in his opening speech. One of the key elements of that, from the standpoint of landlords, is the reintroduction of a system whereby local housing allowances can be paid directly to them, thus avoiding the benefits system being ripped off by unscrupulous tenants—

John Wilson: Will the member give way?

The Presiding Officer (Alex Fergusson): No. The member is just about to wind up.

David McLetchie: Those are tenants who rob the taxpayer of money that was meant to be used to pay their rents but is not being used for that—and that is all at the expense of the landlords. That is being reviewed by HM Government at the moment, but reform cannot come soon enough.

We also want to examine the introduction of tax rules to incentivise investment in housing for rent, because we must face the fact that in a housing market in which people who want new mortgages are being asked for 25 per cent deposits, house purchase is currently outweigh the reach of many people. For people in that situation, renting in the private sector could provide a longer-term solution that meets their needs, but if that is to happen we need to raise the status and reputation of private renting and stimulate institutional investment.

Regulation has an important part to play in confidence building in that regard, and that is the test that we apply to the bill, which takes steps in the right direction.

16:40

Johann Lamont (Glasgow Pollok) (Lab): I welcome the opportunity to speak in the debate and I assure Sandra White that I will strive with every sinew to be as consensual as possible.

The private sector plays an important role. I hope that the minister is alive to concern about what is happening in England. If there is a squeeze on funding in the social rented sector and rents rise as a consequence, we will end up in a position in which the only people who can afford to rent in the social rented sector will be people who are in receipt of housing benefit. That is a serious issue, which must be addressed.

John Wilson: Will the member give her party’s view on the United Kingdom Conservative and Liberal Democrat Government’s policy of starting to cut benefits by 10 per cent for people who have been unemployed for a year or more?

Johann Lamont: We have been explicit in saying that we find the policy incomprehensible and deeply worrying. Another concern to do with housing benefit relates to the transfer of Government spend. Cutting capital spending and allowing housing associations to raise rents will mean that any improvements will be made on the back of people who are on housing benefit.

A large number of private landlords are excellent at what they do, but at the heart of the issue are people who think that renting out a property is an investment opportunity and not a business, so they take no responsibility for their tenants or the communities in which their tenants live. In some cases at the extreme end of the spectrum, the sector provides opportunities for organised crime to settle into a community for the purposes of money laundering and extending control over the community. Those are serious issues.

Landlord registration is therefore not just about the relationship between landlord and tenant; it is about what is happening in our communities. We should remember that the private landlord registration scheme came out of concerns about antisocial behaviour, and for good reason. Nothing stands still in our communities, and if problems are not addressed people give up and move out, property values go down and people with dodgy reputations and dark backgrounds buy up properties and put tenants in them. The issue is not just the tenants’ antisocial behaviour but the collusion between landlord and tenant in doing nothing about the behaviour. In my experience, even if a way is found to remove the tenant, the tenant who replaces them is not managed or challenged. If the focus is only on the tenant, the community still has the same problem.
It is critical that we understand the problem in the context of ordinary people’s experiences. I welcome the people from the Croftfoot housing action group who are in the gallery. Mary Mulligan and I are Labour’s representatives on housing issues and I assure our visitors that Charlie Gordon keeps us well informed about their concerns, which are reflected in other parts of Glasgow, too. It is possible for people to earn money from a community while damaging and destroying it.

It might be for individual tenants to be aware that they should ensure that their landlord is registered, but that is a small issue in comparison with the way in which the public purse often funds the problem.

The bill builds on previous legislation, and if ever a lesson can be learned about the limits of legislation, one can be learned from the experience of the private landlord registration scheme. I welcome the extension of the scheme through the fit-and-proper person test, but if people do not feel the need to apply for registration it will not matter what we put in the test. The test will be irrelevant. I am concerned that good landlords are asking why they should register, if we are not addressing the problem. I support any measure that will strengthen the private landlord registration scheme. When he was Minister for Communities and Sport, Stewart Maxwell was assiduous in pressing local authorities on what they were doing, and I hope that that pressure has been sustained.

My concern is that local authorities are saying that the resources necessary to enforce registration do not exist at a local level. There was dedicated funding in the early days. What has happened to that money? Have we sustained that level of investment in enforcement? If not, we need to think about how investment can be sustained.

I welcomed and was interested in what the minister had to say about information sharing. I understand that he was talking about pilot projects. We need to do more to ensure that that approach is rolled out.

I am interested to hear what more the minister has to say about his discussions with the UK Government on information sharing. When I was a minister, I was involved in such discussions but, sadly, I was not sufficiently persuasive. For me, this is the bottom line: if it is an offence for a landlord to receive rent on a property that they have not registered, why is the public purse paying out money on such properties? That is completely ridiculous. I welcome the pilots and the voluntary approach, but the housing benefit review provides a great opportunity to say that a landlord must have a registration number to show that they have registered.

We will stop many of those problems if we stop people trading outwith the system. We create the incentive for landlords to trade outwith the system and we need to deal with that.

It is important for the culture that renters—particularly young people and students who are becoming renters for the first time—should expect registration. There should be evidence of that and it should become the norm. We should not be having a discussion with the Scottish Association of Landlords about the number of figures in the registration number. As the minister said, we can find a system of making the registration numbers shorter. The point is that people need to be able to ask for the number before they rent at all.

On HMOs, we all wrestle with the conflict between the need of students to have accommodation at a rent that they can afford and the rights of communities to be mixed and stable. We can build a consensus to work our way through that conflict, too.

On planning, it is possible to establish a quota, but it would be essential for prospective landlords to know ahead of investing in an HMO that there was no point in applying if the quota had already been reached. There are important issues in that regard.

Our Lib Dem and Tory colleagues will have to reflect on the consequences of the housing benefit changes, which will increase the number of people who live in HMOs.

In some parts of our cities, particularly in Glasgow—I reflect on the authority that Frank McAveety brings to the question—it is not possible to address overcrowding through housing policy, because the issue is closely tied up with employment. Migrant workers come in and are exploited in relation to the quality of the accommodation that they get. We need to ensure that we use more than one policy to address that. There are big challenges that may be linked to the gangmaster legislation and on which we need to reflect.

I welcome the interesting suggestions of a housing tribunal or court. As with antisocial behaviour legislation more generally—we can also think of other circumstances—it is hugely frustrating that the justice system seems simply not to understand what problem is being addressed.

The courts think that it is an issue of a tenant being evicted because the landlord has suggested something simple, which they think is unreasonable. They say that fines of a certain level are unreasonable, because they have no
comprehension of the scale of the problem or the scale of the damage that is inflicted on communities. It would be useful to inform them of what we are talking about and to have people with a degree of expertise. Certainly, in my area, there is an active disincentive for housing associations and other landlords—I am sure that it applies to the local authority as well—to spend money that they can ill afford only to find that the court clearly does not understand the problem.

The measures in the bill build on what we did before, but the lesson is that, without enforcement, legislation is just words on a page. Our colleagues in the public gallery and in our communities remain frustrated. We must do what is in the bill, but we must also take it beyond that. There are critical, hard enforcement issues that we need to address.

We look forward to working with the minister and others to ensure that we strengthen the legislation across that range of issues and raise the necessary questions about enforcement.

16:50

**Alex Neil:** Like other members, I think that the debate has been very good. It has been fairly consensual, and several constructive suggestions have come out of it.

It is obvious that there are time constraints on us, but in moving from stage 1 to stage 2 after the vote, I will be happy to work with all the parties, if they want to lodge amendments. I will put the Scottish Government’s resources at their disposal and will be happy to see whether we can reach agreements on stage 2 amendments not just between two parties, but ideally between three or four parties, particularly to deal with the higher-priority issues that have been identified during the debate. The bill provides a good example of a subject that is close to the hearts of all of us and on which we can work together as a Parliament.

I want to deal with a number of the more important issues that have been raised in the debate and how we can take them forward. It is clear that enforcement is a major concern for all members. I want to make three particular points about that. First, there are in some local authorities resource issues that need to be addressed. I pick the example of Govanhill. Glasgow City Council, with additional funding from the Scottish Government, has identified that the level of resources is not the only issue; the way in which resources are organised is, too. In particular, it identified the need for a more integrated approach by its teams that deal with landlord registration, its environmental health teams and its planning and building control teams. Through the hub in Govanhill, it is creating a unified team to deal with the whole gamut of issues that arise there. I hope that that model will be repeated throughout the rest of Glasgow and elsewhere. The early indications are that a more unified and comprehensive approach is arising from the integrated approach that we have worked on developing with Glasgow City Council and with the help of Frank McAvety and others.

The second point is not a matter for the Private Rented Housing (Scotland) Bill. If the Chancellor of the Exchequer agreed to allow the revenue from fines to be recycled to the local authorities to incentivise them, that would at least send a clear message to them.

**Bob Doris:** I have championed the campaign for that for some time, and have written to Michael Moore about the issue, but the response that I received was not positive. Perhaps I can give Alex Neil that response, and he could redouble our efforts to persuade the Government on the matter.

**Alex Neil:** I have written to the Government more than once about the matter. I am not relying on the proposal and am not saying that it is a magic bullet, but it would send a clear message to the local authorities.

Thirdly, the failure of the justice system to follow through adequately where there has been a clear breach of the law has been raised several times in the debate. That issue has to be tackled, and there are two ways of doing so. First, it can be done through amendments at stage 2 to strengthen the bill’s enforcement aspects. We will be happy to discuss that and are open to practical and sensible suggestions.

Secondly, I undertake to write to the Lord Advocate as a matter of urgency after the debate to draw to her attention the number of members throughout the chamber who have expressed concern about the judiciary’s failure to follow through and impose fines that match the scale of breaches and the importance and seriousness of offences, where clear breaches have been proven. That will be important. I will be happy to report back at an appropriate time on the discussions about that with the Lord Advocate. I accept that enforcement is the key issue and that, no matter what legislation we pass, if it is not adequately, properly and enthusiastically enforced we are clearly presented with a problem.

If the bill is passed at stage 3, we will have powers to deal with any recommendations that are likely to arise from the landlord registration review, and we will, through secondary legislation—the bill will allow us to do so—introduce additional measures that are recommended by that review.

I am also of the view that we need a dedicated housing court or tribunal. Lord Gill made that one of his recommendations in the review of the court
system last year. My view is that the tribunal method would be better than a court system because it would be much less expensive and could deal with cases much more effectively. All disputes on matters relating to housing could be channelled through it. That is a debate for after the election, but I hope that whoever wins the election will look seriously at introducing legislation to create a much more robust system along those lines.

Another major issue about which concerns have been expressed today and in evidence to the committee is the consequences of implementation of the bill’s provisions on overcrowding. In particular, there is a fear that if a local authority issues an overcrowding order without thinking through the consequences, one of the unintended consequences could be a sudden and, in some cases, significant increase in the number of people who present themselves as homeless under homelessness legislation, and who are therefore entitled to a new house from the council, or to a housing association.

We have had discussions on the matter, particularly with Glasgow City Council and COSLA, and neither we nor they envisage that implementation of the legislation will operate in that way. Where there is clearly overcrowding, the intention is to manage it down to the point at which there is no longer overcrowding, and while that is happening no additional people will be allowed to reside at the address. The idea is that the relevant housing support services will work with the landlord registration team and the implementation and enforcement team to manage down the number of people in the property so that they can be properly accommodated—in many cases, I suspect, that will be elsewhere in the private rented sector. That will be the approach so that we do not, as an indirect and unintended consequence, end up creating a whole new category of homeless people.

It will be important for local authorities to manage overcrowding in that way because, if it looked as though imposed overcrowding orders were going to make a lot of people homeless, there is a danger that that would become a scam. People might deliberately overcrowd as a fast way to get onto the homelessness register, thereby also abusing the homelessness legislation. In detailed discussions with Glasgow City Council and COSLA, we have been clear that the provision should be managed in the way that I have described.

Patricia Ferguson: Will the minister clarify that he will ensure that no anomaly will be created, given that section 5 referrals under the homelessness legislation, where overcrowding exists, already result in people who are in that situation being considered to be homeless? Will the bill dovetail with that rather than create an additional problem?

Alex Neil: Absolutely. I gave in my evidence to the committee a commitment that that would be the case, and I am happy to reinforce that commitment today. We will work with our local authority partners to ensure that legislation dovetails and that there are no unintended consequences between the homelessness legislation and the private rented sector legislation.

I do not have time to cover all the points that were raised in the debate, but I want to mention one point, and I will do so in a consensual tone. I draw members’ attention to the potential unintended consequences of a number of the housing benefit reforms that the UK Government has announced, some of which will come into effect fairly soon and some of which will not come into effect until 2013. We have already done a great deal of work on the matter and we published detailed information today on the potential adverse impact of the reforms. Other organisations, including the Scottish Council for Single Homeless, whose chief executive Robert Aldridge is a councillor in Edinburgh, have also done a lot of detailed work on the potential consequences of some of the changes. Some of them seriously need to be reconsidered because they could have an extremely disadvantageous impact on the private rented sector and the individuals concerned. I make that point in a consensual, rather than accusatory, tone.

On that note, I look forward to a unanimous vote this evening to back the Private Rented Housing (Scotland) Bill at stage 1 and I emphasise that, in moving towards and during stage 2, I will work with all the other parties and seriously take on board any new ideas or suggestions for amendments, particularly with regard to how we might further reinforce enforcement.
I am writing in response to the Local Government and Communities Committee’s Stage 1 Report on the Private Rented Housing (Scotland) Bill. I want to thank the Committee for its careful consideration of the Bill. I am pleased that there are so many areas of common ground, particularly in the recognition that the Bill addresses serious problems and will bring benefits to many communities, including vulnerable people. I welcome the fact that, overall, the Committee recommended that the general principles of the Bill should be agreed to.

I would like to respond in some detail to the specific recommendations made and issues raised by the Committee in its Report.

1. Landlord Registration

Fit and proper person test – paragraph 37

The Committee asked the Scottish Government to clarify how antisocial behaviour orders would be taken into account with regard to the fit and proper person test for landlord registration. Section 1(1)(b) of the Bill would insert a new subsection (7) into section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004. Subsection (7) states that an antisocial behaviour order and an antisocial behaviour notice are particular examples of material that must be considered under section 85(3) and (4) of the 2004 Act when deciding whether an applicant (or a person acting for the applicant in relation to the lease) is fit and proper. Section 85(3) makes clear that material is only relevant if it relates to “any actings” of the applicant or agent with regard to antisocial behaviour relating to a house that was or is let by the landlord applicant.

It is therefore only within this context that an antisocial behaviour order or an antisocial behaviour notice could be relevant to the fit and proper person test. New subsection (7) does not mean that a landlord would be disadvantaged by granting a tenancy to someone who had been served with an antisocial behaviour order that did not relate to a house let by that landlord. If a tenant had been served with an antisocial behaviour order that did relate to a house let by that landlord, the issue would then be whether the landlord had taken appropriate action to address the antisocial behaviour.

It would remain the responsibility of the local authority to make an informed decision in relation to each case.

Registration numbers in advertisements – paragraph 51

The Committee recommended that a combination of “kite marks” and registration numbers should be used to indicate that a landlord is registered and asked the Scottish Government to consider whether, with such a system, “To Let” boards could be included in requirements relating to advertisements.

The original idea that an advertisement for a property to let should include the landlord’s registration number came from local authorities, who considered that this would be useful for enforcement purposes. The Private Rented Sector Strategy Group then recommended that it should be included in the consultation on the Private Rented Housing Bill. There was considerable support for the proposal from respondents to the consultation. Throughout this
process it was made clear that the primary objective of the proposal was to assist local authority registration teams, who could use the number to identify whether a property had been included in a valid application for registration. A subordinate benefit would be that a prospective tenant could see that a landlord appeared to be registered.

Not including registration numbers in advertisements would thus defeat the purpose of the provision. I asked the Bill Sounding Board to consider the idea of additionally requiring a “kite mark” in advertisements. The Sounding Board did not support this suggestion for various reasons, including that it would cause even higher costs for landlords; that it would suggest that a landlord had achieved a certain standard (as with accreditation), rather than having simply complied with the legal requirement to register; and that it would be easy for an unregistered landlord to misuse a symbol (and more difficult for such misuse to be detected by a local authority than when a false number is used), whether in an advertisement or on a “To Let” sign. There would also be resource implications of the development and setting up of a “kite mark” scheme.

The Scottish Government has therefore concluded that we should keep the requirement for a registration number to be included in an advertisement, not adopt a national “kite mark” system, and continue to exempt “To Let” boards. We are keen to explore further, non-legislative measures, such as working with newspapers and web providers to develop a voluntary code of practice whereby they do not accept advertisements from unregistered landlords. In order to reduce potential costs for landlords, we are investigating the possibility of requiring only one registration number in an advertisement for a property where there are multiple registered owners.

Part of the rationale for the stakeholder suggestion of a “kite mark” was that it would increase tenants’ awareness of landlord registration. However, I consider that there are measures in the Bill that would be more effective in raising awareness of registration, such as the tenant information pack and increasing the information available to the public through the landlord register database.

Regulation of letting agents – paragraph 58

The Committee recommended that the possible regulation of letting agents should be considered by the PRS Strategy Group in its further work on the development of the sector.

There would be obvious advantages in the regulation of agents, and I know that many reputable agents would support such a measure. In order to commence wider discussion around the fact that letting agents are currently not required to register in their own right, the matter has been included as part of the evaluation of landlord registration. The analysis of this issue will be fed into the work being taken forward by the PRS Strategy Group.

Meanwhile, the Bill includes measures to address problems associated with less reputable agents, such as the power for a local authority to require an agent to provide a list of the properties managed (which could be targeted at agents who deliberately act for unregistered landlords) and the clarification of pre-tenancy charges that can be made.

Penalties for acting as an unregistered landlord – paragraphs 71 to 72

We agree with the Committee that it is essential that the courts impose appropriate penalties when there are convictions relating to landlord registration and HMO licensing offences. The Scottish Government will seek to highlight the availability of higher fines. As I indicated during the Stage 1 debate on the Bill, I will write to the Lord Advocate on this matter.
I have made clear that I am very sympathetic to the idea of a dedicated housing court or tribunal and I agree with the Committee that the Scottish Government should investigate whether such a system could be established. The PRS Strategy Group will consider in its future work plan how effectively the courts are working for the sector.

In this context I would also mention that I have listened carefully to the argument that local authorities should receive additional funding for their work to build evidence for a prosecution, and that I have written to the Chancellor of the Exchequer to request that consideration be given to enabling revenue from fines for landlord registration offences to be retained in Scotland. It seems only right that monies generated through the Scottish landlord registration regime be retained in Scotland and recycled to support further enforcement activity.

**Enforcement activity – paragraph 79**

We agree with the Committee that the variation among local authorities in the approach they take and priority that they attach to the enforcement of landlord registration needs to be addressed. However, we do not agree that the Bill will not bring about a higher level of consistency among local authorities. Several measures will address this issue, including the clarification of the material that must be taken into account in carrying out the fit and proper person test and the power to obtain information from persons associated with a house to enable or assist a local authority to carry out its registration functions. Furthermore, the requirement introduced by section 10 that a local authority must have regard to Scottish Government guidance on the exercise of its landlord registration functions will allow the Government to disseminate best practice to local authorities, particularly in the light of the conclusions of the ongoing evaluation of landlord registration. This guidance will be subject to further consultation and will also build on the work of the enforcement sub-group of the local authorities’ national landlord registration network, which drafted national enforcement guidance principles.

I am keen that, whilst we endeavour to encourage an appropriate degree of consistency in working methods, the system must also give local authorities the flexibility necessary to take account of local circumstances, while sharing a consistent view of the objectives to be achieved. CoSLA has also stressed the importance of this.

**Interaction between Landlord Registration and Council Tax and Housing Benefit teams – paragraph 90**

The Committee calls on the Scottish Government to continue to support the use by local authorities of council tax and housing benefit data to identify unregistered landlords. We entirely agree with this position. A number of local authorities have developed good working practices to suit their local needs and the Scottish Government encourages good practice options, such as local authority Housing Benefit Teams refusing to process new housing benefit applications without a landlord registration number, if appropriate. Best practice in the use of council tax and housing benefit data is one of the key issues to be covered by the Scottish Government’s statutory guidance to local authorities on the exercise of landlord registration functions, given the wide variations in the approach taken by enforcement teams. Promoting the use of this data does not, however, detract from the significance of the new power in the Bill to obtain information from people associated with a house, which will be crucial in some situations to prove, for example, whether a tenant is an “unconnected person,” i.e., not a member of the landlord’s family.
Statutory guidance - paragraph 98

The Scottish Government will make the statutory guidance on landlord registration available to the Committee as soon as is practicable. However, in order to make the guidance as thorough and as useful as possible, it will not be possible to complete it until the conclusions of the current evaluation of landlord registration have been reached. The Bill also requires the Scottish Ministers to consult local authorities and other appropriate stakeholders on the guidance and this input will be very valuable. We would see local authority practitioners having a clear role in this.

Re-registration - paragraph 109

The Scottish Government agrees with the Committee that it is extremely important that landlords re-register at the end of their three-year period of registration. It is a local authority’s responsibility to follow up registrations which have expired and not been renewed as part of its enforcement activity. As local authorities are only part-way through the bulk of their renewals, it is too early to ascertain if there are a large number of landlords still letting properties who are not coming forward to renew their applications. We will continue to monitor the situation.

Consistency of approach and enforcement – paragraphs 110 to 111

The Committee believes that issues of consistency of approach and enforcement remain unresolved, but that statutory guidance will assist in improving these. We consider that the statutory guidance (and other measures in the Bill, such as powers to obtain information) will go a long way to improve consistency of approach and enforcement. The current evaluation of landlord registration, which has been externally commissioned, may, as the Committee says, identify a need for further legislation, but we also expect its findings to be important in the drafting of the guidance and in the future work of the PRS Strategy Group.

Awareness of prospective tenants – paragraph 118

The Committee considers it crucial that prospective tenants, as well as those who are already tenants, are aware of the rights and responsibilities associated with being a tenant. We expect that the introduction of the tenant information pack will generate publicity, which will bring the pack and its contents to the attention of those who are not yet tenants. We will also work with the PRS Strategy Group, which includes tenant and landlord groups and local authorities, to see how everyone involved in the sector can help to raise awareness among prospective tenants, as well as existing tenants and landlords, by ensuring good communication of information.

2. HMO Licensing

Additional types of HMO - paragraph 150

I can confirm that any order specifying additional types of licensable HMO under new section 125(1)(b) of the Housing (Scotland) Act 2006, inserted by section 13(1)(a) of the Bill, would be subject to affirmative procedure by virtue of section 13(6) of the Bill, which amends section 191(4)(a) of the 2006 Act accordingly.

Linking HMO licensing and planning permission – paragraph 151
I think it would be helpful to clarify a couple of the points made in paragraph 151 of the Report. In the first place, the Bill provisions will not enable a local authority to refuse to grant an HMO licence on the grounds that occupation of the accommodation as an HMO would be a breach of planning control. It will, however, be able to refuse to consider an application for a licence in such circumstances, until planning permission has been obtained. This discretionary power will allow a local authority to address the current anomaly of its having to grant a licence to an HMO operating in breach of planning control, with the possible adverse effects on local amenity, neighbours and law-abiding landlords. Secondly, this new power will not directly address problems related to the subdivision of rooms and the installation of new services in tenement flats, since it is unlikely that such works would be subject to planning consent, as opposed to requiring building warrants. However, the benchmark standards for HMO licensing will help in this regard as they include minimum standards for space and layout.

Statutory guidance on HMO licensing - paragraph 152

The Committee asked to be provided with the new statutory guidance on HMO licensing as soon as possible and preferably before Stage 3. A public consultation on a draft of the guidance is due to begin in early February and will run for six weeks. The final version of the guidance will be issued later, taking into account the consultation responses. We will provide the Committee with a copy of the consultative draft guidance as soon as the consultation begins.

3. Overcrowding Statutory Notices

Use of an overcrowding statutory notice where there is not a short assured tenancy - paragraph 173

The Committee asked for clarification of the application of overcrowding statutory notices in situations where there is not a short assured tenancy, and particularly how landlords could legally reduce overcrowding. The steps that could be taken to reduce overcrowding would depend on the terms of the agreement.

The particular case that was raised in evidence was where there was no formal arrangement in place, so an assured tenancy was assumed to exist, although the same principles would apply to a formally constituted assured tenancy. Possession of a house subject to an assured tenancy could be obtained legally if, for example, there was a breach of a tenancy obligation relating to the occupancy level or if suitable alternative accommodation was available. The local authority might be able to provide assistance to find the latter. Where a landlord lacked power to evict tenants legally, the local authority would be able to serve an overcrowding statutory notice requiring the landlord not to add to or replace occupants as they leave, until the statutory occupancy level was reached, and requiring any future lease to include a maximum occupancy condition. This is similar to the existing procedure under section 166 of the Housing (Scotland) Act 1987 and would not require the landlord to carry out any evictions.

Relationship to homelessness and access to social housing – paragraphs 185 to 189

While recognising that action has to be taken now to address the significant and serious problem of overcrowding, the Committee expresses concern that the use of overcrowding statutory notices could cause confusion in relation to laws on homelessness and access to social housing and that it is difficult to assess the impact on homelessness and the housing stock. It recommends that the Scottish Government consults widely on the guidance on
overcrowding statutory notices, monitors the number of notices issued and the circumstances leading to their issue and reviews the provisions to assess their effectiveness and their impact on homelessness and the housing stock.

I can confirm that the guidance for local authorities will clarify how and when overcrowding statutory notices could be used. It will be essential, for example, that local authorities take account of the availability of alternative accommodation when exercising the powers. This is a complex area, which makes it all the more important that a wide range of stakeholders feed into the Scottish Government’s consultation on the guidance. We will therefore consult widely. We will also monitor the use of notices by local authorities and review the provisions to assess how effective they are in dealing with overcrowding and their other effects.

4. Miscellaneous

Tenant information packs – information on electrical safety and consultation - paragraphs 202 and 203

The Committee asked for the Scottish Government’s views on a suggestion from the Electrical Safety Council that, when making provision about the contents of the tenant information pack, the Scottish Ministers should require the inclusion of a Periodic Inspection Report and confirmation of whether a Residual Current Device had been installed in the property. This is an interesting proposal, which we will consider before consulting with stakeholders on the provisions of the order specifying the contents of the information pack, as required by the Bill. The Scottish Government will keep the Committee informed about the consultation and its results.

Landlord applications to the Private Rented Housing Panel – fees – paragraph 209

The Committee asked the Scottish Government to respond to concerns expressed by the Association of Registered Letting Agents about the Scottish Ministers’ power to require a landlord to pay a fee when applying to the Private Rented Housing Panel (PRHP) for assistance to gain access to a rented house in relation to the Repairing Standard. Landlords and tenants are in different positions. Tenants are consumers who are paying for the provision of a home. They have free access to the PRHP when there are grounds for believing that the service provided by the landlord is not meeting the legal requirements set by the Repairing Standard.

As providers of a service, landlords are businesses and it is therefore more appropriate that they should pay costs relating to that business. At the moment landlords have to go to court to enforce the right of entry, which involves costs. Access to the PRHP should speed up the process of gaining entry and cost less than court action, so it is reasonable and appropriate, since landlords will benefit from the new procedure, that a fee should be paid for the PRHP’s assistance.

5. Financial Memorandum

The Committee asked the Scottish Government to respond to Glasgow City Council’s concerns that additional resources will be required to deal with overcrowding (paragraph 214 of the Report). Glasgow City Council indicated that the use of overcrowding statutory notices might require at least 1.5 new members of staff and that there could be indirect effects on the Council’s homeless unit and legal team.

It will be at the discretion of each local authority whether it uses the power to serve an overcrowding statutory notice in a particular case, taking into account all the circumstances,
including possible effects on homelessness. If the decision is to use the power, it is for the local authority to prioritise its resources. The other local authorities who gave evidence to the Committee and the Finance Committee did not raise this issue, which implies that any resource implications for Scotland as a whole would be minimal, particularly since evidence from local authorities to the Committee was that the notices would be expected to be served seldom and as a last resort. It is likely that most of the notices that would be served would be as a result of action by Glasgow City Council, which originally proposed the introduction of overcrowding statutory notices, so any costs incurred by it are unlikely to be reflected in other local authority areas.

I hope that these remarks have clarified the issues raised in the Committee's Stage 1 Report and will be helpful in further consideration of the Bill.

I am copying this letter to the Clerk to the Local Government and Communities Committee.

Alex Neil
Minister for Housing and Communities

4 February 2011
Private Rented Housing (Scotland) Bill – Response from the Cabinet Secretary

Background


Minister for Housing and Communities response

2. There was only one delegated power in the Bill which the Committee considered was not appropriate, in section 31(4) of the Bill. In his response to the Committee’s stage 1 report, the Minister has agreed to lodge an amendment in line with the recommendation that the Committee requested.

3. The Subordinate Legislation Committee will give further consideration to the delegated powers contained in the Bill after Stage 2.

Recommendation

4. Members are invited to note the Minister’s response on this matter and to reconsider the powers in the Bill after it has completed Stage 2.

Irene Fleming
Clerk to the Committee
I am writing in formal response to the Subordinate Legislation Committee report on the Private Rented Housing (Scotland) Bill at Stage 1.

The Committee raised two issues which I shall address below.

Section 31(4) (inserts section 28B into the Housing (Scotland) Act 2006) – Landlord application to private rented housing panel: further provision

Section 31 of the Bill amends the Housing (Scotland) Act 2006 by introducing a new section 28A. Section 28A will enable a landlord to apply to the Private Rented Housing Panel for assistance in exercising the landlord’s right of entry in order to comply with the Repairing Standard, without the need for court action or waiting until the end of the tenancy. A further new section 28B gives Ministers power to make by regulations further provision about applications made under section 28A.

The Subordinate Legislation Committee expressed concern that regulations made under the new section 28B could cover a wide range of matters, going beyond matters of administrative detail and asked the Scottish Government whether affirmative procedure would therefore be more appropriate. In response, the Scottish Government agreed that this could be the case and that we were therefore reviewing the position with a view to bringing forward amendments to the Bill to address this.

I am now pleased to confirm that the Scottish Government will lodge an amendment at Stage 2 of the Bill with the intention that regulations under new section 28B making provision under subsection 2(a), (c) or (d) would be subject to affirmative procedure. Regulations making provision only under subsection 2(b), i.e., prescribing a fee to accompany applications, would continue to be subject to negative procedure. Subordinate legislation setting application fees is commonly subject to negative procedure, since fees may be changed with some frequency.

Section 35 – Commencement

The commencement power contained in section 35(3) of the Bill, enables provisions to come into force on such day as the Scottish Ministers by order appoint.

In its Stage 1 consideration, the Committee asked the Scottish Government why an order made under section 35, where it includes transitional, transitory or saving provision, should be subject to no procedure, in contrast to an order containing such provision where made under section 33, which would be subject to negative procedure.
The Scottish Government explained that it:

“considers that it is appropriate to include transitional, transitory or savings provision with commencement orders which take no procedure on the basis that such provision is by its very nature temporary and time-limited and is closely related to the section to be commenced, which the Parliament has already closely scrutinised.

The use of such powers in the context of section 33 will tend to be for more substantive matters where the negative procedure is more appropriate.”

I note that the Committee has accepted our assurances on this matter and is content with our explanation.

I thank the Committee for co-operation in its consideration of the Bill and look forward to working further with Committee members throughout the remaining Parliamentary stages of the Bill.

ALEX NEIL
Minister for Housing and Communities
Private Rented Housing (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 12
Sections 13 to 35
Schedule
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 6

Alex Neil

7 In section 6, page 5, line 9, leave out <registered person> and insert <person who is registered by a local authority (“the registered person”)>.

Alex Neil

8 In section 6, page 5, line 10, leave out from <a> to <registered> and insert <the authority>.

Alex Neil

9 In section 6, page 5, line 15, at end insert—

<(  ) Where the house is owned jointly by two or more persons registered by the local authority, the duty in subsection (1) is complied with if the advertisement includes the landlord registration number given by the authority in relation to one of the persons.>

Alex Neil

10 In section 6, page 5, line 21, at end insert—

<(2A) Subsection (2B) applies where the house is owned jointly by—

(a) one or more persons who are registered by the local authority (“the registered persons”), and

(b) one or more relevant persons in relation to whom subsections (2) and (5) of section 93 apply.

(2B) The duties in subsections (1) and (2) are complied with if the advertisement includes either—

(a) the landlord registration number given by the local authority in relation to one of the registered persons, or

(b) the words “landlord registration pending”.)>
In section 6, page 5, line 22, leave out <subsections (1) and (2)> and insert <this section>

Before section 13

Before section 13, insert—

<HMO licensing: meaning of “development”>
In section 26(1) of the Town and Country Planning (Scotland) 1997 Act (c. 8) (meaning of “development”) after “land,” insert “the designation of a house in multiple occupation,”.

Section 13

In section 13, page 9, line 38, leave out subsections (2) to (5)

In section 13, page 10, line 2, leave out <may> and insert <must>

In section 13, page 10, line 2, after <licence> insert <under section 129, or ( ) the variation of an HMO licence under section 138,>

In section 13, page 10, line 6, at end insert—

<( ) In considering a breach of planning control under subsection (1), section 124 (time limits) of the Town and Country Planning (Scotland) Act 1997 (c. 8) does not apply.>

Refusal: adaptation of accommodation

(1) The local authority must refuse to grant an HMO licence if it considers the living accommodation to be concerned as an HMO to be unsuitable for such occupation as a result of any adaptation in respect of—

(a) the subdivision of rooms within the accommodation in the HMO, and
(b) the adaptation of the rooms within the accommodation which has resulted in an alteration to the situation of the water and drainage pipes in the HMO.

(2) The local authority must, within 7 days of refusing to grant an HMO licence, serve notice of its decision on—
(a) the applicant,
(b) the enforcing authority, and
(c) the chief constable.

(3) The notice must—

(a) give the local authority’s reason for refusing to consider the HMO application, and
(b) inform the applicant of the effect of subsection (4).

(4) No fee may be charged in respect of a further application for an HMO licence in relation to the living accommodation concerned within 28 days of the applicant making subsequent adaptations to it which seek to address the original reason or reasons for the local authority refusing to grant an HMO licence under this section.

Pauline McNeill
30 In section 13, page 10, line 25, at end insert—

<129C Refusal: adverse effect on communal open space

(1) The local authority must refuse to grant an HMO licence if it considers the living accommodation to be concerned as an HMO to be unsuitable for such occupation as a result of any adverse effect it would have on communal open space associated with the accommodation.

(2) The local authority must, within 7 days of refusing to grant an HMO licence, serve notice of its decision on—

(a) the applicant,
(b) the enforcing authority, and
(c) the chief constable.

(3) The notice must give the local authority’s reason for refusing to consider the HMO application.

(4) In this section “communal open space” means any land—

(a) in communal ownership in relation to a house or houses,
(b) whether enclosed or not,
(c) on which there are no buildings, and
(d) the whole or part of which—

(i) is laid out as a garden,
(ii) is used for the purposes of recreation,
(iii) is used for the purposes of keeping refuse or storage bins, or
(iv) lies waste and unoccupied.>
Pauline McNeill

5* In section 13, page 11, line 5, at end insert—<

(  ) In section 154 of the 2006 Act (offences relating to HMOs), after subsection (1) insert—

“(1A) It is not a defence to an offence under subsection (1) if the owner of the HMO, subsequent to the committing of the offence, applies for and is granted a licence for that HMO under section 129.”.>

Section 17

Alex Neil

12 In section 17, page 12, line 4, after <may> insert <, subject to section (Matters to be considered prior to service of overcrowding statutory notice).>

Alex Neil

13 In section 17, page 12, line 8, leave out from beginning to <is> and insert <the overcrowding of which is, in the local authority’s opinion,>

Mary Mulligan

23 In section 17, page 12, line 24, at end insert—

<(  ) A local authority serving an overcrowding statutory notice must produce an alternative housing plan for any person who, for the purpose of ensuring that the house to which the notice applies is no longer overcrowded, has been compelled to discontinue their occupation of the house.>

(  ) Before drawing up an alternative housing plan the local authority must consult—

(a) the landlord on whom the overcrowding statutory notice has been served, and

(b) any person who has been required to discontinue their occupation of the house to which the notice applies.>

Alex Neil

14 In section 17, page 12, line 30, at end insert—

<(  ) Before making an order under subsection (7), the Scottish Ministers must consult—

(a) local authorities,

(b) such persons or bodies as appear to them to be representative of the interests of—

(i) landlords,

(ii) occupiers of houses, and

(c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).>

Alex Neil

15 In section 17, page 12, line 31, leave out subsection (8)
Mary Mulligan

24 In section 17, page 12, line 32, at end insert—

<(9) The Scottish Ministers must prepare and publish a report in respect of each period of 3 years following the commencement of Part 3 on—

(a) the number of overcrowding statutory notices issued,
(b) the impact of overcrowding statutory notices on reducing overcrowding,
(c) the extent to which persons have been made homeless as a consequence of overcrowding statutory notices, and
(d) other measures which have been considered for the purpose of reducing overcrowding,

in each local authority area.

(10) A report under subsection (9) must be produced as soon as reasonably practicable following the end of each period to which the report relates.>

After section 17

Alex Neil

16 After section 17, insert—

<Matters to be considered prior to service of overcrowding statutory notice

(1) This section applies where a local authority is considering serving an overcrowding statutory notice in relation to a house.

(2) The authority may serve the notice only if it is reasonable and proportionate in the circumstances to do so having regard to—

(a) the nature of the adverse effect referred to in section 17(2)(b) by reference to which the notice would be served,
(b) the degree to which the overcrowding of the house is contributing to or connected to that adverse effect,
(c) the likely effects of service of the notice, and
(d) whether there are means other than by service of the notice by which the adverse effect could be mitigated or avoided.

(3) The authority must take into account—

(a) the circumstances of the occupier of the house and of any other persons residing in the house (including, in particular, whether any of them is, as a result of the overcrowding of the house, homeless),
(b) the views (if known) of the landlord, the occupier and any other persons residing in the house, and
(c) the likely effects of service of the notice on the occupier and any other persons residing in the house (including, in particular, whether it may lead to the occupier or any such person becoming homeless or threatened with homelessness).

(4) For the purposes of subsection (3), whether a person is homeless or threatened with homelessness is to be determined in accordance with section 24 of the Housing (Scotland) Act 1987 (c.26).>
Section 18

Mary Mulligan

25 In section 18, page 12, line 36, at end insert—

<( ) Any information or advice provided under subsection (1) must be consistent with the terms of any relevant alternative housing plan.>

Alex Neil

17 Leave out section 18 and insert—

<Information and advice for occupiers

(1) This section applies where a local authority serves an overcrowding statutory notice in relation to a house.

(2) The authority must, at the same time as serving the overcrowding statutory notice, also serve on the occupier of the house a notice containing prescribed information and advice in connection with the overcrowding statutory notice.

(3) If the occupier of the house or any other person residing in the house requests information or advice from the local authority in connection with the overcrowding statutory notice, the local authority must comply with the request, unless the authority considers the request to be unreasonable.

(4) The local authority may give the occupier of the house such other information and advice as the authority considers appropriate in connection with the overcrowding statutory notice.

(5) In subsection (2), “prescribed” means prescribed by order made by the Scottish Ministers.

(6) Such an order may also prescribe the form of the notice to be served under subsection (2).

(7) Before making an order under this section, the Scottish Ministers must consult—

(a) local authorities,

(b) such persons or bodies as appear to them to be representative of the interests of—

(i) landlords,

(ii) occupiers of houses, and

(c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).>

Section 25

Alex Neil

18 In section 25, page 15, line 10, leave out <3> and insert <5>
After section 25

Alex Neil

19 After section 25, insert—

<Power to obtain information

(1) A local authority may, for the purpose of enabling it to discharge its functions under this Part, serve a notice on a person falling within subsection (2) (referred to as “A”) requiring A to provide the authority with any of the information mentioned in subsection (3).

(2) A person falls within this subsection if the person appears to the local authority to—

(a) own, occupy or have any other interest in a house in the local authority’s area, or

(b) act in relation to the lease or occupancy arrangement to which any such house is subject.

(3) The information is—

(a) confirmation of the nature of A’s interest in the house,

(b) the name and address of, and information about A’s relationship with, any other person whom A knows to—

(i) own, occupy or have any other interest in the house, or

(ii) act in relation to the lease or occupancy arrangement to which the house is subject,

(c) such other information relating to the house, or such other person, as the local authority may reasonably require.

(4) A person commits an offence if the person—

(a) without reasonable excuse, fails to comply with a requirement of a notice served on the person under subsection (1), or

(b) knowingly or recklessly provides information which is false or misleading in a material respect to a local authority or other person—

(i) in purported compliance with a requirement of such a notice, or

(ii) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, a local authority for the purpose of the discharge of its functions under this Part.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.>

After section 26

Alex Neil

20 After section 26, insert—

<Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers about—
(a) the discharge of its functions under this Part, or
(b) matters arising in connection with the discharge of those functions.

(2) Before issuing any such guidance, the Scottish Ministers must consult—
(a) local authorities,
(b) such persons or bodies as appear to them to be representative of the interests of—
   (i) landlords,
   (ii) occupiers of houses, and
(c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

Section 27

Mary Mulligan
26 In section 27, page 16, line 2, at end insert—

<“alternative housing plan” means a plan produced by a local authority for the purpose of re-housing any persons who have been compelled to discontinue their occupation of a house as a result of steps taken to comply with an overcrowding statutory notice.>

Alex Neil
21 In section 27, page 16, leave out lines 3 to 8 and insert—

<“house” means premises—
   (a) which are subject to a lease or occupancy arrangement by virtue of which they may be used as a separate dwelling, and
   (b) the owner of which would, if not registered in the register maintained by a local authority under section 82(1) of the 2004 Act, be guilty of an offence under subsection (1) of section 93 of that Act (disregarding subsection (3) of that section),
   “landlord”, in relation to a house, means the owner of the house.>

Section 29

Bob Doris
31 In section 29, page 18, line 4, after <house> insert <, including information about its physical condition (including any particular characteristics or features of the house) and an overall assessment of the standards of safety relating to energy utilities, including confirmation of whether or not a residual current device has been installed within that house>

Mary Mulligan
27 In section 29, page 18, line 4, at end insert—

<(iia) documents containing confirmation of whether a carbon monoxide detector has been installed in the house;>
Section 31

Alex Neil

22 In section 31, page 22, line 16, at end insert—

<(...)

In section 191 (orders and regulations), after subsection (4) insert—

“(4A) Regulations under subsection (1) of section 28B (other than such regulations containing only provision under subsection (2)(b) of that section) are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”>

After section 31

David McLetchie

32 After section 31, insert—

<Relaxation of residential restriction on leases of more than 20 years

(1) Section 8 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (property let under a future long lease, etc. not to be used as a private dwelling) is amended as follows.

(2) In subsection (3A)—

(a) the word “or” immediately following paragraph (b) is repealed, and

(b) after paragraph (c), add “; or

(d) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—

“(3B) An order under subsection (3A)(d) may—

(a) prescribe a body or type of body subject to conditions or restrictions,

(b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),

(c) restrict the application of subsection (3A) to specified leases, or leases of specified descriptions,

(d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any lease,

(e) make provision about the consequences, in relation to any lease, of—

(i) a breach of any condition or restriction prescribed by the order, or

(ii) subsection (3A) otherwise ceasing to apply in relation to a body or type of body or the lease.

(3C) Provision made by virtue of subsection (3B)(e) may, in particular, include provision for the protection of the interests of tenants or occupiers of any dwelling-houses on the property which is subject to the lease.

(3D) An order under subsection (3A)(d)—

(a) may modify any enactment, and
(b) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.”.

David McLetchie

33 After section 31, insert—

<Restriction of right to redeem heritable securities after 20 years

(1) Section 11 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling) is amended as follows.

(2) In subsection (3A)(b)—

(a) the word “or” immediately following sub-paragraph (ii) is repealed, and

(b) after sub-paragraph (iii), add “; or

(iv) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—

“(3B) An order under subsection (3A)(b)(iv) may—

(a) prescribe a body or type of body subject to conditions or restrictions,

(b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),

(c) restrict the application of subsection (3A) to specified heritable securities, or heritable securities of specified descriptions,

(d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any heritable security.

(3C) A statutory instrument containing an order under subsection (3A)(b)(iv) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

Section 35

Pauline McNeill

6 In section 35, page 23, line 3, leave out <comes> and insert <and section 13 come>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated at Stage 2, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Landlord registration numbers
7, 8, 9, 10, 11

HMO licensing: meaning of development
28

HMO licensing: refusal
29, 1, 2, 3, 4, 30, 6

Notes on amendments in this group
Amendment 29 pre-empts amendments 1, 2, 3, 4 and 30

HMO licensing: defences against offences
5

Matters to be considered prior to service of overcrowding statutory notice
12, 16

Overcrowding statutory notices
13, 14, 24, 18, 21

Overcrowding statutory notices: alternative housing plans
23, 25, 26

Overcrowding statutory notices: guidance
15, 20

Overcrowding statutory notices: information and advice for occupiers
17

Overcrowding statutory notices: power to obtain information
19
Tenant information packs
31, 27

Landlord application to private rented housing panel
22

Amendment to the Land Tenure Reform (Scotland) Act 1974
32, 33
Private Rented Housing (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 32, 33.

The following amendments were disagreed to (by division):
   29 (For 1, Against 7, Abstentions 0)
   4 (For 3, Against 5, Abstentions 0)
   30 (For 3, Against 5, Abstentions 0)
   31 (For 3, Against 5, Abstentions 0)
   27 (For 3, Against 5, Abstentions 0)
   6 (For 0, Against 8, Abstentions 0)

Amendments 28, 5, and 23 were moved and, with the agreement of the Committee, withdrawn.

The following amendments were not moved: 1, 2, 3, 24, 25, 26.

Sections 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, the schedule, sections 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 26, 28, 29, 30, 32, 33, 34 and 35 and the long title were agreed to without amendment.

Sections 6, 17, 18, 25, 27 and 31 were agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.
On resuming—

Private Rented Housing (Scotland) Bill: Stage 2

The Convener: We move now to agenda item 2, for which we are joined by Pauline McNeil MSP and Ted Brocklebank MSP. We will be considering stage 2 amendments to the Private Rented Housing (Scotland) Bill.

I welcome Alex Neil, the Minister for Housing and Communities. The minister is accompanied by Colin Affleck, senior policy officer of the private rented sector policy team; Rachel England, policy analyst with the housing supply unit; Willie Ferrie from the office of the Scottish parliamentary counsel; and Stephanie Virlogeux from the Scottish Government legal directorate. Welcome.

We now turn to our marshalled list.

Sections 1 to 5 agreed to.

Section 6—Duty to include certain information in advertisements

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8, 9, 10 and 11.

The Minister for Housing and Communities (Alex Neil): The main effect of amendments 7 to 11 will be to limit the requirement for the inclusion of landlord registration numbers in advertisements when landlords are advertising private rented property in cases where houses are in multiple ownership. I am aware that some landlords have expressed concerns that, should the bill require the inclusion of multiple registration numbers in advertisements where there are two or more owners of a property, that could increase the advertising costs for landlords. In response to that concern, the Scottish Government has lodged amendment 9, which provides that, where there are two or more owners of a property, the duty is complied with by the inclusion in the advert of the registration number of any one of the landlords. In other words, only one registration number will be required in the advert.

Amendment 10 seeks to ensure that landlords will not incur excessive costs in cases in which there are joint owners and one or more is registered and one or more has a pending application. In such cases, the duty will be complied with by the inclusion of either the landlord registration number of one of the landlords or the statement “landlord registration pending”.
Amendment 11 is a consequential amendment that will apply the definition of “advertisement” to the provisions that are proposed in amendments 9 and 10. Amendments 7 and 8 clarify the meaning of “registered person” in proposed new section 92B of the Antisocial Behaviour etc (Scotland) Act 2004, as would be inserted by section 6 of the bill.

I ask the committee to support amendments 7, 8, 9, 10 and 11 in my name.

I move amendment 7.

Patricia Ferguson: I understand the intention of the minister’s amendments, and I support the principle behind that intention. However, in his closing comments, will he clarify whether the provisions will simply mean that only one of two individuals who are landlords of a property will register, while the other will decide that there is no compelling reason to do so?

Alex Neil: I can confirm that both will have to register; the only issue is what appears in the advertisement. In essence, what appears in the advert is a control mechanism for enforcement officers in local authorities. We have consulted them widely and they are content that the provisions will in no way diminish the effectiveness of enforcement.

Amendment 7 agreed to.

Amendments 8 to 11 moved—[Alex Neil]—and agreed to.

Section 6, as amended, agreed to.

Sections 7 to 12 agreed to.

Schedule agreed to.

Before section 13

10:45

The Convener: Amendment 28, in the name of Alex Johnstone, is in a group on its own.

Alex Johnstone: It is not my intention to speak at great length since the subject was brought to my attention by my colleague Ted Brocklebank. The experience that Ted reports is a problem that is associated with the high density of houses in multiple occupation in the town of St Andrews.

I apologise to anyone who has been concerned about the nature of amendment 28. I know that it has frightened a few horses in some areas, but it was designed to put the matter on the agenda during our discussion. I am aware that a great deal of fine tuning is necessary, and I hope that we can deal with any side effects during the passage of the bill. It is a matter that I wish to see aired, and I look forward to hearing what the minister and Ted Brocklebank have to say.

I move amendment 28.

Ted Brocklebank (Mid Scotland and Fife) (Con): I begin by drawing the committee’s attention to my entry in the register of members’ interests to the effect that I own two properties in St Andrews that are let for rental. Technically, they are not HMOs since each property is occupied by only two tenants, but by any definition I am a landlord. I assure the committee that what I have to say today in support of amendment 28 is unlikely to be endorsed by the Scottish Association of Landlords.

Simply, the purpose of amendment 28 is to manage concentrations of HMOs that have been shown to be destructive to social cohesion and sustainability of communities. I speak with direct experience of the situation in St Andrews, which is a small town with a fixed population of around 16,000. Additionally, there are around 8,000 students and 1,120 licensed HMOs. They account for 93 per cent of the total for the whole of Fife.

The HMO problem is severest in the historic core of the town. In what has been described as the best surviving example of a medieval township in Scotland, approximately 85 per cent of the population are students. The 155 permanent residents are a diminishing group as market forces ensure that most houses and flats that come on the market are bought by absentee buy-to-let landlords who are guaranteed to have tenants and a reliable income. I assure the committee that the properties that I own are not in the town centre, nor am I an absentee.

By any measure, St Andrews city centre is not a balanced community. The remaining permanent residents’ lifestyles are directly affected by the lifestyles of a younger peripatetic student community, and the buy-to-let properties are not maintained at anything like the same level as those of the permanent residents. I am being neither anti-student nor anti-landlord; I am simply reflecting the facts.

To tackle the problems in the historic core, Fife Council has recently introduced for consultation a draft policy that would limit further HMO development in the town centre, but the policy cannot be fully effective as it covers only houses and flats that require planning permission, and a large number of premises, including many listed buildings, are outwith the scope of the planning legislation. The situation that I describe is replicated with variations in many parts of Scotland, including Glasgow, Edinburgh and Aberdeen.

The Private Rented Housing (Scotland) Bill will improve matters by empowering local authorities to require planning permission before considering a licence application. However, not all HMOs...
require planning consent, so consequently the planning system cannot prevent concentrations of HMOs. The requirement for planning consent for some HMOs but not others will have the effect of concentrating HMOs in house types and areas for which there are no planning controls, thus defeating the very intention of the legislation.

Amendment 28, as lodged by my colleague Alex Johnstone, would make all HMOs subject to planning consent and remove that problem at a stroke. I do not believe that it would prove onerous for local authorities to administer, but would simplify matters through introducing one rule for all.

Mary Mulligan: I am grateful to Mr Brocklebank for his explanation of amendment 28.

When the committee took evidence at stage 1, we were made very aware of the situation in St Andrews in particular. However, I am not sure that the planning system is the way to resolve issues of density.

I would be interested to hear the minister’s comments on amendment 28, its effect with regard to the way in which planning can control the problem and how we can meet the increased demand for HMOs that is likely to occur in the foreseeable future. If there is a demand, it needs to be serviced somewhere.

I recognise what Ted Brocklebank says about the proliferation of HMOs in a given area, but if the provision is not to be there, it needs to be somewhere else, and I am not sure how the interaction would arrive at that.

I would be interested to hear the minister’s response as to whether amendment 28 would achieve what Mr Brocklebank suggests it will achieve.

Alex Neil: I empathise with the issue that Ted Brocklebank has raised in relation to St Andrews, but I also share Mary Mulligan’s concerns that amendment 28 is not the best way to deal with the problem of density.

In fact, amendment 28 would have the extreme opposite effect, in that it would have hugely negative repercussions for the whole HMO sector throughout Scotland. It would mean that every HMO in Scotland would need planning permission, whether or not it is subject to planning control at present, and it would cost local authorities, private landlords and the Scottish Government millions of pounds.

Those costs and the additional unnecessary red tape are likely to affect HMO businesses and significantly to impact on supply by driving good landlords out of the sector and encouraging bad landlords to operate without licences.

As Mary Mulligan said, there will be expanding demand for HMOs. We estimate that as many as 7,500 young adults will require HMO accommodation in Glasgow and Edinburgh in the near future. We are working to drive up standards in the HMO sector and have already included in the bill powers that will help local authorities in that regard. Unfortunately, Alex Johnstone’s amendment 28—which is in a sense Ted Brocklebank’s amendment—would mean that there would most likely not be enough HMOs to go round, which would create a dire shortage.

If access to HMOs is to be substantially reduced, where are vulnerable tenants to go? Where will the 7,500 young people aged between 25 and 34 find single rooms if HMOs are disappearing, in the light of the welfare and housing benefit reforms that have been announced? Even worse, what would happen if people end up living in dangerous, substandard and unlicensed HMOs because of the pressure that amendment 28 would put on the supply?

As the committee pointed out in its stage 1 report, we need to ensure that young people have access to safe and secure accommodation. In that spirit, I ask members to consider carefully the ramifications of amendment 28, which I unfortunately cannot support. I urge Alex Johnstone to withdraw it.

Alex Johnstone: As I conceded, my objective in lodging amendment 28 was to put the matter on the agenda for discussion. I was aware that it is a blunt instrument and I was aware of some of its potential consequences—other consequences have been brought to my attention since I lodged it. I am glad that we have had the opportunity to discuss the matter and I welcome the minister’s acknowledgement that there is a problem in St Andrews and perhaps one or two other places in Scotland. As a consequence, it would be appropriate at this stage to seek leave to withdraw amendment 28, so that I can consider the matter further.

Amendment 28, by agreement, withdrawn.

Section 13—Amendment of HMO licensing regime

The Convener: Amendment 29, in the name of Jim Tolson, is grouped with amendments 1 to 4, 30 and 6. If amendment 29 is agreed to, amendments 1 to 4 and 30 will be pre-empted.

Jim Tolson: Many people think that amendment 29 is very much focused on students in Scotland. However, although the National Union of Students Scotland was instrumental in taking forward the approach that is proposed in amendment 29, members will be aware that the Scottish Council for Single Homeless, Crisis and
other organisations provided briefings in which they sympathised with the proposed approach.

The concern of those bodies, which I share to a large extent, is that the bill—and the amendments in Pauline McNeill’s name—might make the situation worse, particularly in relation to the need to solve Scotland’s homelessness problems. The Government’s approach will not achieve many of the aims of the bill. In particular, the link with planning will reduce local authorities’ flexibility. I would rather put in place a more commonsense approach, which would allow flexibility to permit HMOs, where they are required and where there is no huge, detrimental impact on permanent residents—I know about the extreme cases in St Andrews, which Ted Brocklebank rightly mentioned.

It is certainly not a case of one size fits all for HMOs throughout the country. Flexibility is important for local authorities and local councillors, who are much more aware of the situation on the ground in their areas. Restricting supply could be the wrong thing to do, particularly at this time, as Mary Mulligan and other members said. It would put more pressure on not just students but the many people who might lose their private homes and need to find other accommodation. If not enough rented accommodation is available, there will be problems in many areas and there will be an effect on homelessness in Scotland, which is an issue that we all want to solve.

The bill and the amendments in Pauline McNeill’s name would put more pressure on honest landlords and do not focus on solving the problem of rogue landlords. I would rather that we produced legislation that focused on rogue landlords.

The HMO licensing scheme is imperfect and needs to work better, but a requirement for planning permission could be counterproductive in many ways, particularly if it led to more subdivision by certain landlords. The organisations that I talked about are concerned, as am I, about the impact on not just the type and suitability but the safety of accommodation.

In all likelihood, a shortage of HMOs would push up costs. I draw members’ attention to the situation in Aberdeen, where renting is much more expensive. I am not sure that many of the students who plan to go to the University of Aberdeen or other institutions in the city are aware of the bill’s implications for them.

I move amendment 29.

11:00

Pauline McNeill (Glasgow Kelvin) (Lab): I lodged amendment 1, which I do not intend to press, simply to enable the committee to debate whether the bill should require local authorities to implement the approach in section 13(2), rather than provide that they “may” do so, as the bill says.

I will explain what I wanted to achieve by lodging amendments 1 to 4, 30 and 6. First, as we have often heard in the Parliament, high concentrations of HMOs in parts of Scotland are making some communities unsustainable, as Ted Brocklebank said. I represent an area in which that has been the case for many years. As always, I place it on record that I support HMOs as part of the housing solution, but they cannot continue to be unregulated.

I turn to Jim Tolson’s amendment 29, which is set up against my amendments. His analysis is wrong because the bill does not at all reduce flexibility for local authorities, but instead gives them a choice—I recognise the progress that Alex Neil has made on that. Proposed new section 129A of the Housing (Scotland) Act 2006 states that local authorities can “refuse to consider” an application. The wording in the bill gives local authorities a power that they may or may not use. Therefore, it certainly does not reduce flexibility.

I am sure that other members have argued that there should be strategies for homeless people, student accommodation and migrant workers. Universities should not be let off the hook, and nor should local authorities. However, to have an unregulated HMO system as the only solution would continue to grow the problem throughout Scotland, rather than reduce it. Jim Tolson fails to take into account the concentrations of HMOs in some areas. I can tell him directly that, in my communities and probably in Patricia Ferguson’s constituency, families are leaving. People who were born and bred in areas such as Hillhead and Partick are pleading for us to do something because their communities are unsustainable. The tenement properties that I have particular experience of were not built to allow 35 people to live in one close, as is the situation next to my office. The amenity is not sustainable with that number of people.

Through my amendments, I want to give local authorities clear grounds on which to consider whether an HMO licence should be granted and to expand the grounds on which local authorities can refuse a licence. It is important to emphasise that the issue is not about planning regulation. My amendments would allow local authorities to use certain provisions to refuse applications; their use would be a matter for local authority licensing committees.

Amendment 2 relates to the variation of a licence. Under the bill, a local authority will be able to refuse to consider an application, so it would
make sense and be consistent with the bill to allow an authority to refuse to consider the variation of a licence if it so wishes.

On amendment 3, when I think back to the panels that were put together after the introduction of the 2006 act, in relation to which I, Iain Smith, Mike Pringle and others debated the thinking on HMOs, I remember that there was discussion about the 10-year lawful-use rule. I would not go to the wall on the issue, but it is important to recognise that, under planning law, a landlord who does not have a legal HMO but who can provide evidence that the property has been used as an HMO for 10 years must be granted consent. People should not be rewarded for breaking the law. Even in cases in which a property could legally be an HMO, that should still be a matter for planning law and landlords should not be given consent simply because the property has been used in that way for 10 years.

The evidence that landlords provide in claiming that their property has been used as an HMO for 10 years can be patchy. I cite as an example a property in Glasgow that I owned in 2001 and for which the current landlord applied for a licence under the 10-year lawful-use rule. I had to write to the local authority saying that I could show it the title deeds and details of the sale. It is important to acknowledge that, as greater reliance on HMOs is possible for the reasons that Jim Tolson outlined, that rule will be used more often.

My main amendments are 4, 30 and 6. The committee has heard evidence that, in some cases, the subdivision of rooms leads to overcrowding and noise nuisance. My constituency has many conservation areas where we might be concerned about what is happening to properties, but I am more concerned about landlords cramming in tenants by basically putting a wall in the middle of a room and splitting a window in half or not having a window.

It could be argued that, in such circumstances, local authorities can use the guidance, but I think that such adaptation should be clear-cut grounds for refusal. Authorities will be able to choose whether to use that power. I worry that if such a provision is not in the bill, local authorities will lose appeals. We should not forget that plenty of appeals are made against local authorities that have refused to grant HMO licences.

The same is true of stacked services in tenements where the water amenities are aligned. Landlords who want to put in more tenants will move the kitchen or the bathroom, which causes problems for tenants who sleep below those kitchens or bathrooms, which could be prone to leaks. It seems to me that it would be quite legitimate for a local authority, in circumstances in which it thought that a landlord was maximising the rental stream by cramming a kitchen, a toilet or too many bedrooms into an amenity that could not sustain it, to say, “We are not happy to grant the licence until you change that.”

The same should apply in relation to communal space and amenity. The focus is very much on tenemental properties. To achieve what we are trying to achieve on recycling in Glasgow, it is necessary to have space in the back court. Back courts are not big enough to sustain all the bin bags and recycling for 35 people who all live in one tenement. A local authority should be allowed to look at that issue when it considers licence applications. I re-emphasise that we are talking about licensing law rather than planning law.

Finally—I am getting there—the minister knows from the many letters that I have sent him on the issue and the many discussions that we have had about it how frustrated I am about the length of time that it took for the provisions of the 2006 act, which I think are good, to come into force. I have consulted widely with my local authority, Glasgow City Council, and COSLA, and have reassured them that my intention is to give local authorities the power to act at their discretion.

I feel strongly that whatever legislation we end up with following stage 3 should come into force immediately. We should certainly not have to wait as long as we waited for implementation of the 2006 act, although I know that the minister will say that there were reasons for that, from which I hope that lessons have been learned about the construction of legislation. I make a plea: wherever the committee goes with it, the bill is needed. Local authorities will have the discretion to act. I argue that more local authorities will need to be able to regulate such matters.

Patricia Ferguson: I speak against Jim Tolson’s amendment 29 because in lodging it he forgets the rationale for HMO licensing, which was very simple. We recognised the situation that the tragic deaths of two youth students in my constituency highlighted—the circumstances in which too many of our young people, particularly students, and too many vulnerable people in our communities, such as migrant workers, were living. HMO licensing was developed to protect those people.

In future, given the uncertainties that exist because of the changes that are being made to the benefits system, the likelihood is, as the minister said, that the number of people who seek to live in such accommodation will increase. To my mind, that makes it even more important that we have proper and robust legislation in place that protects those people, and that is exactly what the bill aims to do. I have some concerns about whether it does that in the way that I would like it to, but that is what it aims to do.
I support Pauline McNeill’s amendment 4, in particular, because the subdivision of properties, particularly properties in tenemental buildings, is, as she rightly identified, a huge and growing concern in areas of Glasgow that we are very familiar with and which we work with cheek by jowl. I am extremely frustrated by the lack of opportunity that exists to help people who, as a result of the legislation that is there to protect vulnerable people, find that their communities are being adversely affected by the concentration of HMOs and by the adaptation of HMO properties within communal properties. Pauline McNeill has given examples of windows and sewerage, drainage and other pipework being affected.

In some properties fire doors are quite rightly provided. Unfortunately, because of the number of people who come and go in those properties, the noise created at certain times of the day by fire doors closing becomes an adverse factor for others who live in the close. They might find that their traditional-style flat is now surrounded by flats in which the bedrooms, kitchens, bathrooms and front doors no longer marry up. I am keen that we try to ensure that the legislation makes it safe for people to live in HMOs, and that it also makes it possible for the community to be as balanced and as mixed as possible.

We have to have a serious conversation with the UK Government about the situation that is going to be created by the benefits changes. Perhaps closer to hand, we also have to have a serious conversation with the universities and colleges about the way in which they have to take responsibility for some of the situations that exist. I speak as someone whose constituency, as well as containing a number of HMOs, contains the largest student village in Europe. I am proud of that, because the young people who inhabit that village are an asset to the community. However, their needs and the needs of the indigenous community have to be balanced and both have to be safeguarded.

Mary Mulligan: I will not repeat what Patricia Ferguson has said about Jim Tolson’s amendment 29 other than to say that I do not think that it is the right way to go. I support the idea that we need to have a more comprehensive study of the housing needs of young people and students in particular. Whatever happens after the coming election, it would be prudent to consider that.

On Pauline McNeill’s amendments, I am attracted to amendment 4, which deals with stacked services. That issue was raised with us in stage 1 evidence. It causes inconvenience—perhaps worse than that—for people who live in those areas. The amendment has a point and I am interested to hear the minister’s response to it.

Likewise, I am interested in the continual operation issue, which is dealt with in amendment 3. It is wrong that we should reward people for bad behaviour. Regardless of how long someone thinks an HMO might have been operating, if it has not been registered and they know that it should have been, something is wrong. I am interested to hear what the minister thinks should be our response to that issue.

There is a general point to be made. At the beginning of our consideration of the bill, we knew that it would deal with the HMO issue. I remind the committee that the HMO provisions were removed from the Housing (Scotland) Bill and put into the Private Rented Housing (Scotland) Bill, but we still have not arrived at a satisfactory situation for all those who are involved in HMOs. We have not addressed the concentration levels within certain areas in our towns and cities or the concerns that have been expressed about that issue by people who have lived in those areas for many years. We are now faced with a potential increase in demand, and there is an issue about how to build such an increase into our system.

Apart from the complaints about levels of HMO concentration, the main problem seems to be with management. I am not sure that the bill puts the right measures in place. The minister might have other ideas, but it seems to me that we are making small changes to the existing legislation. If, as Pauline McNeill suggested, local authorities are not pursuing bad management or other bad situations, that is because they feel that they are not going to be able to win the cases. Is the bill going to change that situation? Can we tell people that they will be able to address the problems that have been flagged up to us? Despite the amount of time that we have had to deal with the issue, I do not feel confident that we will have the right legislation in place. I understand why the amendments that we are dealing with were lodged. We are trying to deal with the problem, but in a piecemeal way. We might need to remove the provisions on HMO, decide that the system needs a complete overhaul and take it back to the drawing board. At the moment, I am not sure that we are resolving the problems of anyone who is involved in the sector.

11:15

Alex Neil: We must have a balanced approach in ensuring that there is effective regulation and enforcement of regulation, and that must be done sensibly and at the right time in order not to reduce unintentionally the supply of good-quality HMOs. Having listened to the debate, I feel that members perhaps do not fully appreciate the powers that are already available to local
Let me deal with the amendments in more detail, starting with Jim Tolson's amendment 29. Section 13 of the bill amends the HMO licensing regime in part 5 of the Housing (Scotland) Act 2006, which will commence on 31 August this year, to give a local authority power to refuse to consider an HMO licence application if it considers that any requisite planning permission has not been obtained. Amendment 29 seeks to remove that power completely from the bill. The request for the power originated from Glasgow City Council, which requested help to deal with problems in areas such as Hillhead, where many HMOs operate in breach of planning controls. The inclusion of that power in the bill was endorsed by the Scottish private rented sector strategy group. It is expected that the power will help to improve enforcement where there are excessive numbers of HMOs in an area and will allow local authorities discretion to take account of local circumstances.

Pauline McNeill's amendment 1 goes significantly further than the bill's provisions by seeking to make it mandatory for local authorities to confirm the position in relation to planning permission before considering an application for an HMO licence. Thereafter, amendment 1 would require them to refuse to consider the application if the HMO was in breach of planning control. I understand why Pauline McNeill lodged amendment 1 and I am sympathetic to the particular concerns of her constituents in Hillhead, which is why we included the discretionary power in the bill in the first place. However, I believe that amendment 1 would have unintended negative consequences; accordingly, I cannot support it.

As I said, I was pleased to hear members acknowledge the need to find a balance between managing the impacts that a concentration of HMOs can have on communities and ensuring that young people have access to safe and secure accommodation. I fully support that view; unfortunately, I believe that Pauline McNeill's proposal would stymie efforts to strike that balance by restricting supply and removing local authority discretion. It would also have the unintended consequence of forcing HMO landlords underground. As I outlined, the provision in the bill as introduced originated from Glasgow City Council, which requested a discretionary power to consider planning matters in the context of HMO licence applications in order to deal with exactly the sort of problems that Pauline McNeill seeks to address.

Amendment 1 would remove that discretion and impose a substantial new administrative burden on all local authorities at a time when prioritisation of the use of public finances and staff resource is a key strategic issue. Local authorities would have to check the planning position in relation to every single application. That is not straightforward and would require the council to ascertain whether planning permission was required for the HMO in question and thereafter to establish whether such permission had been granted. I appreciate that councils require the flexibility to prioritise their activities on the basis of local needs. For example, they may consider local planning considerations to be outweighed by the need for HMO accommodation in a particular area to tackle homelessness. The provision in the bill as introduced would enable authorities to take the planning position into account where they considered that to be appropriate. However, amendment 1 would require authorities to do so even if they did not consider it necessary or helpful in view of local conditions. That would cause unnecessary delays in opening HMOs in areas where they were most needed, which would restrict supply and could contribute to homelessness.

The bulk of most HMOs raise no planning concerns for local authorities. Many authorities will not need to use proposed new section 129A of the 2006 act, so it is appropriate that its use remains discretionary, to avoid an unnecessary administrative burden and so that authorities can consider their particular local issues and needs case by case. Glasgow City Council and other stakeholders that I have consulted support that approach. As I said, the PRS strategy group, which helped to develop the bill, concurred with that view. The bill sounding board that I established also endorsed it.

Amendment 2 would require local authorities to refuse to consider varying a licence unless they were satisfied that any requisite planning permission, or a certificate of lawfulness of use, had been granted. That would create administrative delays and would deter landlords from notifying authorities of changes to their circumstances that would require a variation of their licences.

Amendment 3 would ensure that the bill stated expressly that a local authority can exercise the power to refuse to consider an HMO licence application on planning grounds after the time limit for enforcement action by a planning authority has expired. The amendment is unnecessary, as it is already clear from section 13 that the relevant consideration for the authority is whether planning control would be breached and not whether the planning authority is entitled to take enforcement action on a breach under planning legislation.

Furthermore, amendment 3 would risk causing confusion. I do not think that Pauline McNeill's intention is to revive the planning authority's ability
to take enforcement action after the period that is set out in planning legislation. However, the amendment has the risk of being misinterpreted in that way, which could have significant adverse consequences for landlords who might have operated lawfully for some time.

Amendment 4 would introduce subdivision and alteration of water or drainage pipes as issues that a local authority must take into account when considering an HMO licence application. I highlight the fact that local authorities are already required to consider the suitability of accommodation when deciding whether to grant or renew an HMO licence. As part of that assessment, it is open to them to consider issues such as subdivision and alteration of rooms. To that extent, the amendment is unnecessary.

In granting or renewing HMO licences, local authorities apply space standards to ensure that rooms are of a sufficient size. Our guidance encourages authorities to work with building standards colleagues to ensure compliance on that point. Issues have arisen when the relocation of bathrooms and kitchens in flats has caused nuisance, but that applies not just to HMOs but to adaptations in owner-occupied housing. It is for building standards officers to deal with such matters.

Pauline McNeill’s amendment 30 would introduce an additional factor for local authorities to consider when determining an HMO licence application. They would be required to refuse an application if they considered that the use of the living accommodation as an HMO would have an adverse effect on communal open space that was associated with the accommodation, such as gardens or refuse storage areas. The amendment is unnecessary. Under section 131 in part 5 of the 2006 act, when considering an HMO licence application, local authorities must ensure that the premises are “suitable for occupation as an HMO” and must consider “the possibility of undue public nuisance.”

The draft statutory guidance that is being consulted on supplements that by suggesting, under the heading of physical standards, that whether adequate refuse storage facilities are available and are used appropriately should be considered.

Amendment 6 would commence section 13 of the bill at royal assent. That would have no practical effect and could cause confusion, as part 5 of the 2006 act, to which section 13 relates, will not come into force until 31 August 2011.

I ask Jim Tolson to withdraw amendment 29 and Pauline McNeill not to move her amendments.

Jim Tolson: I am interested in some of the comments that we have heard, particularly from Pauline McNeill and the minister.

Unfortunately, although Pauline McNeill and I agree on many issues in the Parliament, I am afraid that there is not just clear blue water but somewhat of an ocean between us on some of these issues. I will not support her amendments today as I think that they go too far, especially as I am already quite concerned, on behalf of the groups that I mentioned earlier, about this part of the bill.

Alex Neil is right to say that we should have some balance, and perhaps that is where we will end up after today—who knows? There are conflicting concerns from different groups and individuals in areas of high HMO concentration, and perhaps trying to achieve a balance is the best way forward, but we will see how that pans out as the debate on the amendments proceeds.

I am not too familiar with the Glasgow Hillhead issue, for which I apologise to Pauline McNeill and others, nor with the specific concerns that Patricia Ferguson raised about the effects on the lives of some of her constituents.

In my view, however, people feel strongly that discretion must remain a part of how we take these issues forward. It is going too far to bind the hands of our local authorities and councillors, and I press amendment 29.

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Tolson, Jim (Dunfermline West) (LD)

Against
Doris, Bob (Glasgow) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Johnstone, Alex (North East Scotland) (Con)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 29 disagreed to.
Amendments 1 to 3 not moved.
Amendment 4 moved—[Pauline McNeill].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
For Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 30 disagreed to.

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 30 disagreed to.

The Convener: Amendment 5, in the name of Pauline McNeill, is in a group on its own.

Pauline McNeill: Amendment 5 relates to the 10-year rule in the Town and Country Planning (Scotland) Act 1997. As I have said, some landlords are now relying on the fact that they have been landlords for 10 years. If the minister, as he indicated in his previous comments, is clear that a local authority may decide not to grant an application if it is in breach of planning controls, I would be happier if it was clear that the landlord could not then rely on the fact that they had been around for 10 years and therefore the section would not apply.

For clarity’s sake, I am going to move amendment 5. There needs to be clarity. If a local authority chooses to refuse an application from a landlord because of a breach on planning grounds—because the landlord did not apply for planning consent, which is a matter for the local authority to decide—the landlord should not be allowed to come along and say, “Well, I’ve been a landlord for 10 years, so you have to give me the planning consent.” That would be fundamentally wrong, and would go against the provisions in the bill.

I move amendment 5.

11:30

Mary Mulligan: As I said in an earlier contribution, I have concerns about rewarding people for not doing what they are supposed to do. I heard what the minister said about local authorities already having the appropriate power, but how do we ensure that they are aware of their power and use it when appropriate? Sometimes, the only way in which to make something happen is to put it in legislation. However, if the minister can reassure me that that is not necessary, I will be open to persuasion.

Alex Neil: As Pauline McNeill said, amendment 5 proposes to include in the bill a statement that, if a landlord unlawfully operates an unregistered HMO and subsequently obtains a licence, they cannot use the fact that they have obtained a licence as a defence in any prosecution for the earlier offence. I categorically reassure Pauline that that is already the position in law, so there is no need to express it directly in the bill. Indeed, there is a danger that amendment 5 could introduce confusion and uncertainty about the operation of other, similar provisions.

To Mary Mulligan I say that, once this bill becomes an act, we will of course issue guidelines and reminders to local authorities about their powers, and we will remind them about this power. The review of the implementation and enforcement of landlord registration can address that issue as well.

In light of the fact that the measures already exist in law, I invite Pauline McNeill to withdraw amendment 5.

The Convener: I invite Pauline McNeill to indicate whether she wishes to press or withdraw amendment 5.

Pauline McNeill: As I have said, some landlords are now relying on the fact that they have been landlords for 10 years. If the minister, as he indicated in his previous comments, is clear that a local authority may decide not to grant an application if it is in breach of planning controls, I would be happier if it was clear that the landlord could not then rely on the fact that they had been around for 10 years and therefore the section would not apply.

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The Convener: I invite Pauline McNeill to indicate whether she wishes to press or withdraw amendment 5.

Pauline McNeill: Amendment 5 relates to the 10-year rule in the Town and Country Planning (Scotland) Act 1997. As I have said, some landlords are now relying on the fact that they have been landlords for 10 years. If the minister, as he indicated in his previous comments, is clear that a local authority may decide not to grant an application if it is in breach of planning controls, I would be happier if it was clear that the landlord could not then rely on the fact that they had been around for 10 years and therefore the section would not apply.

For clarity’s sake, I am going to move amendment 5. There needs to be clarity. If a local authority chooses to refuse an application from a landlord because of a breach on planning grounds—because the landlord did not apply for planning consent, which is a matter for the local authority to decide—the landlord should not be allowed to come along and say, “Well, I’ve been a landlord for 10 years, so you have to give me the planning consent.” That would be fundamentally wrong, and would go against the provisions in the bill.

I move amendment 5.
Alex Neil: Amendments 12 and 16 relate to matters to be considered by a local authority in deciding whether to serve an overcrowding statutory notice. I was pleased that, in its stage 1 report, the committee agreed with us that something needs to be done now about the serious problems caused by overcrowding in some parts of Scotland, such as Govanhill. The method by which we are proposing to do something was originally proposed by Glasgow City Council. However, I am aware of the concerns that some stakeholders and MSPs have expressed about the practical operation of overcrowding statutory notices and, in particular, about the potential effects on homelessness and housing stock.

To respond to those concerns, the Scottish Government has lodged amendments to clarify further how the notices will work and to offer reassurance that local authorities will use notices only when it is appropriate to do so. We have explained previously the importance of statutory guidance for local authorities in the use of notices. However, we have decided that it would be better to place some provisions in the bill.

Amendment 16 sets out matters that the local authority must consider when deciding whether to serve an overcrowding statutory notice. The first of those is whether it is reasonable and proportionate to serve a notice in view of the extent to which the overcrowding is having an adverse effect, the nature of that effect, the likely effects of service and whether another approach could be taken instead. That will ensure that notices are served only in the most serious cases, where no better alternative exists, and only when service would not make matters worse.

Secondly, before serving a notice, there will be a specific requirement for the local authority to take into account the circumstances of the people living in the house; their views and the views of the landlord, if the local authority is aware of them; and the likely effects of a notice on the people living in the house, particularly with regard to homelessness. That means that the local authority will have to focus on the individuals living in the house to see whether serving a notice is the best approach for them. Amendment 16 will thus ensure that the local authority considers a wide range of factors before using an overcrowding statutory notice.

Amendment 12 indicates that the power to issue a notice is subject to the requirement to take the matters that I have described into account. I ask the committee to support amendments 12 and 16.

I move amendment 12.

Amendment 12 agreed to.

The Convener: Amendment 13, in the name of the minister, is grouped with amendments 14, 18 and 21.

Alex Neil: These amendments relate to overcrowding statutory notices. Amendment 14 places a requirement on ministers to consult stakeholders before using the power to make an order under section 17(7) in relation to overcrowding statutory notices. That will ensure that relevant interests, such as local authorities and tenant and landlord representatives, will have an input into the prescribed form of the overcrowding statutory notice, the additional information to be included in it and the people to whom a copy of it must be given.

Like other amendments that we have lodged, these amendments show the importance that the Scottish Government attaches to the full involvement of relevant stakeholders in the process of developing the system of overcrowding statutory notices.

At stage 1, some stakeholders observed that the maximum fine for a landlord’s non-compliance with an overcrowding statutory notice seemed too low in comparison with other housing offences. On reconsideration, we agree, given that the harm that could be caused by non-compliance could be very serious. We are all aware of the appalling consequences of overcrowding in some parts of Scotland. Amendment 18 therefore increases the maximum fine level from level 3, which is £1,000, to level 5, which is £5,000.

Amendments 13 and 21 are minor drafting amendments. Amendment 13 clarifies one of the criteria in relation to houses for which an overcrowding statutory notice may be served. Amendment 21 amends the definitions of “house” and “landlord” as used in part 3.

I am sympathetic to the aims behind Mary Mulligan’s amendment 24. In its stage 1 report, the committee recommended that the Scottish Government should monitor the number of overcrowding statutory notices that are issued and review their effectiveness in dealing with overcrowding and their impact on homelessness. In my reply, I said that we would do that. I therefore consider it sensible to reassure those who have concerns about OSNs by placing a statutory requirement on ministers to publish a triennial report on the number and effects of overcrowding statutory notices. However, there are some minor drafting amendments that could be made to the amendment. In order to ensure that the provision works as intended, Scottish Government officials would be prepared to work with Mary Mulligan with a view to lodging a revised amendment at stage 3. On the basis of that offer, I invite Mary Mulligan not to move amendment 24.
I ask the committee to support amendments 13, 14, 18 and 21.

I move amendment 13.

Mary Mulligan: The committee had much discussion about the problem of overcrowding and what we felt needed to be done through legislation to resolve it. We knew that homelessness legislation would provide for anyone who was rendered homeless because of overcrowding. However, we all agreed that the bill was necessary to strengthen the powers of local authorities to serve notice where overcrowding was a problem.

Following discussion at stage 1, we also recognised that there was a risk of unintended consequences. For example, we discussed the risk that people might be seen as queue jumping for council housing. Furthermore, once an overcrowding notice was served, there would be nowhere for individuals to go, so we would not solve the problem in the way that we would wish to.

The minister and I have each lodged amendments that seek to address those problems. However, to be honest, there is still a risk, and that is the reasoning behind my suggestion that we should review the measures after three years to gauge the impact that they have had. I accept that that might seem like a belt-and-braces proposal, but the committee’s concerns were genuine and we needed to do something.

I have listened to what the minister has said, and we are in agreement on the matter. If the drafting of my amendment 24 needs to be improved, I am more than happy to discuss with the minister how to do that. We are both aiming to achieve the same thing. On this occasion, therefore, I will not move my amendment.

Alex Neil: I thank Mary Mulligan for taking up the offer, and I reiterate that we will work with her to produce an acceptable stage 3 amendment. The drafting changes to her amendment 24 will be fairly minor, but it is better to try to get it right for stage 3.

Amendment 13 agreed to.

The Convener: Amendment 23, in the name of Mary Mulligan, is grouped with amendments 25 and 26.

Mary Mulligan: As I have already said, the committee took a lot of time to discuss overcrowding statutory notices and their consequences. The intention behind my amendments 23, 25 and 26 is to ensure that one of the effects of serving those notices is dealt with.

An overcrowding notice having been served, we would expect someone—often more than one person—to leave the property. For me, the issue is where that person then goes. We all accept that those people will frequently be vulnerable in some way, and that they will be in need of support to find alternative accommodation. The intention behind my amendments in this group is to ensure that the local authority that serves the notice provides a housing plan.

The housing plan, which will be drafted in discussion with the landlord and the tenants, will provide information on alternative housing options, such as other private landlords’ names and addresses, and guidance on how to apply to the local authority or to a housing association in the area. I wish to be clear that the existence of a housing plan will not mean that the local authority has to provide alternative housing. However, providing support by way of a housing plan would be sensible. Given our concerns about outcomes, I feel that it is necessary to place the housing plan in legislation. That is why I have lodged these amendments.

I move amendment 23.

Jim Tolson: I understand the reasoning behind Mary Mulligan’s amendments, which are well intentioned. However, I am concerned about the proposals, despite the member’s assurance that the intention is not to make people feel that they will get housing from the local authority and despite the fact that the circumstances that we are discussing will be rare. I am also concerned that the provisions duplicate many of the services that local authorities and a wide range of voluntary sector bodies already provide. Therefore, I am not convinced of the need for the amendments.

Alex Neil: Amendment 23, in conjunction with amendments 25 and 26, relate, as Mary Mulligan has said, to the situation where the local authority has served an overcrowding statutory notice that requires the landlord to take active steps to reduce the occupancy level of the house. Local authorities will be able to serve notices that require landlords not to replace tenants as they leave. However, it is possible that some situations will require more urgent action, and landlords might have to take steps to require occupants to leave.

The idea of providing support to occupants who are affected by an overcrowding statutory notice is highly desirable. When we reach the Government’s amendment 17, I will explain how we intend that that should be done in relation to all overcrowding statutory notices. However, the wording of Mary Mulligan’s amendments means that they would go further than merely requiring a local authority to support someone in finding alternative accommodation. Although the amendments describe “an alternative housing plan”, it is clear from the wording of amendment 26, which uses the phrase...
“for the purpose of re-housing”,
that the amendments would actually place a duty on local authorities to arrange rehousing for anyone who was required to leave by a landlord complying with a statutory notice.

11:45
Rehousing would not have to be in the social sector; it could be in the private rented sector. However, if the local authority could not arrange private rented accommodation, it would have to use its power to provide accommodation itself. We consider that it would be an unnecessarily bureaucratic burden to require every local authority to arrange an individual alternative housing plan involving rehousing for every person who was required to move because of an overcrowding statutory notice. That could cut across existing homelessness obligations and might make it more difficult for local authorities to meet their duties to priority-need groups and impact on their ability to meet the 2012 homelessness target.

COSLA has made that point and has also expressed concerns about the effects on allocations policies and possible allegations of queue jumping. COSLA also shares our serious concerns about the costs that local authorities could incur if they were required to rehouse every person.

Some occupants will be capable of making their own arrangements unaided. In other cases, all that occupants will need is advice and information about, for example, reputable letting agents or landlords. The Government’s amendment 17 gives local authorities duties and a power to provide advice and information that, as subordinate legislation and guidance will make clear, will include those topics. Legislation on environmental health and fire safety can already lead to occupants being required to leave houses, and local authorities and other agencies take a measured approach to dealing with people who are thus displaced. That is exactly the sort of approach that will result from the Government’s amendment 16, which will require local authorities to take into account a range of factors, including possible homelessness and other available means to deal with overcrowding, before serving an OSN. Those provisions will be backed up by statutory guidance.

I consider Mary Mulligan’s amendments to be unnecessarily sweeping. They might dissuade local authorities from using OSNs, and we do not want to place barriers in the way of local authorities using OSNs to deal with the appalling conditions that we know still exist in parts of Scotland. I therefore invite Mary Mulligan to withdraw amendment 23 and not to move amendments 25 and 26.

Mary Mulligan: I do not think that my measures would be overburdensome in the way that the minister suggests. In the discussions that we have had about overcrowding statutory notices, we have agreed that their use will be a last resort. I am not sure that so many will be issued that the measures will be burdensome.

I also believe that almost all people who find themselves in that situation will be vulnerable. Although they might be able to take on board any advice that is given, they will need some support, so there will be a burden. I can see both sides of that position.

I regret if the wording of my amendments is not such that they explain exactly what I am trying to achieve. In using the term “alternative housing plan” I have tried to distinguish the measures from the housing allocation system. It was never my intention that they should be the same. I have sought to ensure that we provide the necessary support to individuals who find themselves in an overcrowding situation and are required to move. I have listened to the minister and I take his points on board. I hope that we can have some more discussion of the issue. He might be able to convince me that his amendments 16 and 17 address what I am trying to do. However, at this stage, I will seek to withdraw amendment 23.

Amendment 23, by agreement, withdrawn.

Amendment 14 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 15, in the name of the minister, is grouped with amendment 20.

Alex Neil: These amendments relate to guidance for part 3. Despite the changes that we have made, guidance will still play an important role in a local authority’s use of the new overcrowding powers and the local authority must have regard to it. Amendment 20 is designed to allow such guidance to be as comprehensive as possible by clarifying that it can deal with all aspects of a local authority’s discharge of its functions under part 3 and related matters. In its stage 1 report, the committee recommended that the Scottish Government should consult widely on the guidance and amendment 20 seeks to put such consultation on a statutory footing by requiring ministers to consult local authorities, representatives of landlords and occupiers and other appropriate stakeholders before the guidance is issued. Amendment 15 seeks to remove the previous, more limited provision on guidance, and I ask committee members to support both amendments.

I move amendment 15.
Amendment 15 agreed to.
Amendment 24 not moved.
Section 17, as amended, agreed to.

After section 17
Amendment 16 moved—[Alex Neil]—and agreed to.

Section 18—Tenant information and advice
Amendment 25 not moved.

The Convener: Amendment 17, in the name of the minister, is in a group on its own.

Alex Neil: The bill contains a power for a local authority to provide appropriate information and advice to the occupier of a house on which an overcrowding statutory notice has been served. In light of concerns that the provision was not strong enough to ensure that occupiers would receive the necessary help, amendment 17 seeks to replace that original power with new duties. A local authority that serves a notice will be required to serve on the occupier of the house in question a notice containing information and advice as prescribed in an order to be made by ministers. Before that order is made, ministers will be required to consult stakeholders. In addition, the local authority will have to provide relevant information or advice that is reasonably requested by anyone living in the house and may provide the occupier with other appropriate information and advice. Such duties placed on a local authority exercising the discretionary power to serve an overcrowding statutory notice will maximise the opportunities for the occupier and other people living in the affected house to receive helpful advice and information.

I move amendment 17.

Mary Mulligan: I reassure the minister that I appreciate the reference to “duties” in his remarks and that I will support amendment 17.

Jim Tolson: Proposed subsection (4) in amendment 17 refers to “other information” that would be given to the occupier. Given that in the debate on a number of Mary Mulligan’s amendments it was felt that we might be going too far and requiring too much information to be provided, I am slightly concerned about double standards and I would be grateful if the minister could give us some examples of “other information” that it might be appropriate to give under the terms of amendment 17.

Alex Neil: Obviously, we will consult on all this, but other information might include where to get housing support and what housing is available in the private and social rented sectors. Moreover, under our new housing options approach, we would be encouraging local authorities to have a wider discussion with displaced people on other options that might be available to them, including, for example, assistance through the low-income first-time buyers scheme. As I say, that wide-ranging discussion would be based on the housing options principle and would consider all the realistic options that might be available to the displaced person.

Amendment 17 agreed to.
Section 18, as amended, agreed to.
Sections 19 to 24 agreed to.

Section 25—Offences
Amendment 18 moved—[Alex Neil]—and agreed to.

Section 25, as amended, agreed to.

After section 25
The Convener: Amendment 19, in the name of the minister, is in a group on its own.

Alex Neil: At stage 1, some stakeholders raised the valid question of how a local authority would establish that a house was statutorily overcrowded, which is a criterion for the service of an OSN. It is expected that information about a house causing problems would come in the main from neighbours, agencies such as the police and other local authority departments. However, in order to establish that overcrowding exists, a local authority may need to obtain additional information about the house and the people living in it. To allow a local authority to carry out its part 3 functions, amendment 19 gives it the power to require specified persons connected with the house and persons connected with it. Failure to comply with the requirement, or the provision of false or misleading information, will be offences that will be subject to a maximum fine of level 2—£500. The use of this power, particularly in relation to vulnerable occupants of houses, will be covered in the statutory guidance.

I move amendment 19.

Mary Mulligan: I am glad that the minister referred to protection for vulnerable tenants. We had a similar discussion about tenants giving information against landlords where landlords were not registered. We were concerned that that might put vulnerable tenants in a difficult situation to the extent that they would be thrown out on to the street. I want reassurance from the minister that there will be guidance to try to support people in such a situation in that, if they are legitimately seen as vulnerable, they would not face a possible fine.
Jim Tolson: I seek clarification on new subsections (2)(a) and (3)(b) that are proposed in amendment 19; they seem to be wide ranging. I am not sure that in circumstances where multiple individuals own particular properties they would all be known to one another, depending on how that was organised. Can you clarify why you seek what seems to be a wide-ranging remit in those subsections?

Alex Neil: First, I assure Mary Mulligan that we will follow the example that we followed previously in ensuring that vulnerable people are not subject to prosecution in the circumstances to which she referred. Clearly, that would not be our intention at all. The provisions proposed in amendment 19 and the guidance that will be provided will make that absolutely clear.

Does Jim Tolson’s question refer first to proposed subsection (2)(a)?

Jim Tolson: Yes. There is a similar feel to proposed subsections (2)(a) and (3)(b). There could be a situation in which, for example, shareholders in various properties that would come under the legislation would not be known to one another, so how could they provide information on one another?

Alex Neil: That is a fairly technical point. There is similar wording for HMO and landlord registration, so the registration of individual people or companies should be synonymous with HMO registration.

Jim Tolson: I accept the minister’s reassurance on that.

Alex Neil: We will give you further explanation by letter. I am happy to do so.

Jim Tolson: Thank you.

Amendment 19 agreed to.

Section 26 agreed to.

After section 26

Amendment 20 moved—[Alex Neil]—and agreed to.

Section 27—Interpretation of Part 3

Amendment 26 not moved.

Amendment 21 moved—[Alex Neil]—and agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

Section 29—Tenant information packs

Bob Doris (Glasgow) (SNP): I thank the Electrical Safety Council, with which I have had a dialogue on the matter. The ESC has drawn to my attention its belief that tenants in the private rented sector are more at risk in a variety of ways, including in relation to the electrical safety of properties.

For instance, the installation of residual current devices—RCDs—has an important role to play in fire safety and safeguarding life. Such devices detect small variations in current should an electrical appliance malfunction in some way or should a tenant within a property be subject to electric shock and black out. They potentially save people from fire and save life and limb, but around 50 per cent of private rented sector stock has no such devices fitted. That is a UK figure, and perhaps there is a need for a Scottish figure. The safety council also estimates that 80 fires in the UK annually could be avoided by the installation of RCDs. That would be 20 per cent of all electrical fires.

Making electrical safety reports a core part of any tenant information pack could be a key driver for change. My amendment 31 would require the pack to have such a report. It would also, among other things, require the pack to say whether an RCD had been installed when commenting on the electrical safety of the house in general. Such a requirement would assist in focusing the minds of private landlords to roll out the installation of RCDs and to promote a more systematic approach to electrical safety in general in their properties.

There appears to be public support for such measures. It is estimated that 87 per cent of the Scottish population would seek to have electrical checks in rented properties, whereas the UK average support for that is 78 per cent, so it is clear that the Scottish electorate would be keen for such things to happen.

I concede that the safety council would like to go further and introduce, among other things, periodic inspection reports, but I am wary of the burden that such measures could place on the private rented sector. Other possible drivers for the improvement of the sector’s electrical safety might include providing small grants and tax incentives—particularly VAT cuts—for retrofitting RCDs in certain private rented sector stock.

I acknowledge that we do not normally put such measures in a bill but, given the concerns that have been brought to my attention, I thought that it was only right to seek to put in the bill provisions to ensure that such information is provided in the tenant information pack. I seek the minister’s
views on whether that would be desirable and, regardless of whether the matter is included in the bill, an assurance that the tenant information pack will focus more seriously on electrical safety.

I move amendment 31.

Mary Mulligan: The committee has recognised that gas and electricity checks are crucial to tenants’ being fully reassured about safety. Such checks have been available for some years and have been included in good practice for a period. However, technology now allows for efficient and effective carbon monoxide detectors to be used and, therefore, I see no reason why we should not include them.

I acknowledge that the committee did not take any evidence on the issue at stage 1. Indeed, I would not have lodged amendment 27 had I not been prompted to do so by a constituent who is a landlord and has experience of the effect of having had a carbon monoxide detector in her property. She is to be commended for her concern about safety and I hope that other committee members will feel able to support amendment 27.

Alex Neil: The amendments seek to ensure that documents confirming the installation of a carbon monoxide detector and a residual current device, along with the assessment of the safety of the energy utilities, form part of the tenant information pack outlined in section 29.

Section 29 inserts a new section 30A into the Housing (Scotland) Act 1988, placing a duty on private landlords to provide tenants with standard tenancy documents. New section 30B provides a power for ministers to specify the documents to be provided. The amendments set out to insert provisions in the bill that require the relevant documents be included in the contents of the tenant information pack, which ministers can specify by order.

As the bill is drafted, the documents to be provided to tenants may include, among other things, documents containing information about the house and the rights and responsibilities of tenants and landlords. Before making an order specifying the standard documents, ministers are required to consult representatives of tenants, private landlords, agents and any other appropriate bodies. That allows scope to include a broad set of documents following further consultation and consideration of the implications for landlords, tenants and local authorities.

I agree that electrical safety and the detection of carbon monoxide are extremely important and I undertake to ensure that those issues are considered as part of that consultation process, with a view to ensuring that they are addressed when developing the information pack.

I believe that we can achieve what members are looking for without amending the bill, and I therefore ask Bob Doris to withdraw amendment 31 and Mary Mulligan not to move amendment 27.

Bob Doris: Amendment 31 was a probing amendment to raise awareness generally about the need for electrical safety in all tenure types, including the private rented sector. I have listened carefully to the minister’s assurances and on that basis I am happy to withdraw the amendment.

The Convener: The member seeks leave to withdraw the amendment. Are we agreed?

Members: No.

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 31 disagreed to.

Amendment 27 moved—[Mary Mulligan].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against
Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 27 disagreed to.

Sections 29 and 30 agreed to.
The Convener: Amendment 22, in the name of the minister, is in a group on its own.

Alex Neil: Section 31 amends the Housing (Scotland) Act 2006 by inserting provisions that will allow a landlord to apply to the private rented housing panel. That is to help landlords exercise their existing right of entry to a rented house to establish whether it meets the repairing standard or to carry out work to comply with the repairing standard duty or repairing standard enforcement order.

New section 28B of the 2006 act, as inserted by the bill, will give ministers power to “make further provision about the making or deciding” of such applications by means of regulations. As the bill stands, such regulations will be subject to negative procedure. However, the Subordinate Legislation Committee commented that the power could be used to go beyond purely administrative detail and that negative procedure might not be appropriate. The Scottish Government agrees, and amendment 22 therefore amends the 2006 act so that regulations made under new section 28B(1) will be subject to affirmative procedure, except where they relate only to new section 28B(2)(b), which deals with the prescribing of an application fee to be paid by a landlord.

Subordinate legislation that sets fees is commonly subject to negative procedure, since fees may be altered quite frequently.

I move amendment 22.

Amendment 22 agreed to.

Section 31, as amended, agreed to.

After section 31

The Convener: Amendment 32, in the name of David McLetchie, is grouped with amendment 33.

David McLetchie (Edinburgh Pentlands) (Con): Having been a member of the committee when it considered the bill in Parliament at stage 1, it is a pleasure to be back in order to move amendments 32 and 33.

I think that we would all agree that Scotland needs to build more homes for rent, and that is certainly true of what we label the affordable housing sector: homes for social or mid-market rent that are built by councils or housing associations. However, it is also true of homes for rent on the open market—the private rented sector—which accounts for some 9 per cent of the total housing stock in Scotland.

As the minister has said on several occasions, the private rented sector is a bit of a cottage industry with a multiplicity of landlords who own one or two properties. Many of those landlords are brought into the market by the investment returns that they perceive they can gain with the aid of buy-to-let mortgages. Overall, that has been a positive development, contributing to the increase in the housing stock in Scotland that is available to suit the needs and circumstances of our people.

However, what we do not have in this country is significant institutional investment in the private rented sector, other than in specialised areas such as the provision of student accommodation. As I think we are all aware, institutional investment is commonplace in European countries, so we need to consider the barriers to such investment in Scotland where they exist.

One such barrier is the Land Tenure Reform (Scotland) Act 1974, which abolished feu duities and contained provisions in sections 8 and 11 in effect to prevent the equivalent of feu duties being reintroduced through the use of long leaseholds and standard securities.

Those sections in the 1974 act prohibited the granting of a lease of residential property of more than 20 years and the right to redeem a standard security over property that was longer than 20 years in duration.

Those were good intentions, but as we are all aware, good intentions can have unintended negative consequences. In this case, certain funding models for the construction of new homes for rent cannot safely be used because of those legal restrictions and prohibitions.

The issue was brought to light in the context of housing associations and housing bodies when the committee considered the Housing (Scotland) Bill last year and the amendments that were lodged at stage 2 by the minister and Alasdair Morgan and at stage 3 by the minister, and which the committee and the Parliament approved.

Amendments 32 and 33 take matters a stage further. I am grateful to the minister and his officials for the detailed consideration that they have given to the amendments, and I am also grateful to Mr Leonard Freedman of Harper Macleod and other professional colleagues for the expert advice that they have provided.

In essence, the amendments enable a minister by order to prescribe further bodies, which will essentially be private sector bodies and institutions, that can enter into new funding arrangements for building housing for rent. It does so through a further relaxation of the 20-year rule, which was relaxed for other organisations in the Housing (Scotland) Act 2010 last year.

I believe that amendment 32 contains sufficient checks and balances to protect the interests of tenants and prevent the resurrection of the feudal system of land tenure by the back door, which was
of course the real purpose of the 1974 act. It was never intended to inhibit construction of housing for rent, but it is a technical barrier to doing so. That is why the amendment is necessary and desirable, and I commend it to the Parliament.

I move amendment 32.

Mary Mulligan: I knew that David McLetchie would miss us and have to come back and join the committee, but I did not think that it would be quite so quick.

I appreciate his explanation of amendments 32 and 33, because—I have to be honest—when I first looked at them, I was a little puzzled as to why they were being lodged at this stage. As someone who has just lodged amendment 27 I perhaps should not say this, but I was not aware that we had had much discussion of the issue at stage 1.

Mr McLetchie’s explanation was helpful, but part of me wonders whether his amendments might have unintended consequences. I would appreciate clarification of whether he has had discussions with the minister or his expert advisers with a view to ensuring that his proposals would have no unintended consequences.

12:15

Alex Neil: I, too, welcome back Mr McLetchie to the committee’s proceedings and thank him for lodging his amendments.

As he said, the Government has already enabled housing associations, local authorities and rural housing bodies to invest in and provide affordable housing without the restrictions that the 20-year rule imposes. Amendments 32 and 33 would enable other landlords to obtain the same opportunities. As Mr McLetchie pointed out, the provisions would not apply to individuals. We are talking about a limited measure that would avoid the risk of introducing the leasehold arrangements for residential property that apply elsewhere in the UK.

Although we have still to see how social landlords and rural housing bodies will take advantage of the exemptions that the Housing (Scotland) Act 2010 affords them, we should not delay further reform of this area while we await evidence. In the current financial climate, given the rising demand for rented accommodation, it is important to ensure that there are as few barriers as possible to increasing the supply of affordable housing, particularly when many people who, a few years ago, would have been first-time buyers cannot afford the deposit for a mortgage to get on the owner-occupation housing ladder and so must have the option to rent.

Accordingly, I welcome amendments 32 and 33 and urge the committee to support them.

David McLetchie: I welcome the minister’s remarks and those of Mary Mulligan. I hope that the minister’s explanation of the background to our discussions allays any concerns that she may have had about unintended consequences. I stress that my amendments incorporate a number of checks and balances on the bodies that will be authorised to enter into such arrangements, and I hope that members will be satisfied that that process enables us to open up the market to a wider form of institutional investment while not prejudicing or imperilling the security and peaceful occupation of property that tenants are entitled to expect.

Amendment 32 agreed to.

Amendment 33 moved—[David McLetchie]—and agreed to.

Sections 32 to 34 agreed to.

Section 35—Short title and commencement

Amendment 6 moved—[Pauline McNeill].

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Doris, Bob (Glasgow) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Johnstone, Alex (North East Scotland) (Con)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Mulligan, Mary (Linlithgow) (Lab)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 0, Against 8, Abstentions 0.

Amendment 6 disagreed to.

Section 35 agreed to.

Long title agreed to.

The Convener: Thank you. That ends stage 2 consideration of the bill. I thank the minister and his team.
Private Rented Housing (Scotland) Bill
[AS AMENDED AT STAGE 2]

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Private Rented Housing (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about private rented housing.

PART 1

REGISTRATION OF PRIVATE LANDLORDS

1 Fit and proper person: considerations

(1) In section 85 of the 2004 Act (section 84: considerations)—

(a) in subsection (2)—

(i) in paragraph (a), after sub-paragraph (i) insert—

“(ia) firearms (within the meaning of section 57(1) of the Firearms Act 1968 (c. 27));”,

(ii) after that paragraph, insert—

“(aa) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c. 46));”,

(b) after subsection (5) insert—

“(6) Examples of material which falls within subsection (2) (as mentioned in paragraph (c)(i) or (ii)) are (without prejudice to the generality of that provision)—

(a) an offence or disqualification under—

(i) this Part;

(ii) Part 5 of the Housing (Scotland) Act 2006 (asp 1);

(b) a repairing standard enforcement order made under section 24(2) of that Act.

(7) Examples of material which falls within subsection (3) are (without prejudice to the generality of that provision)—

(a) an antisocial behaviour order (or any interim order) within the meaning of Part 2;

(b) an antisocial behaviour notice within the meaning of Part 7.

(8) Examples of material which falls within subsection (4) are (without prejudice to the generality of that provision)—
(a) complaints and other information which come to the attention of the local authority concerning the relevant person or, as the case may be the person, in relation to the fulfilment of any financial obligation in respect of any house which is included in the application;

(b) concerns and other information which come to the attention of the local authority in the exercise of any of its functions in connection with any house which is included in the application;

(c) where section 85A(3)(b) applies, the relevant person fails to provide the certificate within the period the local authority directs.

(9) The Scottish Ministers may by order modify subsection (2).”.

(2) In section 141(4)(a) of that Act (orders and regulations), after “83(7),” insert “85(9),”.

2 Fit and proper person: criminal record certificate

After section 85 of the 2004 Act insert—

“85A Fit and proper person: criminal record certificate

(1) A local authority may, in deciding for the purposes of section 84(3) or (4) whether a relevant person is, or is no longer, a fit and proper person, require the relevant person to provide the local authority with a criminal record certificate (within the meaning of section 113A of the Police Act 1997 (c. 50)).

(2) A local authority may require a criminal record certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided with an application for entry in the register maintained under section 82(1) in relation to material falling within subsection (2), (3) or (4) of section 85 is, or has become, inaccurate.

(3) Where a local authority has required a criminal record certificate to be provided under subsection (1)—

(a) in the case of an application for entry in the register maintained under section 82(1), a relevant person may not be entered in the register until the certificate has been received by the local authority;

(b) in the case of a relevant person entered in the register, the relevant person must provide the certificate within such reasonable period as the local authority directs.”.

3 Landlord registration number

(1) In section 84 of the 2004 Act (registration), after subsection (5) insert—

“(5A) An entry in a register under subsection (2)(a) shall state, in relation to the relevant person, a registration number (to be known as the “landlord registration number”).”.

(2) In section 86 of that Act (notification of registration or refusal to register), after subsection (1) insert—

“(1A) Where a local authority gives notice of the fact of registration under subsection (1)(a) it must, in doing so, give notice of the landlord registration number.”.

(3) In section 101 of that Act (interpretation of Part 8), after the definition of “landlord” insert—
“‘landlord registration number’ has the meaning given by section 84(5A);”.

4 Appointment of agents

In section 88 of the 2004 Act (registered person: appointment of agent)—

(a) after subsection (2) insert—

“(2A) Subject to subsections (2B) and (2C), the notice shall be accompanied by such fee as the local authority may determine.

(2B) No fee shall be payable under subsection (2A) if, when the notice is given—

(a) the person appointed is entered in the register as a relevant person; or

(b) another relevant person’s entry in the register states that the person appointed acts for the other relevant person.

(2C) The Scottish Ministers may by regulations prescribe for the purposes of subsection (2A)—

(a) fees;

(b) how fees are to be arrived at;

(c) other cases in which no fee shall be payable.”,

(b) after subsection (8) insert—

“(9) A registered person is guilty of an offence who, without reasonable excuse—

(a) in giving notice under subsection (2), specifies information which is false in a material particular; or

(b) fails to comply with subsection (2).

(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

5 Access to register: additional information

(1) In section 88A(1) of the 2004 Act (access to register)—

(a) in paragraph (a), before sub-paragraph (i) insert—

“(zi) confirmation of whether any application relating to the house has been made in accordance with section 83 but has not yet been determined;”,

(b) in paragraph (a)(i), for “the owner” substitute “any owner of the house”,

(c) in paragraph (b)—

(i) after “applicant” insert “—

(i)”,

(ii) after “register” insert “; and

(ii) whether its register includes a note under section 92ZA of a decision to refuse that other person’s entry in, or to remove that other person from, the register.”.

(2) After section 92 of the 2004 Act insert—
Duty to note refusals and removals

(1) Subsection (4) applies where—

(a) a local authority decides to—

(i) refuse to enter a person in its register under section 84(2)(b) or (7); or

(ii) remove a person from its register under section 88(8) or 89(1) or (4); and

(b) either—

(i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or

(ii) such application is refused by the sheriff and—

(A) the period for appealing against the sheriff’s decision expires without an appeal being made; or

(B) such an appeal is refused by the sheriff principal.

(2) Subsection (4) applies where—

(a) a local authority refuses to enter a person in its register under section 84(8); and

(b) either—

(i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or

(ii) such application is refused by the sheriff and—

(A) the period for appealing against the sheriff’s decision expires without an appeal being made; or

(B) such an appeal is refused by the sheriff principal.

(3) Subsection (4) applies where a local authority removes a person from its register under section 89(5).

(4) Where this subsection applies, the local authority must note the fact in its register that the person has been refused entry to, or removed from, its register.

(5) Where a fact is noted by virtue of subsection (1) it must, subject to subsection (6)—

(a) remain on the register for 12 months from the date on which the local authority is required to note it in its register; and

(b) be removed from the register at the end of that period.

(6) Where a person in respect of whom a local authority notes a fact in its register by virtue of subsection (1) is subsequently entered in the register before the end of the period mentioned in subsection (5)(a), the local authority must remove the fact from the register when the person is so registered.

(7) Where a fact is noted by virtue of subsection (2) or (3) it must—
(a) remain on the register for the period of disqualification specified in the order made under section 93A(2); and
(b) be removed from the register at the end of that period.”.

6 **Duty to include certain information in advertisements**

5 After section 92A of the 2004 Act insert—

“**92B Duty of certain persons to include landlord registration number in advertisements**

(1) Where—

(a) a person who is registered by a local authority ("the registered person"), in relation to a house that the person owns in the area of the authority, communicates with another person with a view to entering into a lease or an occupancy arrangement such as is mentioned in section 93(1)(a); and

(b) the communication is by way of an advertisement in writing,

the registered person must ensure the advertisement includes the landlord registration number given by the authority.

10 (1A) Where the house is owned jointly by two or more persons registered by the local authority, the duty in subsection (1) is complied with if the advertisement includes the landlord registration number given by the authority in relation to one of the persons.

(2) Where—

(a) subsections (2) and (5) of section 93 apply; and
(b) the communication referred to in subsection (2)(b) of that section is by way of an advertisement in writing,

the relevant person must ensure the advertisement includes the words “landlord registration pending”.

15 (2A) Subsection (2B) applies where the house is owned jointly by—

(a) one or more persons who are registered by the local authority ("the registered persons"), and

(b) one or more relevant persons in relation to whom subsections (2) and (5) of section 93 apply.

20 (2B) The duties in subsections (1) and (2) are complied with if the advertisement includes either—

(a) the landlord registration number given by the local authority in relation to one of the registered persons, or

(b) the words “landlord registration pending”.

25 (3) In this section, “advertisement”—

(a) includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons; but

(b) does not include a notice board at or near the house concerned.”.
Penalty for acting as unregistered landlord etc.

In section 93(7) of the 2004 Act (offences), for “level 5 on the standard scale” substitute “£50,000”.

Disqualification orders for unregistered landlords

After section 93 of the 2004 Act insert—

“93A Disqualification orders etc.

(1) This section applies where a court convicts a person of an offence under section 93(1) or (2).

(2) The court may, in addition to imposing a penalty under section 93(7), by order disqualify the convicted person (and, where the person is not an individual, any director, partner or other person concerned in the management of the house concerned) from being registered by any local authority for such period not exceeding 5 years as may be specified in the order.

(3) A person may appeal against an order under subsection (2) in the same manner as the convicted person may appeal against sentence.

(4) The court may suspend the effect of an order made under subsection (2) pending such an appeal.

(5) The court may, on summary application by a person disqualified by an order under subsection (2), revoke the order with effect from such date as the court may specify.

(6) But no such revocation may be made unless the court is satisfied that there has been a change of circumstances which justifies the revocation of the order.

(7) No application may be made for the purposes of subsection (5) during the first year of a disqualification.

(8) The court may order the applicant to pay the whole or part of the expenses arising from an application made for the purposes of subsection (5).

(9) Within 6 days of the court—

(a) disqualifying a person under subsection (2); or

(b) revoking an order under subsection (5),

the clerk of court must provide an extract of the disqualification or, as the case may be, the revocation to the local authority for the area in which the house concerned is situated.”.

Power to obtain information

After section 97 of the 2004 Act insert—

“Information

97A Power to obtain information

(1) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (2) to provide the local authority with—

(a) confirmation of the nature of that person’s interest in the house;
(b) the name and address of, and information about that person’s relationship with, any other person whom that person knows to—

(i) own, occupy or have any other interest in the house;

(ii) act in relation to a lease or occupancy arrangement to which that house is subject; or

(iii) act for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house;

(c) such other information relating to the house, or such other person, as the local authority may reasonably request.

(2) A person falls within this subsection if the person—

(a) owns, occupies or has any other interest in the house concerned;

(b) acts in relation to a lease or occupancy arrangement to which that house is subject; or

(c) acts for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house.

(3) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (4) to provide the local authority with—

(a) confirmation of the nature of that person’s interest in any such house in relation to which the person acts;

(b) the address of any such house;

(c) the name and address of, and information about that person’s relationship with, any other person whom that person knows to own any such house;

(d) such other information relating to any such house, or such other person, as the local authority may reasonably request.

(4) A person falls within this subsection if the person—

(a) acts in relation to a lease or occupancy arrangement to which any house within the local authority’s area is subject; or

(b) acts for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to such a house.

(5) A requirement under subsection (1) or (3) is to be made by serving it on the person concerned in accordance with section 97B.

(6) It is an offence for a person—

(a) without reasonable excuse, to fail to comply with a requirement made under this section; or

(b) knowingly or recklessly to provide information which is false or misleading in a material respect to a local authority or any other person—

(i) in purported compliance with a requirement made under this section; or
(ii) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, a local authority in connection with its functions under this Part.

(7) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

97B Power to obtain information: service of requirement

(1) A requirement under section 97A(1) or (3) must be in writing.

(2) A requirement under section 97A(1) or (3) is served on a person if it is—

(a) delivered to the person at the place mentioned in subsection (3);

(b) sent, by post in a prepaid registered letter or by the recorded delivery service, to the person at that place; or

(c) sent to the person in some other manner (including by electronic means) which the local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.

(3) The place referred to in subsection (2) is—

(a) where the person is an individual, that person’s place of business or usual or last known place of abode;

(b) where the person is an incorporated company or body, its registered or principal office.

(4) Subsection (5) applies where service of a requirement by one of the methods described in subsection (2) has been attempted and failed.

(5) Where this subsection applies, a requirement under section 97A(1) or (3) may be served on the person by—

(a) where the person is an individual, leaving a copy of the requirement at that person’s place of business or usual or last known place of abode;

(b) where the person is an incorporated company or body, leaving a copy of the requirement at the person’s registered or principal office.

(6) Subsection (7) applies where the local authority is unable to deliver or send a requirement under section 97A(1) or (3) to the owner or occupier of any house or other premises because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.

(7) Where this subsection applies, a requirement under section 97A(1) or (3) may be served by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the house or other premises.

(8) A requirement which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.”.
“Guidance”

99A Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers about—

(a) the discharge of its functions under this Part; and

(b) matters arising in connection with the discharge of those functions.

(2) Before issuing any such guidance the Scottish Ministers must consult—

(a) local authorities; and

(b) such other persons as they think fit.”.

Information to be given to local authority

After section 22 of the 2006 Act insert—

“22A Information to be given to local authority

(1) On receipt of an application under section 22(1), the private rented housing panel must provide the information mentioned in subsection (2) to the local authority for the area in which the house concerned is situated for the purpose of the local authority maintaining the register under section 82(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(2) The information is—

(a) the address of the house concerned,

(b) the name of the landlord of the house (if known),

(c) the landlord’s address (if known),

(d) the landlord registration number of the landlord (if known), and

(e) the name and address (if known) of any person who acts as agent for the landlord.”.

Minor and consequential amendments

The schedule to this Act (which makes minor modifications and modifications consequential on this Part) has effect.

PART 2

AMENDMENT OF PART 5 OF HOUSING (SCOTLAND) ACT 2006

13 Amendment of HMO licensing regime

(1) In section 125 of the 2006 Act (meaning of “house in multiple occupation”)—

(a) in subsection (1)—

(i) for the words from “Any” to second “is” substitute “‘HMO’ means any living accommodation”, and

(ii) after “families” insert “—

(a) which—
(i) falls within subsection (2), and
(ii) is occupied by those 3 or more persons as an only or main
    residence, or
(b) which is of such type, or which is occupied in such manner, as the
    Scottish Ministers may by order specify.”,
(b) after subsection (1) insert—
“(1A) Before making an order under subsection (1)(b), the Scottish Ministers must consult—
(a) local authorities, and
(b) such tenants (or tenants’ representatives) and such landlords (or
    landlords’ representatives) as they think fit.”,
(c) subsection (4)(a) is repealed.
(2) After section 129 of the 2006 Act insert—
“129A Preliminary refusal: breach of planning control
(1) The local authority may, within 21 days of an application for an HMO licence,
    refuse to consider the application if it considers that occupation of the living
    accommodation concerned as an HMO would constitute a breach of planning
    control for the purposes of the Town and Country Planning (Scotland) Act
    1997 (c. 8) (“the 1997 Act”).
(2) The local authority must, within 7 days of deciding to refuse to consider an
    HMO application, serve notice of its decision on—
    (a) the applicant,
    (b) the enforcing authority, and
    (c) the chief constable.
(3) The notice must—
    (a) give the local authority’s reason for refusing to consider the HMO
        application, and
    (b) inform the applicant of the effect of subsection (4).
(4) No fee may be charged in respect of a further application for an HMO licence
    in relation to the living accommodation concerned made within 28 days of the
    applicant subsequently obtaining—
    (a) planning permission under Part 3 of the 1997 Act, or
    (b) a certificate of lawfulness of use or development under section 150 or
        151 of the 1997 Act,
    in respect of the occupation of the living accommodation as an HMO.
(5) This section applies regardless of whether the local authority is the planning
    authority for the area in which the living accommodation concerned is
    situated.”.
(3) In section 132(1) of the 2006 Act (restriction on applications), after first “licence” insert
    “(otherwise than under section 129A),”.
(4) In section 135 of the 2006 Act (application for new HMO licence: effect on existing HMO licence)—

(a) in subsection (2)—

(i) the word “and” immediately following paragraph (a) is repealed,

(ii) after that paragraph insert—

“(aa) where the local authority refuses to consider the application for the new HMO licence—

(i) the date on which the existing HMO licence would expire had an application for a new HMO licence not been made, or

(ii) such later date as the local authority considers reasonable in the circumstances, and”,

(b) after subsection (2) insert—

“(3) The local authority must serve notice of a decision under subsection (2)(aa)(ii) to extend (or further extend) the duration of an existing HMO licence on—

(a) the licence holder,

(b) the enforcing authority, and

(c) the chief constable.”.

(5) In section 158(1)(a) of the 2006 Act (notice of decisions), after “so” insert “(otherwise than under section 129A)”.

(6) In section 191(4)(a) of the 2006 Act (orders and regulations), after “section” insert “125(1)(b).”.

14 **Penalty for certain offences in relation to houses in multiple occupation**

In section 156(1)(a) of the 2006 Act (penalties etc.), for “£20,000” substitute “£50,000”.

15 **Reasons for decisions**

(1) In section 158 of the 2006 Act (notice of decisions)—

(a) in subsection (12)(a), for “give” substitute “subject to subsection (17), advise of the right to request”,

(b) after that subsection insert—

“(13) A person on whom a notice of a decision to which this section applies has been served may request the local authority to give its reasons for the decision.

(14) A request under subsection (13) must be made within 14 days of the person receiving notice of the decision.

(15) Where a local authority receives such a request it must notify the person of its reasons for the decision within 14 days of receiving the request.

(16) A local authority must, at the same time as notifying the person under subsection (15), so notify any other person on whom a notice of the decision has been served.
(17) The requirement for the notice to advise of the right to request the local authority’s reasons does not apply where the reasons are included in the notice (or accompany it in writing).”.

(2) In section 159 of the 2006 Act (Part 5 appeals), after subsection (5) insert—

“(5A) For the purposes of an appeal, the sheriff may require the local authority to give reasons for the decision (if the authority has not already done so), and the authority must comply with such a requirement.”.

16 Guidance

In section 163(1) of the 2006 Act (guidance), after “Part” insert “and section 186 (so far as that section relates to this Part)”.

PART 3

OVERCROWDING STATUTORY NOTICES

17 Overcrowding in private rented housing: statutory notice

(1) A local authority may, subject to section 17A, require the landlord of a house to which subsection (2) applies to take steps to ensure the house is not overcrowded.

(2) This subsection applies to any house in the local authority’s area—

(a) which is overcrowded, and

(b) the overcrowding of which is, in the local authority’s opinion, contributing or connected to (or is likely to contribute or be connected to)—

(i) an adverse effect on the health or wellbeing of any person,

(ii) an adverse effect on the amenity of the house or its locality.

(3) A requirement under subsection (1) must be made by serving a notice (an “overcrowding statutory notice”) on the landlord in accordance with section 26.

(4) Where there are joint landlords, the duty under subsection (3) may be satisfied by service on any one of them.

(5) An overcrowding statutory notice—

(a) must specify—

(i) the steps which require to be carried out to ensure the house is no longer overcrowded, and

(ii) the period within which the steps must be completed (being a period not shorter than 28 days),

(b) must state the conditions set out in section 19, and

(c) may specify other steps which require to be carried out for the purposes of section 19(b) or otherwise.

(6) An overcrowding statutory notice may not specify any step which would require the landlord to breach any statutory or contractual obligation.

(7) The Scottish Ministers may by order prescribe—

(a) the form of an overcrowding statutory notice,
(b) other information to be included in the notice,
(c) persons who must be given a copy of the notice by the local authority.

(7A) Before making an order under subsection (7), the Scottish Ministers must consult—
(a) local authorities,
(b) such persons or bodies as appear to them to be representative of the interests of—
(i) landlords,
(ii) occupiers of houses, and
(c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

17A Matters to be considered prior to service of overcrowding statutory notice
(1) This section applies where a local authority is considering serving an overcrowding statutory notice in relation to a house.
(2) The authority may serve the notice only if it is reasonable and proportionate in the circumstances to do so having regard to—
(a) the nature of the adverse effect referred to in section 17(2)(b) by reference to which the notice would be served,
(b) the degree to which the overcrowding of the house is contributing to or connected to that adverse effect,
(c) the likely effects of service of the notice, and
(d) whether there are means other than by service of the notice by which the adverse effect could be mitigated or avoided.
(3) The authority must take into account—
(a) the circumstances of the occupier of the house and of any other persons residing in the house (including, in particular, whether any of them is, as a result of the overcrowding of the house, homeless),
(b) the views (if known) of the landlord, the occupier and any other persons residing in the house, and
(c) the likely effects of service of the notice on the occupier and any other persons residing in the house (including, in particular, whether it may lead to the occupier or any such person becoming homeless or threatened with homelessness).
(4) For the purposes of subsection (3), whether a person is homeless or threatened with homelessness is to be determined in accordance with section 24 of the Housing (Scotland) Act 1987 (c.26).

17B Information and advice for occupiers
(1) This section applies where a local authority serves an overcrowding statutory notice in relation to a house.
(2) The authority must, at the same time as serving the overcrowding statutory notice, also serve on the occupier of the house a notice containing prescribed information and advice in connection with the overcrowding statutory notice.
(3) If the occupier of the house or any other person residing in the house requests information or advice from the local authority in connection with the overcrowding statutory notice, the local authority must comply with the request, unless the authority considers the request to be unreasonable.

(4) The local authority may give the occupier of the house such other information and advice as the authority considers appropriate in connection with the overcrowding statutory notice.

(5) In subsection (2), “prescribed” means prescribed by order made by the Scottish Ministers.

(6) Such an order may also prescribe the form of the notice to be served under subsection (2).

(7) Before making an order under this section, the Scottish Ministers must consult—
   (a) local authorities,
   (b) such persons or bodies as appear to them to be representative of the interests of—
       (i) landlords,
       (ii) occupiers of houses, and
   (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

19 Mandatory conditions

The conditions are, where the steps have been taken as specified in the notice to ensure the house is no longer overcrowded, that the landlord must—

(d) not cause the house to become overcrowded,

(e) take reasonable steps to prevent the house becoming overcrowded.

20 Duration of notice

(1) An overcrowding statutory notice—
   (a) has effect from, and
   (b) expires 5 years (or such shorter period of not less than one year as may be specified in the notice) after,

the latest of the dates set out in subsection (2).

(2) Those dates are—
   (a) the last date on which the notice may be appealed to the sheriff under section 22,
   (b) where such an appeal is made, the date on which—
       (i) an order is made under section 22(4), or
       (ii) the application is abandoned, and
   (c) any later date as may be specified in the notice.

(3) An overcrowding statutory notice ceases to have effect in relation to a person if that person ceases to be the landlord of the house.
21 Representations

(1) A person on whom an overcrowding statutory notice is served may make representations to the local authority concerning the notice within 7 days of the notice being served.

(2) A local authority must consider any representations made under subsection (1) and respond to the person within 7 days of the representations having been made by—

(a) confirming the notice,
(b) varying the notice, or
(c) revoking the notice.

(3) Where the local authority fails to respond in accordance with subsection (2), the overcrowding statutory notice is revoked.

(4) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 23(4)(a), subsection (3) of this section only applies to the variation of the overcrowding statutory notice.

22 Appeals

(1) The landlord may appeal against an overcrowding statutory notice by summary application to the sheriff.

(2) An application under subsection (1) must be made—

(a) where representations under section 21(1) have been made, before the expiry of the period of 28 days beginning with the service of the notice,
(b) in any other case, before the expiry of the period of 21 days beginning with the service of the notice.

(3) But the sheriff may, on cause shown, hear an appeal made after the deadline set by subsection (2).

(4) The sheriff may determine the appeal by making an order—

(a) confirming the notice,
(b) varying it in such manner as may be specified in the order, or
(c) revoking the notice.

(5) The sheriff’s decision on any such appeal is final.

(6) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 23(4)(b), the sheriff’s powers under subsection (4) of this section are not prejudiced in relation to the overcrowding statutory notice.

23 Variation

(1) The local authority may vary an overcrowding statutory notice (including extending the duration of its effect) at any time.

(2) But a notice may not be so varied so as to shorten the duration of its effect.

(3) The local authority must serve notice of any variation of an overcrowding statutory notice on the landlord in accordance with section 26.

(4) The following sections apply to a notice of variation of an overcrowding statutory notice as they apply to an overcrowding statutory notice—
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(a) section 21 (representations),
(b) section 22 (appeals).

(5) A variation of an overcrowding statutory notice has effect from the latest of the dates set out in subsection (6).

(6) Those dates are—

(a) the last date on which the notice of variation of the overcrowding statutory notice may be appealed to the sheriff under section 22,
(b) where such an appeal is made, the date on which—
(i) an order is made under section 22(4), or
(ii) the application is abandoned, and
(c) any later date as may be specified in the notice of variation of the overcrowding statutory notice.

(7) Any reference to an overcrowding statutory notice in this Part includes, unless the context otherwise requires, any variation which has effect by virtue of this section.

24 Revocation

(1) The local authority may revoke an overcrowding statutory notice at any time.

(2) The local authority must serve any revocation of an overcrowding statutory notice on the landlord by a notice in accordance with section 26.

(3) A revocation of an overcrowding statutory notice has effect from the date on which the notice of revocation is served on the landlord.

25 Offences

(1) A landlord commits an offence if the landlord fails, without reasonable excuse, to comply with any requirement or condition contained in an overcrowding statutory notice within the period (if any) specified for completion.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

25A Power to obtain information

(1) A local authority may, for the purpose of enabling it to discharge its functions under this Part, serve a notice on a person falling within subsection (2) (referred to as “A”) requiring A to provide the authority with any of the information mentioned in subsection (3).

(2) A person falls within this subsection if the person appears to the local authority to—

(a) own, occupy or have any other interest in a house in the local authority’s area, or
(b) act in relation to the lease or occupancy arrangement to which any such house is subject.

(3) The information is—

(a) confirmation of the nature of A’s interest in the house,
(b) the name and address of, and information about A’s relationship with, any other person whom A knows to—
   (i) own, occupy or have any other interest in the house, or
   (ii) act in relation to the lease or occupancy arrangement to which the house is subject,

(c) such other information relating to the house, or such other person, as the local authority may reasonably require.

(4) A person commits an offence if the person—

(a) without reasonable excuse, fails to comply with a requirement of a notice served on the person under subsection (1), or

(b) knowingly or recklessly provides information which is false or misleading in a material respect to a local authority or other person—
   (i) in purported compliance with a requirement of such a notice, or
   (ii) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, a local authority for the purpose of the discharge of its functions under this Part.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

26 Service of notices

(1) A notice is served on a person if it is—

(a) delivered to the person at the place mentioned in subsection (2),

(b) sent, by post in a prepaid registered letter or by the recorded delivery service, to the person at that place, or

(c) sent to the person in some other manner (including by electronic means) which the local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.

(2) The place referred to in subsection (1) is—

(a) where the person is an individual, that person’s place of business or usual or last known place of abode,

(b) where the person is an incorporated company or body, its registered or principal office.

(3) Subsection (4) applies where service of the notice by one of the methods described in subsection (1) has been attempted and failed.

(4) Where this subsection applies, service of the notice may be on the person by—

(a) where the person is an individual, leaving a copy of the notice at that person’s place of business or usual or last known place of abode,

(b) where the person is an incorporated company or body, leaving a copy of the notice at the person’s registered or principal office.

(5) Subsection (6) applies where the local authority is unable to deliver or send a notice to the person because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.
Where this subsection applies, service of the notice may be by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the house or other premises.

A notice which is sent by electronic means must be received in a form which is legible and capable of being used for subsequent reference.

26A Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers about—
   (a) the discharge of its functions under this Part, or
   (b) matters arising in connection with the discharge of those functions.

(2) Before issuing any such guidance, the Scottish Ministers must consult—
   (a) local authorities,
   (b) such persons or bodies as appear to them to be representative of the interests of—
       (i) landlords,
       (ii) occupiers of houses, and
   (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

27 Interpretation of Part 3

(1) In this Part—
   “house” means premises—
   (a) which are subject to a lease or occupancy arrangement by virtue of which they may be used as a separate dwelling, and
   (b) the owner of which would, if not registered in the register maintained by a local authority under section 82(1) of the 2004 Act, be guilty of an offence under subsection (1) of section 93 of that Act (disregarding subsection (3) of that section),
   “landlord”, in relation to a house, means the owner of the house.

(2) In this Part references to a house being overcrowded are to be construed according to the definition of overcrowding in section 135 of the Housing (Scotland) Act 1987 (c. 26); but do not include any house to which the matters mentioned in section 139(2)(a) or (b) of that Act apply.

PART 4
MISCELLANEOUS

28 Premiums

(1) In section 82 of the Rent (Scotland) Act 1984 (c. 58) (prohibition of premiums and loans on grant of protected tenancies)—
   (a) in subsection (1), “, in addition to the rent,” is repealed,
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(b) in subsection (2), “in addition to the rent” is repealed.

(2) After section 89 of that Act insert—

"89A Premiums: regulations

(1) The Scottish Ministers may by regulations make provision about sums which may be charged in connection with the grant, renewal or continuance of a protected tenancy.

(2) Such regulations may, in particular, specify—

(a) categories of sum which are not to be treated as a premium for the purposes of this Part;

(b) the maximum amount which tenants may be asked to pay in respect of such a sum.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) such persons or bodies as they consider representative of the interests of—

(i) tenants;

(ii) private sector landlords; and

(iii) persons who act as agents for such landlords,

as they consider appropriate; and

(b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).

(4) The power conferred by subsection (1) on the Scottish Ministers to make regulations—

(a) must be exercised by statutory instrument;

(b) may be exercised so as to make different provision for different purposes.

(5) No regulations are to be made under subsection (1) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

(3) In section 90(1) of that Act (interpretation of Part 8), for the entry for “premium” substitute—

“‘premium’ means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge;”.

(4) In section 115(1) of that Act (interpretation), for the entry for “premium” substitute—

“‘premium” has the meaning given in section 90;”.

29 Tenant information packs

After section 30 of the 1988 Act insert—
30A Duty of landlord to provide certain information

(1) A person who is to be the landlord under an assured tenancy (of whatever duration) must provide the person who is to be the tenant of that tenancy with the documents specified by virtue of section 30B(1) (“the standard tenancy documents”).

(2) The standard tenancy documents must be provided no later than the date on which the assured tenancy commences.

(3) Where there are to be joint landlords under the tenancy, the duty under subsection (1) may be satisfied by any one of them.

(4) A person under the duty mentioned in subsection (1) who (without reasonable excuse) does not comply with that duty is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Where an offence under subsection (4) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or similar officer of the body, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished accordingly.

30B Duty of landlord to provide certain information: further provision

(1) The Scottish Ministers may by order—

(a) specify the documents to be provided under section 30A(1) which may, in particular, include—

(i) documents containing information about the tenancy;

(ii) documents containing information about the house;

(iii) documents containing information about the person who is to be the landlord;

(iv) documents containing information about the rights and responsibilities of tenants and landlords;

(v) copies of documents which the person who is to be the landlord is under a duty to provide by virtue of this Act (other than section 30A(1)) or any other enactment;

(b) make such further provision about the documents as they think fit, including, in particular, provision about the form of, and the information to be included in (or excluded from), any of the documents;

(c) make provision so that the giving of a document (or copy of a document) specified under subsection (1)(a)(v), either in pursuance of the duty under section 30A(1) or by virtue of another provision of this Act or any other enactment, has the effect of satisfying all or any such obligations;

(d) make provision about whether the documents may be provided separately or whether they must all be provided at the same time.

(2) Before making an order under subsection (1), the Scottish Ministers must consult—
(a) such persons and bodies as they consider representative of the interests of—
   (i) tenants;
   (ii) private sector landlords; and
   (iii) persons who act as agents for such landlords,
as they consider appropriate; and
(b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).”.

30  Notices required for termination of short assured tenancy
In section 33 of the 1988 Act (recovery of possession on termination of a short assured tenancy), after subsection (4) insert—

“(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”.

31  Landlord application to private rented housing panel
(1) The 2006 Act is amended as follows.

(2) In section 21 (naming of panel and re-naming of committees)—
   (a) in subsection (3), after “panel,” where it first occurs, insert “the members of the panel,”,
   (b) in subsection (4)—
      (i) the words from “the exercise” to the end become paragraph (a), and
      (ii) after that paragraph insert—
         “(b) the exercise by members of the panel of the functions conferred on them under sections 28A and 28C.”.

(3) At the beginning of the title of section 22 (application to private rented housing panel) insert “Tenant”.

(4) After section 28 insert—

“28A  Landlord application to private rented housing panel
(1) A landlord may apply to the private rented housing panel for assistance under section 28C in exercising the landlord’s right of entry to the house concerned under section 181(4).

(2) The president of the panel must allocate an application under subsection (1) to an individual member of the panel, and may subsequently reallocate it at any time to another individual member of the panel (the member to whom it is, for the time being, allocated being referred to as “the panel member”).

(3) The panel member must decide whether—
   (a) to assist the landlord in exercising the landlord’s right of entry to the house concerned under section 181(4) in accordance with section 28C, or
   (b) to reject the application (and notify the landlord accordingly).
(4) The panel member may require the landlord to produce such further information as the panel member considers necessary to reach a decision on the application.

(5) Where the panel member decides to assist the landlord under subsection (3)(a) the panel member must send the landlord and the tenant a notice—

(a) indicating that—

(i) the panel member has decided to assist the landlord, and

(ii) the panel member will be seeking to arrange a suitable time for the landlord to exercise the landlord’s right of entry under section 181(4), and

(b) informing the tenant of the tenant’s right under subsection (6).

(6) A tenant may, within the period of 14 days beginning with the date of receipt of a notice under subsection (5) (or such longer period as the panel member considers appropriate in the circumstances), make representations to the panel member as to why it is inappropriate or unnecessary for the landlord to exercise the landlord’s right of entry under section 181(4) at that time.

(7) Where representations are made by the tenant under subsection (6), the panel member—

(a) may make such further enquiries of the landlord and tenant as the panel member considers appropriate, and

(b) must decide whether to—

(i) continue to assist the landlord, or

(ii) stop assisting the landlord.

(8) A decision—

(a) to reject an application under subsection (3),

(b) of the panel member under subsection (7),

(c) by the panel member to stop acting in accordance with section 28C(9), is final.

(9) No application may be made under subsection (1) where the landlord is—

(a) a local authority landlord (within the meaning of the Housing (Scotland) Act 2001 (asp 10)),

(b) a registered social landlord (being a body registered in the register maintained under section 57 of that Act), or

(c) Scottish Water.

28B Landlord application to private rented housing panel: further provision

(1) The Scottish Ministers may by regulations make further provision about the making or deciding of applications under section 28A.

(2) Those regulations may, in particular, make provision—

(a) about the form and content of applications and notices,

(b) prescribing a fee to accompany applications,
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(c) specifying circumstances when the panel member must decide to reject an application or stop assisting a landlord,

(d) about the procedure for—

(i) making decisions under section 28A(3) or (7),

(ii) giving notice under section 28A(5),

(iii) making representations under section 28A(6).

(3) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).

28C Panel member to arrange suitable time for access

(1) Subsection (2) applies where the panel member has decided to assist the landlord under section 28A(3)(a).

(2) The panel member must liaise with the landlord and the tenant with a view to agreeing a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(3) Subsection (4) applies if the tenant (without reasonable excuse) has failed or refused, within a reasonable time, to—

(a) respond to the panel member, or

(b) agree a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(4) The panel member may fix a date and time (or dates and times) for the landlord to exercise the landlord’s right of entry to the house under section 181(4).

(5) Where a date and time has been agreed under subsection (2), the panel member may, on the request of either the landlord or the tenant and where there are reasonable grounds for doing so, liaise with the parties with a view to agreeing a different date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(6) The panel member must as soon as reasonably practicable notify the landlord and tenant of any date and time (or dates and times) agreed or fixed under this section for the landlord to exercise the landlord’s right of entry under section 181(4).

(7) When notifying the parties of the date and time (or dates and times) agreed or fixed under this section, the panel member must also—

(a) provide the tenant with information about the action that the panel member may take under section 182 if the tenant refuses the landlord’s exercise of the landlord’s right of entry to the house under section 181(4), and

(b) inform both parties that the panel member (or a person authorised by the panel member) may be requested to attend when the landlord exercises such right of entry.

(8) The panel member may, at the request of the landlord or the tenant, attend at the house at the time agreed or fixed for the landlord to exercise the landlord’s right of entry under section 181(4).
(9) The panel member may, at any time, stop assisting the landlord under this section if the panel member considers it appropriate to do so.

(10) The panel member may—

(a) authorise a person (other than the landlord or a representative of the landlord) to exercise any function conferred on the panel member under this section, or

(b) arrange for any such function to be carried out by another panel member.

(11) The Scottish Ministers may by regulations make further provision about the action the panel member is to take under this section.

(12) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).”.

(5) In section 29 (annual report)—

(a) in subsection (1), after “panel” where it second occurs insert “, by the members of the panel”,

(b) in subsection (2)—

(i) the words from “the frequency” to the end become paragraph (a), and

(ii) after that paragraph insert—

“(b) the number of—

(i) applications made under section 28A,

(ii) cases in which it has been possible to agree a suitable date and time (or dates and times) under section 28C for the landlord to exercise the landlord’s right of entry under section 181(4),

(iii) houses attended by a member of the private rented housing panel (or a person authorised by such a member) as a result of a request made under section 28C(8), and

(iv) warrants sought to authorise entry under section 182(1) in pursuance of section 181(2A).”.

(6) In section 181 (rights of entry: general), after subsection (2) insert—

“(2A) A member of the private rented housing panel, and any other person authorised by any such member, is entitled to enter any house in respect of which a decision has been made under section 28A(3) to assist the landlord’s exercise of the landlord’s right of entry under subsection (4) of this section for the purpose of enabling the landlord to exercise such right of entry.”.

(7) In section 182(1) (warrants authorising entry), for “or (2)” substitute “, (2) or (2A)”.

(8) In section 191 (orders and regulations), after subsection (4) insert—

“(4A) Regulations under subsection (1) of section 28B (other than such regulations containing only provision under subsection (2)(b) of that section) are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.
31A Relaxation of residential restriction on leases of more than 20 years

(1) Section 8 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (property let under a future long lease, etc. not to be used as a private dwelling) is amended as follows.

(2) In subsection (3A)—

(a) the word “or” immediately following paragraph (b) is repealed, and

(b) after paragraph (c), add “; or

(d) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—

“(3B) An order under subsection (3A)(d) may—

(a) prescribe a body or type of body subject to conditions or restrictions,

(b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),

(c) restrict the application of subsection (3A) to specified leases, or leases of specified descriptions,

(d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any lease,

(e) make provision about the consequences, in relation to any lease, of—

(i) a breach of any condition or restriction prescribed by the order, or

(ii) subsection (3A) otherwise ceasing to apply in relation to a body or type of body or the lease.

(3C) Provision made by virtue of subsection (3B)(e) may, in particular, include provision for the protection of the interests of tenants or occupiers of any dwelling-houses on the property which is subject to the lease.

(3D) An order under subsection (3A)(d)—

(a) may modify any enactment, and

(b) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.”.

31B Restriction of right to redeem heritable securities after 20 years

(1) Section 11 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling) is amended as follows.

(2) In subsection (3A)(b)—

(a) the word “or” immediately following sub-paragraph (ii) is repealed, and

(b) after sub-paragraph (iii), add “; or

(iv) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—
“(3B) An order under subsection (3A)(b)(iv) may—
(a) prescribe a body or type of body subject to conditions or restrictions,
(b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),
(c) restrict the application of subsection (3A) to specified heritable securities, or heritable securities of specified descriptions,
(d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any heritable security.

(3C) A statutory instrument containing an order under subsection (3A)(b)(iv) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

PART 5
GENERAL

32 Interpretation
In this Act—
“the 1988 Act” means the Housing (Scotland) Act 1988 (c. 43);
“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);
“the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1).

33 Ancillary provision
(1) The Scottish Ministers may by order make such consequential, supplementary, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for the purposes of giving full effect to, any provision of this Act.
(2) An order under this section may modify any enactment, instrument or document.

34 Orders
(1) Any power conferred by this Act on the Scottish Ministers to make an order—
(a) must be exercised by statutory instrument,
(b) includes power to make different provision for different purposes.
(2) An order under section 33 containing provisions which add to, omit or replace any part of the text of an Act, may be made only if a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.
(3) Any other statutory instrument containing an order (other than under section 35(3)) is subject to annulment in pursuance of a resolution of the Parliament.

35 Short title and commencement
(1) This Act may be cited as the Private Rented Housing (Scotland) Act 2010.
(2) This Part comes into force at the beginning of the day following the day on which the Bill for this Act receives Royal Assent.
(3) The remaining provisions of this Act come into force on such day as the Scottish Ministers may appoint by order.

(4) An order under subsection (3) may include transitional, transitory or saving provision.
SCHEDULE
(introduced by section 12)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

1 The 2004 Act is amended as follows.
2 In section 84 (registration)—
   (a) in subsection (2), after “Where” insert “(subject to subsections (7) and (8))”,
   (b) after subsection (6) add—
      “(7) The local authority may refuse to enter a person in the register maintained by
           the authority under section 82(1) if the person fails to comply with the duty, if
           applicable, imposed by section 92B(2).
      (8) The local authority must refuse to enter a person in the register maintained by
           the authority under section 82(1) if the person is disqualified by an order made
           under section 93A(2).”.
3 In section 86 (notification of registration or refusal to register)—
   (a) in subsection (1)(b), after “section” insert “or subsection (7) or (8) of section 84”,
   (b) in subsection (2), after “84(2)(b),” insert “(7) or (8),”.
4 In section 89 (removal from register), after subsection (3) add—
   “(4) Where a registered person, without reasonable excuse, fails to comply with the
duty imposed by section 92B(1) the authority may remove the person from the
register.
   (5) Where—
      (a) a person is registered by a local authority; and
      (b) the person is disqualified from being registered by virtue of an order
           under section 93A(2),
           the authority shall remove the person from its register.”.
5 In section 90(1) (notification of removal from register: registered person), after “89(1)”
   insert “, (4) or (5)”.
6 In section 91(1) (notification of removal from register: other persons), after “89(1)”
   insert “, (4) or (5)”.
7 In section 92(1) (appeal against refusal to register or removal from register)—
   (a) in paragraph (a), after “84(2)(b)” insert “, (7) or (8)”,
   (b) in paragraph (b), after “89(1)” insert “or (4)”.
8 In section 93(5) (offences), after paragraph (aa) insert—
   “(aaa) the relevant person is not disqualified from being registered by virtue of
    an order under section 93A(2),”.
Private Rented Housing (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about private rented housing.

Introduced by: Nicola Sturgeon
On: 4 October 2010
Supported by: Alex Neil
Bill type: Executive Bill
This document relates to the Private Rented Housing (Scotland) Bill as amended at stage 2 (SP Bill 54A)

PRIVATE RENTED HOUSING (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Private Rented Housing (Scotland) Bill (introduced in the Scottish Parliament on 4 October 2010) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government 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.

THE BILL

4. The purpose of the Private Rented Housing (Scotland) Bill is to support responsible landlords and address more effectively the problems caused by landlords who act unlawfully, by strengthening the regulation of the private rented sector. This involves changes to the operation of the systems for registration of private landlords and licensing of houses in multiple occupation. The Bill also includes provisions intended to deal with problems caused by overcrowding in the private rented sector and to improve the working of the private sector tenancy regime.

5. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

STRUCTURE AND SUMMARY OF THE BILL

6. The Bill is in 5 parts:
Part 1 Registration of Private Landlords amends legislation concerning the registration of private landlords contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. This is in relation to:

- expanding the criteria of the fit and proper person test;
- allowing a local authority to require a criminal record certificate from a landlord in order to verify information;
- fees for certain agents;
- public access to information on applications not yet determined and persons found not to be fit and proper to act as landlords;
- requiring landlord registration numbers in advertisements of properties to let;
- an increase in the maximum fine for offences and the ability of a court to impose a ban of up to five years on a convicted landlord;
- powers for a local authority to obtain information to enable or assist it to carry out its landlord registration functions, including requiring a letting agent to provide information on properties managed for a landlord;
- a requirement for a local authority to take account of guidance on the use of its enforcement powers issued by the Scottish Ministers; and,
- requiring the Private Rented Housing Panel to pass information on landlords to local authorities so that their registration status can be checked.

Part 2 Amendment of Part 5 of the Housing (Scotland) Act 2006 makes changes to the legislation concerning HMO licensing in Part 5 of the Housing (Scotland) Act 2006 to:

- give Ministers a power to bring by order additional types of multi-occupancy property within the scope of HMO licensing;
- give a local authority a power to refuse to consider an application for an HMO licence if it considers that there would be a breach of planning control;
- increase the maximum fine for offences;
- remove a requirement for a local authority to issue a statement of reasons for every HMO licensing decision; and,
- require a local authority to take account of guidance issued by the Scottish Ministers on the use of its information gathering powers.

Part 3 Overcrowding Statutory Notices creates new powers to tackle overcrowding in the Private Rented Sector. This is in relation to:

- powers for a local authority to serve an overcrowding statutory notice on the landlord of a house which is overcrowded; where it considers that the overcrowding is contributing to or connected with adverse effects on health or wellbeing, or on amenity;
- requiring the local authority to provide prescribed information and advice to the occupier of a house when serving an overcrowding statutory notice;
This document relates to the Private Rented Housing (Scotland) Bill as amended at stage 2 (SP Bill 54A)

• enabling Scottish Ministers to prescribe by order; the form of an overcrowding statutory notice, along with the form and content of the prescribed information and advice;
• powers for a local authority to obtain information from persons connected to the house to enable it to carry out its functions in connection with overcrowding statutory notices; and,
• a requirement for a local authority to take account of guidance issued by the Scottish Ministers on the use of these powers.

Part 4 Miscellaneous makes changes to the tenancy regime in the Housing (Scotland) Act 2006, the Rent (Scotland) Act 1984, the Housing (Scotland) Act 1988 and the Land Tenancy Reform (Scotland) Act 1974 in order to:
• clarify the right to make tenancy charges and the level of such charges;
• require a private landlord to issue specified information to a new tenant;
• clarify the notices to be served when a landlord seeks possession of a house after a short assured tenancy has reached its contractual end;
• allow a private landlord to seek the assistance of the Private Rented Housing Panel in gaining access to a house for purposes related to the Repairing Standard; and
• introduce new powers to enable Scottish Ministers to prescribe bodies and types of body which can be exempted from the 20 year limit on residential leases and the right to redeem heritable securities.

Part 5 General sets out general provisions, such as for the making of orders. It also contains definitions, the short title and provisions for commencement of the Act.

PART 1 – REGISTRATION OF PRIVATE LANDLORDS

7. The provisions in this Part make amendments to the landlord registration provisions contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 (‘the 2004 Act’).

Sections 1 and 2 – Fit and proper person

8. Section 85 of the 2004 Act describes the material that local authorities must have regard to when considering if a landlord is a fit and proper person (or if a person appointed to act for a landlord is a fit and proper person so to act). To improve protection for private tenants, section 1 of the Bill expands the list of offences that have to be considered, to include firearms and sexual offences. Regulations will require these to be declared by an applicant for landlord registration, and section 2 of the Bill makes provision for a local authority to require a criminal record certificate to be produced to it, on application or subsequently.

9. Sections 85(3) and (4) of the 2004 Act require a local authority to take into account any information that it deems relevant to the question of whether the landlord or agent is a fit and proper person. To assist local authorities in determining what is relevant, the Bill specifies certain information that should be considered when applying this test, specifically:
• previous convictions under legislation relating to landlord registration or HMO licensing;
• breaches of the Repairing Standard;
• complaints and information which come to the local authority’s attention (for example from tenants, neighbours and others) where landlords have not paid their share of the cost of communal repairs or payments to property factors;
• antisocial behaviour by the landlord, the tenant, or at the property;
• concerns and other information which come to a local authority’s attention in relation to a property, through its other functions; for example when investigating noise complaints or carrying out environmental health inspections; and,
• failure to produce a criminal record certificate where the local authority requires it.

10. Section 1 also gives Ministers the power to add, amend or remove offences or other unlawful acts that must be taken into account by a local authority in applying the fit and proper test.

11. Section 2 of the Bill adds a new subsection 85A to the 2004 Act which gives a local authority the power to require a criminal record certificate if it deems this is necessary when applying the fit and proper person test. If an applicant for registration fails to provide this he or she will not be placed on the register. A registered landlord who fails to provide it may be removed from the register.

Section 3 – Landlord registration number

12. Landlord Registration numbers are currently provided for administrative reasons when landlords are registered but have no legal status. Section 3 therefore amends section 84 of the 2004 Act to put landlord registration numbers on a statutory footing and outlines that local authorities must provide landlords with their registration number when advising them that their registration has been completed.

Section 4 – Appointment of agents

13. Section 4 introduces a new subsection (2A) to section 88 of the 2004 Act to allow a local authority to charge a registered landlord a fee when the landlord notifies the local authority of the appointment of an agent. There is currently no power for the local authority to charge a fee for such an addition to the landlord’s register entry, although assessing whether the agent is a fit and proper person will involve expense to the local authority. Setting a fee will enable local authorities to recover costs and will be fairer for those landlords and agents who pay fees, because they register at an earlier stage. New subsection (2B) ensures that no fee is payable if the fit and proper test has already been carried out on the agent. New subsection (2C) gives Ministers powers to prescribe by regulations the fees, how fees are to be arrived at, and circumstances in which no fee is payable. The Bill further amends section 88 to make it an offence if landlords do not notify local authorities that they have appointed an agent or provide false information. The penalty is a fine on summary conviction not exceeding level 3 on the standard scale.
Section 5 – Access to register: additional information

14. Information on registered private landlords and their properties is held on a register maintained by the local authority for the area where each property is located. Public access to the register is restricted to prevent misuse. To help protect tenants section 5 of the Bill provides two additional categories of information to be made available to the public. Subsection (1) amends section 88A(1) of the 2004 Act to make available information on whether a registration application has been made but not yet determined; and whether a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord or because the person’s agent was found to be not fit and proper. Subsection (2) inserts a new section 92ZA into the 2004 Act. This requires a local authority to note in its register the fact that a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord, or because the person’s agent was found to be not fit and proper. This note must be made when the appeal procedure has been exhausted and must be removed after 12 months or sooner if the person is subsequently registered.

Section 6 – Duty to include certain information in advertisements

15. To prevent unregistered landlords from advertising their properties, section 6 of the Bill inserts a new section 92B into the 2004 Act which requires all adverts for properties for let to include the landlord registration number or, in the case of landlords whose application is yet to be determined, the phrase “landlord registration pending”. Reusable ‘To Let’ boards are exempt from this due to costs for landlords. Where there is more than one owner of the property, only one landlord registration number (or the phrase “landlord registration pending” if relevant) need be included in the advertisement. For a registered landlord the sanction for failing to include a registration number is that they may be removed from the register. For an applicant for registration the sanction is that the application may be refused.

Sections 7 and 8 – Penalties for unregistered landlords

16. Sections 7 and 8 give powers to the Courts to impose tougher penalties on the most severe cases of bad landlord practice. To reflect the seriousness of the behaviour of some landlords, the Bill increases the maximum fine level in section 93(7) of the 2004 Act, for offences relating to acting as an unregistered landlord, from level 5 on the standard scale to £50,000 and introduces a new section 93A to allow the court to disqualify a person operating as an unregistered landlord from being registered as a landlord by any local authority in Scotland, for up to five years. These provisions bring landlord registration in line with HMO licensing. The Bill outlines the landlord’s right of appeal and makes provision for revocation of any disqualification order, though no revocation can occur unless there has been a change of circumstances, and even then not within the first year of the order taking effect.

Section 9 – Power to obtain information

17. Section 9 inserts new section 97A into the 2004 Act. Section 97A details powers for a local authority to obtain information to enable or assist it to carry out its functions under Part 8. This information can be obtained from various specified persons. The local authority can serve a notice requiring such a person to provide information on the nature of their interest in the house; specified information about other people with an interest in the house or who act in relation to a
lease or occupancy arrangement; and such other information about the house or such a person as can be reasonably requested. To help local authorities identify unregistered landlords, the Bill contains a power for local authorities to require a letting agent to provide information in relation to any house in the area in relation to which the agent acts, including the address of the house and the name and address of the owner.

18. Section 9 also outlines the methods a local authority must use to advise the person that they are required to provide information, which may include electronic service. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale.

Section 10 - Guidance

19. Section 10 of the Bill makes an amendment to the 2004 Act by introducing a new section 99A which requires local authorities to have regard to any guidance issued by Scottish Ministers when carrying out their functions in respect of landlord registration. Ministers are required to consult local authorities and, if they think fit, others before issuing any such guidance.

Section 11 – PRHP: information to be given to a local authority

20. To further help local authorities identify unregistered landlords, section 11 of the Bill amends the 2006 Act by inserting new section 22A which requires the Private Rented Housing Panel to pass onto the local authority details about the landlord and property, which must include the landlord registration number if known and details of any agent the panel knows is acting on the landlord’s behalf. This requirement arises where an application is made to the panel by a tenant relating to the repairing standard.

PART 2 - LICENSING OF HOUSES IN MULTIPLE OCCUPATION

21. The provisions in this Part make amendments to the legislation concerning the licensing of houses in multiple occupation under the Housing (Scotland) Act 2006 (the “2006 Act”).

Section 13 – Amendment of HMO licensing regime

22. Section 125 of the Housing (Scotland) Act 2006 defines a house in multiple occupation (HMO). Section 13 inserts into section 125(1) a new paragraph (b), which allows Ministers to define in secondary legislation additional categories of multi-occupancy accommodation, specified by type or manner of occupation, as licensable HMOs. Any such category must meet the usual requirement of a licensable HMO that there are three or more occupants being members of more than two families. However, it does not necessarily have to be a house or premises in terms of the 2006 Act, nor does it have to be the only or main residence of the occupants. Before making such an order, the Scottish Ministers must consult relevant persons.

23. Section 13 also inserts new section 129A into the 2006 Act to give a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. If the
applicant subsequently obtains planning permission or a certificate of lawful use or development and makes a further application for a licence within 28 days, no fee may be charged in relation to that application. If an application is refused before an existing licence for the HMO has expired, the existing licence will expire either on its normal expiry date or on a later date that the local authority considers reasonable, given the circumstances.

Section 14 - Penalties for certain HMO offences

24. In line with the provision outlined above for landlord registration offences, section 14 of the Bill gives powers to the Courts to impose tougher penalties for HMO offences by increasing the maximum fine in section 156(1)(a) of the 2006 Act to £50,000.

Section 15 – Statement of reasons for decisions

25. Under the HMO licensing regime a local authority must provide a statement of reasons for an HMO decision. Local authorities have raised concerns that this may cause significant costs, and be unnecessary in many cases. For example, where a licence is granted without any concerns having been raised or identified, an applicant may neither need nor wish reasons. Section 15 therefore amends Part 5 of the 2006 Act at section 158(12)(a) so that a statement of reasons need only be provided when this is requested by any person who receives the decision. The Bill outlines the time periods for local authorities to issue the statement of reasons and for the person to request that they be provided. Where such a request is made, reasons must be provided.

Section 16 - Guidance

26. Section 186 of the 2006 Act allows a local authority to require certain people to provide information relating to the land or premises to help it carry out its functions under HMO licensing. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale. Section 16 of the Bill amends section 163(1) of the 2006 Act to enable the Scottish Ministers to give guidance over the use of the information gathering powers contained in section 186. Such guidance may be used to inform local authorities how best to deal with vulnerable persons who are reluctant or unwilling to provide information for fear of reprisals.

PART 3 – OVERCROWDING IN THE PRIVATE RENTED SECTOR

27. This part introduces powers to enable local authorities to deal with overcrowding in the private rented sector.

Section 17 – Overcrowding statutory notice

28. Section 17 gives a local authority the power to serve an overcrowding statutory notice on the landlord of a house which is overcrowded, where the local authority considers that the overcrowding is having an adverse effect on the health or wellbeing of any person or on the amenity of the house or its locality. This will allow enforcement action to be taken in the worst cases of overcrowding in the sector, where it is creating adverse effects for occupants, neighbours and others in the locality. The notice will set out the steps to be taken by the landlord
to rectify the situation (that is, to reduce the occupancy level to the maximum permitted by the Housing (Scotland) Act 1987), the period within which the steps must be taken, and any other conditions considered appropriate by the local authority. Section 17(7) allows the Scottish Ministers to prescribe by order the form of an overcrowding statutory notice and such other information to be included in the notice as they see fit, plus the persons who must be given a copy of the notice. Ministers are required to consult local authorities, representatives of landlords and occupiers, and such others as they consider appropriate, before making an order.

Section 17A – Matters to be considered prior to service of an overcrowding statutory notice

29. Section 17A sets out matters which a local authority must consider before serving an overcrowding statutory notice. The authority must assess whether serving the notice is reasonable and proportionate in the circumstances. In so doing, the authority must weigh up the nature of the adverse effect, and the degree to which the overcrowding is contributing or connected to it, as well as the likely effects of serving a notice, and whether there are other means to address the problem. In addition to this assessment of reasonableness and proportionality, the local authority must, in deciding whether to serve a notice, take account of the views of the landlord, occupier and others living in the house and examine the particular circumstances of the occupier and others living in the house. In particular, the authority is required to consider whether the overcrowding is causing homelessness as defined in section 24 of the Housing (Scotland) Act 1987 or whether the service of a notice may have this effect.

Section 17B – Information and advice for occupiers

30. Section 17B requires the local authority to provide information and advice to the occupier of a house at the same time as serving an overcrowding statutory notice. This must take the form of a notice containing prescribed information and advice. The Scottish Ministers have a power by order to prescribe the content and form of the notice but before making such an order must consult local authorities, representatives of landlords and occupiers and other appropriate bodies and persons. In addition to the information notice, the local authority must provide information or advice reasonably requested by the occupier or other people living in the house in connection with the notice and may give the occupier such additional information and advice as it considers appropriate.

Sections 19 to 25 – Overcrowding: further provisions

31. Sections 19 to 25 of the Bill make further provision about the content and duration of notices and the procedure for making them, outline the appeals procedure and provide that failure by a landlord to comply with a notice will be an offence attracting a fine not exceeding level 5 on the standard scale. They also make provision for variation of notices, though not so as to shorten their duration. A local authority may revoke a notice at any time.

Section 25A – Power to obtain information

32. Section 25A gives a local authority the power to obtain certain information from persons connected to the house to enable it to carry out its functions in connection with overcrowding statutory notices. Any person who is required to provide information and fails to do so, or
knowingly or recklessly provides false or misleading information, is guilty of an offence attracting a fine not exceeding level 2 on the standard scale.

**Section 26A – Guidance**

33. Section 26A requires local authorities to have regard to any guidance issued by the Scottish Ministers in relation to their functions under Part 3. Ministers are required to consult local authorities, representatives of landlords and occupiers, and such others as they deem appropriate before issuing any such guidance.

**PART 4 – MISCELLANEOUS**

34. Part 4 makes a number of miscellaneous amendments to legislation relating to the private sector tenancy regime.

**Section 28 - Premiums**

35. Section 82 of the Rent (Scotland) Act 1984 makes it an offence to charge or receive any premium or make any loan, in addition to the rent, a condition of the grant, renewal or continuance of a protected tenancy. Despite this, there is evidence that some confusion exists about what it means in practice and a variety of charges are made to tenants. Section 28 of the Bill clarifies that all charges in connection with the grant, renewal or continuance of a tenancy are illegal apart from certain specified, reasonable charges. It inserts a new section 89A into the 1984 Act, giving Ministers powers to outline in secondary legislation charges that will be allowed in connection with the grant, renewal or continuance of a protected tenancy. The regulations will be able to specify categories of payment that are not to be treated as premiums in terms of section 82 and to set a maximum limit to the amount of any such payment that could be charged. Ministers must, before making regulations, consult representatives of tenants, private landlords and landlords’ agents, as well as such other persons (including tenants, private landlords and landlords’ agents) as they consider appropriate.

36. Any such regulations may also apply to assured tenancies (including short assured tenancies) because new section 89A will constitute part of the sequence of sections 86 to 90 of the 1984 Act referred to in section 27 of the Housing (Scotland) Act 1988.

**Section 29 - Tenant information packs**

37. To improve knowledge about housing legislation and regulation among private tenants and landlords, section 29 of the Bill places a duty on private landlords to provide new tenants with specified documents by inserting new section 30A into the Housing (Scotland) Act 1988. Failure to do so (without reasonable excuse) is an offence attracting a fine not exceeding level 2.

38. New section 30B gives Ministers the power to specify the documents that must be provided, through secondary legislation. For example, this might include documents containing information about the tenancy (such as a tenancy agreement), about the house (such as the permitted level of occupancy), about the landlord (such as his or her landlord registration number), and about the rights and responsibilities of tenants, landlords and agents. They may
include documents that the landlord is already required to provide under other sections of the 1988 Act. An order may make further provision, including about the form of the documents and the information to be included in (or expressly excluded from) any of them. It may provide that supply of a document in accordance with such an order will satisfy another statutory obligation to give a document, the intention of this provision being to remove duplication. It may provide for documents to be provided separately or at the same time.

39. Section 30B(2) requires the Scottish Ministers, before using the order-making power, to consult representatives of tenants, private landlords and landlords’ agents, as well as such other persons (including tenants, private landlords and landlords’ agents) as they consider appropriate.

Section 30 - Notices required for termination of a short assured tenancy

40. Section 19 of the Housing (Scotland) Act 1988 states that a sheriff will not consider proceedings to gain possession of a house let as an assured tenancy (which includes a short assured tenancy) unless the landlord has served a notice of proceedings. There is evidence of some uncertainty as to whether this requirement also applies to section 33 of the Act; section 33 relates to recovery of possession in respect of short assured tenancies which have come to the end of their normal contractual agreement. Section 30 of the Bill is intended to clarify that in such cases a notice of proceedings is not required by explicitly stating that sections 18 and 19 of the 1988 Act do not apply to proceedings under section 33.

Section 31 - Landlord applications to the private rented housing panel

41. Section 14 of the Housing (Scotland) Act 2006 places a duty on a landlord in certain tenancies to ensure that the house meets the Repairing Standard (set out in section 13 of the Act) and allows a tenant who considers that the landlord has failed to comply with this duty to apply to the Private Rented Housing Panel for assistance.

42. The Act also gives a landlord, or a person authorised by the landlord, the right to enter the house in respect of carrying out this duty; i.e., to inspect the premises or carry out works. Section 31 of the Bill amends the 2006 Act by introducing a new section 28A to enable a landlord to apply to the Private Rented Housing Panel for assistance in exercising these entry rights in order to comply with the Repairing Standard where the tenant has been uncooperative, without the need for court action or waiting until the end of the tenancy. Such an application will be considered by a single member of the Panel.

43. New section 28B gives Ministers power to make by regulations further provision about applications made under section 28A. Such provision may relate to the form and content of applications, the prescription of a fee to accompany applications, the procedure to be followed by applicants and the Panel, the time limits for making decisions and the determination of applications and action following determination, amongst other things.

44. New section 28C outlines the arrangements that the panel member must make and the procedure that must be followed for a suitable time for access. This procedure commences where the panel member decides to offer assistance, at which point a notice is served under section 28A(5) and the member liaises with the landlord and tenant with a view to agreeing a
date and time for access (section 28C(2)). If the tenant makes representations to the panel member that entry is inappropriate or unnecessary (for example, when the panel member calls to try to agree a date for access) the member has to decide whether to continue to assist the landlord, and may contact the landlord before reaching that decision (section 28A(7)). If the tenant fails to respond, or refuses to agree a date and time, the panel member may fix them (section 28C(4)). Either the landlord or tenant can request that the panel member attend at the property at the time fixed. Section 31(5) of the Bill amends section 29 of the 2006 Act to provide for the recording and reporting of instances where landlord applications are made, houses attended to by a member following a request for attendance, and instances where a warrant for entry is sought.

**Sections 31A and 31B - long leases and heritable securities**

45. Sections 31A and 31B amend the “20 year rules” - sections 8 and 11 of the Land Tenure Reform (Scotland) Act 1974. The amendments introduce powers for Scottish Ministers to prescribe bodies or types of body, which will alter how the rules apply to them.

46. Section 8 of the 1974 Act restricts the ability of landlords and tenants (other than social landlords and rural housing bodies) to enter into residential leases for more than 20 years. The amendment by section 31A means that other bodies or types of body can be exempted from this restriction. In prescribing a body or a type of body Ministers have the power to set conditions and restrictions. The conditions may include the type of leases to be exempted, what happens if the conditions or restrictions are breached and make provision that, in the event of a breach, will protect the interests of tenants and residents. Scottish Ministers also have power to amend legislation if that is required.

47. Section 11 of the 1974 Act allows a debtor to redeem a heritable security over residential property after 20 years have elapsed, regardless of any longer contractual term. Social landlords, their connected bodies and rural housing bodies are able to renounce their right to redeem. The amendment by section 31B allows bodies and types of body to be prescribed so that they too will gain this ability. This could be useful, for example, if a landlord wishes to participate in a long-term fixed interest bond issue which relies on the bond holder retaining security over the underlying housing assets for more than 20 years. Scottish Ministers have the power to set conditions and restrictions which a prescribed body or type of body must meet and to specify the sort of securities in respect of which renunciation can be made.

**PART 5 – GENERAL**

**Section 32 - Interpretation**

48. Section 32 defines various expressions used in the Bill.

**Section 33 - Ancillary provision**

49. Section 33 confers on Ministers a power to make by order such consequential supplementary, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for the purposes of giving full effect to, any provision of the Bill. Such an order may modify any enactment.
Section 34 - Orders

50. Section 34 provides procedural requirements for orders and regulations made under the Bill.

Section 35 - Short title and Commencement

51. Section 35 gives the short title of the Bill and provides that the provisions of the Bill (except sections 32 to 35, which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on a date or dates determined by order, made by Ministers.
PRIVATE RENTED HOUSING (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Subordinate Legislation Committee in its consideration of the Private Rented Housing (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

PART 3 – OVERCROWDING STATUTORY NOTICES

Section 17(7) – Overcrowding in private rented housing: statutory notice

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

2. Local authorities currently have very limited powers to deal with overcrowding in the private rented sector other than licensable HMOs. The statutory definition of overcrowding is contained in sections 135 to 137 of the Housing (Scotland) Act 1987.

3. Section 17 of the Bill gives a local authority the power to serve an overcrowding statutory notice on the landlord of a house which is statutorily overcrowded, where the local authority considers that the overcrowding is contributing or connected to an adverse effect on the health or wellbeing of any person, or on the amenity of the house or its locality. This will allow enforcement action to be taken in the worst cases of overcrowding in the sector, where it is creating severe problems for occupants, neighbours and others in the locality. The notice will set out the steps to be taken by the landlord to rectify the situation (that is, to reduce the occupancy level to the maximum permitted by the 1987 Act), the period within which the steps must be taken, and any other conditions considered appropriate by the local authority.
4. Section 17(7) allows the Scottish Ministers to prescribe by order the form of an overcrowding statutory notice, such other information to be included in the notice as they see fit, and the persons who must be given a copy of the notice by the local authority.

5. A Scottish Government amendment at Stage 2 inserted new section 17(7A), which provides that, before making an order under section 17(7), the Scottish Ministers are required to consult local authorities, representatives of landlords and occupiers of houses, and other appropriate stakeholders.

Reason for taking power

6. Ministers wish to be able to prescribe the form of an overcrowding statutory notice in order to ensure that a landlord is clearly informed of the obligations it places on him or her and, if necessary, to ensure that the landlord is given any other information – for example, about rights to make representations or to appeal – that is considered appropriate.

7. The details of the form, including any information to be provided, and the persons to receive a copy of the notice may require to be amended in the light of experience, so this matter is most appropriately dealt with by an order-making power rather than primary legislation.

8. The requirement for Ministers to consult before issuing an order under section 17(7) will ensure that stakeholders have an opportunity to express their views on the content of any order.

Choice of procedure

9. The Scottish Government does not consider that the content of the notice and the persons to whom it must be copied for the purposes of this provision, which is a technical matter, should merit a higher degree of Parliamentary scrutiny than negative resolution procedure. This position is further strengthened by the addition of the requirement to consult.

Section 17B – Information and advice for occupiers

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

10. This section imposes duties on a local authority to give certain information and advice to the occupier of, and other people living in, a house, in relation to which it serves an overcrowding statutory notice. The local authority may also give such further information as it considers appropriate. The section replaces section 18 of the Bill as introduced, which gave a local authority a discretionary power to give appropriate information and advice to the occupier of the house.

11. Subsection (2) requires the local authority, at the same time as it serves an overcrowding statutory notice, to serve on the occupier a notice containing prescribed information and advice in connection with the overcrowding statutory notice. Subsection (5) states that such
information and advice will be prescribed by order made by the Scottish Ministers and subsection (6) states that an order may also prescribe the form of the notice containing the information and advice.

Reason for taking power

12. At Stage 1 of the Bill, some stakeholders and MSPs expressed concerns about the impact of the service of an overcrowding statutory notice on those living in the house. The Scottish Government therefore lodged an amendment to ensure that information and advice would be provided to them. The duty to serve on the occupier a notice containing information and advice will ensure that every occupier of an affected house will receive the contents of that notice as a minimum level of information and advice. It is therefore considered necessary that the content of that notice should be prescribed by Ministers in order to ensure that every affected occupier receives the same, appropriate information and advice.

Choice of procedure

13. Before making an order under section 17B, the Scottish Ministers are required by subsection (7) to consult local authorities, representatives of landlords and occupiers of houses, and other appropriate stakeholders. Given this requirement for consultation, and the fact that the content of the information and advice notice is a technical matter, it is considered that negative procedure will provide the appropriate level of Parliamentary scrutiny.

Section 26A – Guidance on Part 3

Power conferred on: The Scottish Ministers
Power exercisable by: Issue of guidance
Parliamentary procedure: None

Provision

14. This section provides that a local authority must have regard to guidance issued by the Scottish Ministers in relation to the discharge of its functions under Part 3 or related matters. The section replaces section 17(8) of the Bill as introduced, which provided that a local authority had to have regard to guidance issued by the Scottish Ministers in relation to overcrowding statutory notices.

15. Subsection (2) requires the Scottish Ministers to consult local authorities, representatives of landlords and occupiers of houses, and other appropriate stakeholders before issuing guidance under this section.

Reason for taking power

16. The power is being taken, not to enable the Scottish Ministers to issue guidance (which they could do without any legislative basis), but to require that local authorities have regard to it. As the notices are an innovation, it is thought likely that guidance will be useful in promoting good practice and consistency where the provisions are used. The power to issue guidance is considered preferable to, for example, a power to issue directions, as this will allow local
This document relates to the Private Rented Housing (Scotland) Bill as amended at Stage 2 (SP Bill 54A)

authorities the flexibility to determine how to exercise the power to require private landlords to take steps to address overcrowding, in light of conditions in their areas.

17. The Scottish Government lodged Stage 2 amendments to remove section 17(8) and add section 26A in order to make clear that guidance may go beyond overcrowding statutory notices themselves to cover any aspect of a local authority’s discharge of its functions under Part 3 and matters connected with that discharge. The requirement for Ministers to consult before issuing such guidance will ensure that stakeholders have an opportunity to express their views on the best way for local authorities to use their new powers.

Choice of procedure

18. Given the very limited effects of any guidance, which has no directive effects on any local authority or person, it is not considered that there is a need for any formal provision as to the making of guidance, such as laying before Parliament. The operation of the notices, in terms of their form, content and who must receive them, will be covered separately, by order, and the consultation requirement will ensure that stakeholder views will be taken into account. Guidance will simply assist local authorities in considering how to use their powers.

PART 4 – MISCELLANEOUS

Section 31(4) (inserts section 28B into the Housing (Scotland) Act 2006) – Landlord application to private rented housing panel: further provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative or negative resolution of the Scottish Parliament

Provision

19. Section 31(4) amends the Housing (Scotland) Act 2006 by inserting new section 28A to make provision for a landlord to apply to the Private Rented Housing Panel for assistance in exercising the right of entry under section 181(4). This is a right to enter a house to determine whether it meets the Repairing Standard or to carry out work to comply with the landlord’s repairing duty or with a Repairing Standard Enforcement Order.

20. Section 31(4) also inserts new section 28B, giving Ministers power to make by regulations further provision about applications made under section 28A. Such provision may relate to the form and content of applications and notices, the prescription of a fee to accompany applications, the procedure to be followed by applicants and the panel member, and the determination of applications and action following determination, among other matters. In the Bill as introduced, such regulations were to be subject to negative procedure.

Stage 2 amendment

21. During its Stage 1 scrutiny, the Subordinate Legislation Committee asked the Scottish Government whether the power to make further provision about the making or deciding of landlord applications could be used to deal with a range of matters which could potentially go
This document relates to the Private Rented Housing (Scotland) Bill as amended at Stage 2
(SP Bill 54A)

beyond administrative detail, and whether it would therefore be appropriate that it should be
subject to affirmative procedure.

22. The Scottish Government agreed that the power could potentially address more than
administrative detail and subsequently put forward a Stage 2 amendment to add section 31(8) to
the Bill.

Choice of procedure

23. Section 31(8) inserts into the 2006 Act new section 191(4A), which states that regulations
made under section 28B(1) are to be subject to affirmative procedure, except where they contain
provision only under section 28B(2)(b). This means that regulations that make provision only in
relation to the application fee will be subject to negative procedure, whereas those dealing with
wider matters will be subject to affirmative procedure. It is considered that negative procedure is
appropriate for regulations dealing only with application fees – as is commonly the case – given
the administrative nature of this matter and, in particular, the frequency with which levels of fees
may require to be updated.

Section 31A – Relaxation of residential restriction on leases of more than 20 years

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

24. This section amends the lease provisions at section 8 of the Land Tenure Reform
(Scotland) Act 1974. It supplements recent amendments made to the 1974 Act in the Housing
(Scotland) Act 2010 which exempted local authorities, housing associations (registered social
landlords) and rural housing bodies from the 20 year limit on residential leases.

25. Subsection (3A) has been amended in order to widen the organisations that can be
exempted from restrictions on 20 year leases to bodies other than social landlords or rural
housing bodies. It introduces a new power for Scottish Ministers to prescribe other bodies or
types of body. Subsection (3B) gives Ministers the option of placing conditions or restrictions
on the additional bodies to be exempted, the leases they may enter into and what is to happen if
any specified conditions or restrictions are breached. This includes making provision for the
protection of interests of any tenants or residents who may occupy the property. It also enables
an order to modify legislation – e.g. tenancy legislation – which might be required in the event
that conditions or restrictions are breached and the interests of tenants are placed at risk.

Reason for taking power

26. Taking a power, rather than legislating directly, is preferable because it offers the most
flexible route for recognising bodies other than social landlords and rural housing bodies who
can enter into residential leases for periods in excess of 20 years. The alternative would have
required extremely complex drafting which anticipated the types of body and types of leasing
arrangements which it would be appropriate to permit and that would result in a very inflexible
provision, which could not be applied proportionately nor take account of specific
circumstances. It is important that prescription of bodies or types of body takes into account the specific circumstances of applicants not only because they are expected to be of very different types – they may be a single private landlord body, or a class of body such as “public limited companies” – but also because bodies using this provision are unlikely to be subject to the same controls over disposal of assets or assignation of head leases which characterise the social landlord sector. This power complements the power provided by the amendment in section 31B and enables the introduction of combined leasing and funding arrangements which may draw on institutional and similar forms of long-term investment.

Choice of procedure

27. The new subsection (3D)(b) provides for an affirmative procedure which is considered appropriate given the substantive nature of the provision that may be made in exercise of this delegated power, including the power to modify enactments and to prescribe widely-defined types of body. It is also considered that Parliament would welcome the opportunity to scrutinise the restrictions and conditions which the Scottish Ministers may wish to place on prescribed bodies, the tenancy agreements they intend to offer and the protections to be afforded to tenants and residents.

Section 31B – Restriction of right to redeem heritable securities after 20 years

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

28. This section amends the standard security (heritable security) provisions at section 11 of the Land Tenure Reform (Scotland) Act 1974. It follows recent amendments made to the 1974 Act in the Housing (Scotland) Act 2010 which enables local authorities, housing associations (registered social landlords) and rural housing bodies to give up their right to repay debt early which is secured on residential property after 20 years, if that is what they wish to do.

29. Subsection (3A)(b) is amended to allow for bodies other than social landlords and rural housing bodies to choose to give up their right to redeem debt early. The amendment introduces a power for Scottish Ministers to prescribe additional bodies or types of body. The new subsection (3B) also gives Ministers the option of placing conditions or restrictions on bodies they prescribe, on the types of heritable security that the prescribed body or bodies may elect not to repay early and circumstances in which the prescription will no longer apply.

Reason for taking power

30. Taking a power, rather than legislating directly, is preferable because it offers the most flexible route for recognising bodies other than social landlords and rural housing bodies who can opt out of their right to redeem debt early. The alternative would have required extremely complex drafting which anticipated the types of body and funding arrangements secured on residential property on which it would be appropriate to permit early repayment. This approach offers a focussed solution which allows landlords to seek to be exempted from the standard security rule and for any exemption granted to them to reflect their specific circumstances, whilst
retaining the right for all other bodies and individuals with loans of over 20 years secured on residential property to repay debt early, if that is what they wish to do. This power complements the power provided by the amendment in section 31A and enables the introduction of combined leasing and funding arrangements which may draw on institutional and similar forms of long-term investment.

Choice of procedure

31. The new subsection (3C) provides for a negative procedure. This is considered entirely appropriate given the more limited scope of this power as compared to the new power inserted by section 31A, especially as there is no scope to modify enactments in this power.
Subordinate Legislation Committee

Remit and membership

Remit:
1. The remit of the Subordinate Legislation Committee is to consider and report on-

(a) any-

(i) subordinate legislation laid before the Parliament;

(ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter;

(iii) Pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Bob Doris (Deputy Convener)
Helen Eadie
Rhoda Grant
Alex Johnstone
Ian McKee
Elaine Smith
Jamie Stone (Convener)
Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Jake Thomas

Support Manager
Lori Gray
The Committee reports to the Parliament as follows—

1. At its meetings on 8 March 2011, the Subordinate Legislation Committee considered the delegated powers provisions in the Private Rented Housing (Scotland) Bill as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Scottish Government provided the Parliament with a supplementary delegated powers memorandum on the provisions in the Bill (“the supplementary DPM”)¹.

3. The Committee is content with the powers at sections: 17(7), 17B, 26A, 31(4), 31A and 31B.

¹ Supplementary Delegated Powers Memorandum
Private Rented Housing (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

<table>
<thead>
<tr>
<th>Sections 1 to 35</th>
<th>Schedule</th>
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<td>Long Title</td>
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</table>

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 5

Alex Neil

3 In section 5, page 4, line 17, leave out <refuses> and insert <decides to refuse>

Section 8

Alex Neil

4 In section 8, page 6, line 11, leave out <house concerned> and insert <person>

Section 9

Alex Neil

5 In section 9, page 6, line 39, after <with> insert <, in relation to any house within the local authority’s area>

Alex Neil

6 In section 9, page 7, line 20, leave out <such house> and insert <house within the local authority’s area>

Section 13

Alex Neil

7 In section 13, page 10, line 19, at end insert <by virtue of section 123(a) or (b) of that Act>

Alex Neil

8 In section 13, page 10, line 38, at end insert—

<6> For the purposes of this Part, a refusal to consider an application under subsection (1) is not to be treated as a refusal to grant an HMO licence under section 129(2)(b)."
In section 13, page 10, line 38, at end insert—

<(  ) In section 131 of the 2006 Act (suitability of living accommodation), after subsection (2)(d) insert—

“(da) whether any rooms within it have been subdivided,

(db) whether any rooms within it have been adapted and that has resulted in an alteration to the situation of the water and drainage pipes within it,”>

In section 13, page 10, line 38, at end insert—

<(  ) After section 131 of the 2006 Act insert—

“131A Overprovision

(1) The local authority may refuse to grant an HMO licence if it considers that there is (or, as a result of granting the licence, would be) overprovision of HMOs in the locality in which the living accommodation concerned is situated.

(2) In considering whether to refuse to grant an HMO licence under subsection (1), the local authority must have regard to—

(a) whether there is an existing HMO licence in effect in respect of the living accommodation,

(b) the views (if known) of—

(i) the applicant, and

(ii) if applicable, any occupant of the living accommodation,

(c) such other matters as the Scottish Ministers may by order specify.

(3) It is for the local authority to determine the localities within its area for the purpose of this section.

(4) In considering whether there is or would be overprovision for the purposes of subsection (1) in any locality, the local authority must have regard to—

(a) the number and capacity of licensed HMOs in the locality,

(b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need,

(c) such other matters as the Scottish Ministers may by order specify.

(5) Before making an order under subsection (2)(c) or (4)(c), the Scottish Ministers must consult—

(a) local authorities,

(b) such persons or bodies as appear to them to be representative of the interests of—

(i) landlords,

(ii) occupiers of houses, and
(c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).”.

Alex Neil

9 In section 13, page 10, line 39, leave out subsection (3)

Alex Neil

10 In section 13, page 11, line 18, leave out subsection (5)

Section 24

Alex Neil

11 In section 24, page 16, line 17, after <serve> insert <notice of>

Alex Neil

12 In section 24, page 16, line 18, leave out <by a notice>

After section 26A

Mary Mulligan

2 After section 26A, insert—

<Reports>

(1) The Scottish Ministers must, as soon as practicable after the end of each 3 year period, publish a report containing the information referred to in subsection (2).

(2) That is information, in relation to each local authority area, about—

(a) the number of overcrowding statutory notices served during the period to which the report relates,

(b) the extent to which service of the notices has reduced the overcrowding of houses,

(c) the extent to which persons have become homeless as a result of the service of the notices, and

(d) any other measures that have been taken or considered by the local authority during the period for the purpose of reducing the overcrowding of houses.

(3) A local authority must provide the Scottish Ministers with such information as they may reasonably require to comply with subsection (1).

(4) In subsection (1), “3 year period” means—

(a) the period of 3 years beginning with the day on which section 17 comes into force, and

(b) each subsequent period of 3 years.>
Section 28

Alex Neil

13 In section 28, page 19, line 17, leave out <and>

Section 29

Alex Neil

14 In section 29, page 21, line 4, leave out <and>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated).
- the text of amendments to be debated at Stage 3, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

**Group 1: Minor and technical amendments**
3, 4, 5, 6, 11, 12, 13, 14

**Group 2: Refusal to consider an application for an HMO licence**
7, 8, 9, 10

**Group 3: Suitability of living accommodation for HMO licence**
1

Debate to end no later than 20 minutes after proceedings begin

**Group 4: Refusal to grant an HMO licence: overprovision**
15

**Group 5: Overcrowding statutory notices: reports**
2

Debate to end no later than 45 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Private Rented Housing (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to without division: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 2, 13 and 14.

The following amendments were agreed to (by division)—

1 (For 119, Against 0, Abstentions 0)

15 (For 92, Against 2, Abstentions 0)

**Private Rented Housing (Scotland) Bill - Stage 3:** The Minister for Housing and Communities (Alex Neil) moved S3M-8128—That the Parliament agrees that the Private Rented Housing (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
The Deputy Presiding Officer (Trish Godman): The next item of business is stage 3 proceedings on the Private Rented Housing (Scotland) Bill. In dealing with amendments, members should have the bill as amended at stage 2, the marshalled list—that is, SP Bill 54A-ML—and the groupings, which the Presiding Officer has agreed. As usual, the division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. All other divisions will be 30 seconds.

Section 5—Access to register: additional information

The Deputy Presiding Officer: Group 1 is on minor and technical amendments. Amendment 3, in the name of the minister, is grouped with amendments 4 to 6 and 11 to 14.

The Minister for Housing and Communities (Alex Neil): The amendments in this group are minor drafting amendments that make slight changes to the wording of a few sections in order to clarify some expressions, remove ambiguity and make the drafting consistent.

Only amendment 4 needs specific comment. It relates to new section 93A of the Antisocial Behaviour etc (Scotland) Act 2004, which is inserted by section 8 of the bill. New section 93A gives the court the power, when a person is convicted of offences relating to operating as an unregistered landlord, to disqualify that person from registering as a landlord for up to five years.

A landlord may not be an individual; it could be a body such as a company or a partnership. As currently drafted, the section allows the court in such a case to disqualify a director, partner or other person involved in the management of the house. However, such a person may not be directly involved in the management of the house. Amendment 4 therefore replaces the word “house” with the word “person” so that, where the landlord is a company or other body, anyone involved in the management of the company or other body concerned could be subject to disqualification.

I invite Parliament to support amendment 3 and the other amendments in the group.

I move amendment 3.
The Deputy Presiding Officer: I call Ted Brocklebank.

Ted Brocklebank (Mid Scotland and Fife) (Con): I am sorry, but I did not ask to speak on this group.

The Deputy Presiding Officer: I am sorry about that. Your name came up on the screen.

Amendment 3 agreed to.

Section 8—Disqualification orders for unregistered landlords

Amendment 4 moved—[Alex Neil]—and agreed to.

Section 9—Power to obtain information

Amendments 5 and 6 moved—[Alex Neil]—and agreed to.

Section 13—Amendment of HMO licensing regime

The Deputy Presiding Officer: Group 2 is on refusal to consider an application for a licence to operate a house in multiple occupation. Amendment 7, in the name of the minister, is grouped with amendments 8 to 10.

Alex Neil: The amendments relate to the proposed power for a local authority to refuse to consider an application for an HMO licence when it considers that use of the property as an HMO would be a breach of planning control.

It has always been the policy position that a local authority would be able to refuse to consider a licence application if it thought that the owner of the property had failed to obtain requisite planning permission or to comply with conditions or limitations that were contained in planning permission that had been obtained. However, the current wording of proposed new section 129A that section 13 of the bill would insert into the Housing (Scotland) Act 2006 would allow consideration to be refused where there had been any breach of planning control as defined by the Town and Country Planning (Scotland) Act 1997, including minor breaches due to failure to give or display notices. Amendment 7 will correct that position by restricting the local authority’s power to refuse consideration of an application to cases where there has been a failure to obtain, or comply with conditions of, planning permission.

It has always been the Government’s intention that a refusal to consider an HMO licence application would occur before full consideration of the application, and therefore would not be the same as refusal of the application. When a local authority considered that planning permission was required, the HMO licence application would not be considered until the planning situation had been rectified. We wish to ensure that that important point is beyond doubt. Therefore, amendment 8 makes it explicit that a local authority’s refusal to consider an HMO licence application because it considers that there are planning issues is not to be regarded as a refusal to grant the licence.

Pauline McNeill (Glasgow Kelvin) (Lab): It is important to draw that distinction and clarify that a refusal to consider a licence application is not a refusal of the licence. Will the minister confirm that that means that the landlord would not be entitled to operate an HMO even though the licence had not actually been refused? I am just a little bit worried about why the Government thinks at this late stage that it is important to make the distinction. I had read the provision as amounting to a refusal—in fact, I think that I said so at stage 2—which is why I thought that it was a good provision. I want to be clear that landlords will be unable to operate if the local authority refuses to consider their application. That should amount to the same thing, surely.

Alex Neil: I confirm that landlords cannot operate an HMO until they receive a licence to do so.

Amendments 9 and 10 are consequential and remove provisions that amendment 8 renders unnecessary.

I invite Parliament to support amendment 7 and the other amendments in the group.

I move amendment 7.

Amendment 7 agreed to.

Amendment 8 moved—[Alex Neil]—and agreed to.

The Deputy Presiding Officer: Group 3 is on the suitability of living accommodation for an HMO licence. Amendment 1, in the name of Pauline McNeill, is the only amendment in the group.

Pauline McNeill: Amendment 1 deals with a continuing issue about which the Local Government and Communities Committee heard evidence. It relates to HMOs in which rooms have been subdivided and toilets, bathrooms and kitchens—otherwise known as stacked services—have been moved to accommodate more tenants. I felt that the committee was minded—as I felt that the minister was in my discussions with him—to recognise that that is a serious problem for all tenants who live in conditions that are too cramped because of subdivision or who live below a room that was previously a bathroom or kitchen.

That situation is causing many tenants untold misery and is becoming much more of an issue.
Many of my constituents have written to me to say that they have had to move out of their homes as a result or that the noise from rooms that have been changed round is becoming unbearable. Defective bathrooms that have been installed to allow the number of tenants to be increased are leaking sewage and water, and insurance companies will no longer insure tenants when such leaks have happened two or three times.

I hope that the minister and I are not at odds on what I am trying to achieve. He and his officials drew my attention to section 131 of the 2006 act, which amendment 1 would amend. Section 131 says:

“In determining whether any living accommodation is, or can be made to be, suitable for occupation as an HMO the local authority must consider—

(a) its location,
(b) its condition,
(c) any amenities it contains,
(d) the type and number of persons likely to occupy it,
(e) the safety and security of persons … and
(f) the possibility of undue public nuisance.”

After discussion, I have not really been persuaded that those provisions are clear cut or that it is clear that local authorities could consider refusing an application because a room was subdivided or because it was concerned that stacked services would cause the problems that I have talked about. In some cases, sheriffs have refused to uphold a local authority’s refusal under section 131 because the section does not make it clear that a licence can be refused on such grounds.

Members might hear this afternoon of another way to achieve the objective. I have looked at the issue in relation to all the legislation on HMOs that the Parliament has considered. I was told that it could be dealt with through planning, then through building control. I have approached all those departments, but I can see no solution. Building control departments say that they are required only to consider the standards and perhaps the dimensions in guidance; they cannot consider the use of a property. My proposal is the only and best way to ensure that local authorities that want to avoid the problems that I have described can do so without challenge in the courts.

I plead with the Parliament: this is our last chance to resolve some of the issues, which affect not just families but students and a range of people who live in such properties. Some landlords who manage HMOs and do not live in the properties pay no attention to the complaints that they receive from tenants who live in the conditions that I have talked about. At this late stage, I plead with members who think that what I have described is a problem: for clarity, please include the proposed provisions in section 131 of the 2006 act.

I am delighted that the 2006 act will—at last—be implemented in August, and I give the Government credit for the provisions that it will put in that act. However, to ensure that it is the best act that it can be, we should give local authorities the additional grounds for refusal, so that, when a landlord challenges a local authority in court for refusing an application for such reasons, the local authority is on safe ground.

I move amendment 1.

Sandra White (Glasgow) (SNP): On amendment 1, I sympathise with Pauline McNeill’s views, as I did at stage 1. I also recognise the public nuisance provision in the 2006 act.

I thank the minister for making himself available to all members to talk through the bill and the amendments. Will he provide clarification about section 17 of the bill, to which I think Pauline McNeill referred? That section will give local authorities the power to serve a statutory notice on the landlord of an overcrowded house when that overcrowding is having “an adverse effect on the health or wellbeing of any person” or on any “amenity of the house or its locality.”

That will allow enforcement action to be taken to deal with adverse effects on occupants, neighbours and others in the locality.

I ask the minister for clarification of whether section 17 covers what Pauline McNeill’s amendment 1 would cover. I am not too clear about that. Like her, I have read the bill. I spoke to her about the issue just after lunch time. I have sympathy with her, but I feel that her proposal—and I would like to hear from the minister about it—is covered by section 17 and by the 2006 act, which will come into force in August. I would like clarification before I make up my mind on whether I fully support Pauline McNeill’s amendment 1.

Robert Brown (Glasgow) (LD): I very strongly support Pauline McNeill’s amendment 1. I understand the point about section 17, but I do not feel that it deals with the issue in a satisfactory way. There is no great dispute about the fact that the problem is significant and affects a number of tenemental properties, perhaps particularly in Glasgow, although I believe that the situation is similar in other parts of Scotland.

I will put amendment 1 in context. It seems to me that amendment 1 would not require the refusal of an HMO licence. Instead, it would give local authorities discretion to look at the matter, establish whether particular aspects are satisfactory and deal with it in consequence. It
may be—as I believe that the minister will suggest—that the matter is already covered by the more general provisions in section 131(1) of the 2006 act. However, amendment 1 would put a particular onus on local authorities, specifically mention the issue and ensure that it is higher up in councils’ thinking. Also, it is appropriate, as a matter of policy, to deal with the issue in the context of HMOs, because there is a particular problem, and although it can exist in other circumstances, it comes to the fore in HMO situations.

We have heard the argument about the linkage between HMO licences and planning. Similarly, it is useful to join together the issues that are addressed in amendment 1. They could be joined together through other arrangements, but amendment 1 is a neat, effective and satisfactory way of doing it, and makes it much more likely that the local authority—which will look at the legislation that it must comply with—will deal with the matter more effectively and address the problem.

Like other members, I have had a number of representations on various aspects of HMO legislation. Amendment 1 is a small but important amendment on one such aspect, and I hope that the minister will look on it favourably.

Patrick Harvie (Glasgow) (Green): I would like to support Pauline McNeill’s amendment 1, but I wonder whether she could address one or two issues in her closing speech. We all know that her constituency contains good and bad landlords, but some of the biggest and most profitable in the industry are extremely exploitative, and we all want to reduce the harm that they do.

Two organisations that have briefed MSPs share that concern but have argued against amendment 1. The National Union of Students Scotland states that it understands the reasoning behind the amendment, but it is concerned that it could force the HMO system away from ensuring the safety of occupants, which was the original intention when the system was introduced. It suggests that changes to guidance to local authorities could make reference to subdivisions, to moving water and waste pipes and to other issues.

Shelter raised a similar concern. It is concerned about adding specific examples to a general power, which it suggests could undermine the generality of the existing power. It also referred to the possibility of using guidance to local authorities. I would like to be persuaded of the merits of voting for amendment 1, so I invite Pauline McNeill to address those points in her closing speech.

Patricia Ferguson (Glasgow Maryhill) (Lab): I, too, have been lobbied by many organisations, both within and outside my constituency. For the avoidance of doubt, I put my mind to the point that Patrick Harvie raised. In my view, in addition to the points that Pauline McNeill made and which Robert Brown amplified, amendment 1 would ensure that my constituents—many of whom are students—are no longer required to live in rooms in which there is no natural light because of subdivision and would ensure that they have sanitary facilities that work and that do not cause environmental and social problems for their neighbours.

Amendment 1 is about more than convenience or inconvenience; it is about the safety and wellbeing of those who live in HMOs and those who live in the wider environment round about. I therefore support amendment 1.

15:15

Alex Neil: We are all trying to achieve the same objective. The issue is the best way to achieve it. As Pauline McNeill stated, her amendment 1 would introduce subdivision of rooms and alteration of water or drainage pipes as issues that a local authority would have to take into account when considering an HMO application.

Pauline McNeill suggested a similar amendment at stage 2. As I highlighted then, local authorities are already required to consider the suitability of the accommodation when deciding whether to grant or renew an HMO licence. Section 131 of the 2006 act places a duty on local authorities to consider the property’s location and condition, any amenities it contains, the type and number of persons who are likely to occupy it, the safety and security of likely occupants and the possibility of public nuisance. That is not an exhaustive list, and local authorities should consider other relevant matters that might make accommodation unsuitable to be used as an HMO, such as the subdivision and adaptation of rooms. The statutory guidance on part 5 of the 2006 act, to which local authorities are required to have regard, will set out further recommended standards and licensing conditions. Therefore, I consider that Pauline McNeill’s amendment 1 is unnecessary, because the same objective will be obtained on a statutory basis as a result of the guidance on part 5.

In granting or renewing HMO licences, local authorities already apply space standards to ensure that rooms are of a sufficient size. Our guidance encourages local authorities to work with colleagues in building standards to ensure compliance. There have been issues when bathrooms and kitchens have been relocated in flats, causing nuisance. However, that applies not only to HMOs, but to adaptations of owner-
occupied housing. It is for building standards to deal with such matters.

I hope that my comments provide Pauline McNeill and others with the reassurance that they need that the matters that she is rightly concerned about are already addressed and that no further amendment is required. I ask Pauline McNeill to seek to withdraw her amendment, as the matter will be dealt with by guidance under part 5 of the 2006 act.

Pauline McNeill: I recognise the work that Alex Neil has done to make the bill better, but if I had been given a penny every time I heard a minister say at the last minute at stage 3 that there was a better way to achieve something, I would be a rich woman. There is not a better way to achieve what amendment 1 seeks, and I will briefly say why.

I am afraid that Sandra White has misread section 17, which relates to statutory notices. Local authorities will not use that section to deal with the issue, for a simple reason. Robert Brown made the important point that when a licensing committee considers whether to grant an HMO licence, it needs to know what it is looking for. It is crucial that we place the issues of subdivision and adaptations higher up in licensing committees’ thinking when they are applying section 131 of the 2006 act. I know that Sandra White is sympathetic to amendment 1, but she is wrong, in that the issue needs to be dealt with before a landlord is granted a licence in the first place.

Let me address the issues that Patrick Harvie raised. Good landlords—I put it on record that there are many of them—do not tend to cram tenants into subdivided rooms with no light. The University of Glasgow students representative council came to me this week and gave its support for amendment 1. Members might have received an e-mail from the SRC on the issue. The reason for that is that students across Glasgow have been raised. Good landlords—

The issue is nothing to do with granting a power; instead, it is to do with giving local authorities reasons, if they so wish, to reject a licence application when the subdivision of rooms would mean that tenants would get a poor deal or the property would be a poor HMO. If Alex Neil supports the general intention, I do not see what is wrong with adding to section 131. He says that the local authority can take into account the location, the condition, any amenities and the possibility of undue public nuisance, but that is not clear enough.

All I am asking is for the Government to add two things to that list, so that if local authorities want to reject licences because of stacked services and subdivisions, they can do so. There have been cases in which the sheriff refused to uphold the decision of the local authority because the decision was made on those grounds. We are making law here, so I ask members to make the law clear. We will not have another chance to do this. I plead with members: they have nothing to lose if they support amendment 1, and I ask them to do so.

The Deputy Presiding Officer: I take it that you wish to press amendment 1.

Pauline McNeill: Yes, I am happy to press it.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a five-minute suspension followed by the division.

15:20

Meeting suspended.

15:25

On resuming—

The Deputy Presiding Officer: We come to the division on amendment 1.

For

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Allan, Alasdair (Western Isles) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Aileen (South of Scotland) (SNP)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Loudoun) (SNP)
Constance, Angela (Livingston) (SNP)
Craighie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Margaret (Glasgow Baillieston) (Lab)
Don, Nigel (North East Scotland) (SNP)
Doris, Bob (Glasgow) (SNP)
Ewing,ergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
FitzPatrick, Joe (Dundee West) (SNP)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghamhame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
I believe that the existing licensing provisions were suggested that many local authorities did not the problem in different ways. However, evidence different local authorities have attempted to tackle 2006 act to address that growing problem: indeed, that local authorities already have powers in the set out in the Housing (Scotland) Act 2006, to be amending the licensing provisions for HMOs as minister for Housing and Communities persuaded me that the problem would be best tackled by the division is: For 119, Against 0, Abstentions 0.

Amendment 1 agreed to.

The Deputy Presiding Officer: Group 4 is on refusal to grant an HMO licence: overprovision. Amendment 15, in the name of Ted Brocklebank, is the only amendment in the group.

Ted Brocklebank: In speaking to amendment 15, I pay tribute to Suscoms—Sustainable Communities (Scotland)—which first alerted the Public Petitions Committee to a variety of problems regarding houses in multiple occupation in parts of our towns and cities. In supporting the original petition, Pauline McNeill and Sandra White in parts of our towns and cities. In supporting the original petition, Pauline McNeill and Sandra White raised HMO problems—which we have now resolved—in Glasgow; Margo MacDonald, Mike Pringle and Robin Harper spoke about similar problems in Edinburgh; and I drew the committee’s attention to the overconcentration of HMOs in the town centre of St Andrews, where I make my home.

Initially I believed that the problems might be resolved by requiring all HMO applications to be subject to planning approval by the local authority. However, our pragmatic and ever-resourceful Minister for Housing and Communities persuaded me that the problem would be best tackled by amending the licensing provisions for HMOs as set out in the Housing (Scotland) Act 2006, to be introduced in August.

Amendment 15 proposes an entirely new section 131A in the part of the original act that relates to the licensing of HMOs. To those who might say that it is a fairly heavy hammer to crack a relatively small nut, I say that the daily lives of people—let us call them the local indigenous populations—in certain areas of our cities and towns are being blighted by the very high density of HMOs in their neighbourhoods.

Some might argue, as the minister originally did, that local authorities already have powers in the 2006 act to address that growing problem: indeed, different local authorities have attempted to tackle the problem in different ways. However, evidence suggested that many local authorities did not believe that the existing licensing provisions were
recognise that students and others have a right to
centre HMOs, but it is equally important to
such as St Andrews has about the number of town
concerns that the indigenous population in places
the 2006 act.
subsection (4)(b) of proposed new section 131A of
Brocklebank. They relate, in particular, to
clarification from the minister and from Ted
concerns about amendment 15, on which I seek
15:30
closer harmony with existing tenants.
communities in which tenants in HMOs can live in
position whereby we will have more balanced
retrospective but seeks, over time, to achieve a
many HMOs. The proposed provision is not
in which they believe that there are already too
absolute right to refuse HMO applications in areas
applications solely on the grounds that there were
already too many HMOs in that locality.
Margo MacDonald (Lothians) (Ind): I want to
to say how much I appreciate amendment 15; I
congratulate Ted Brocklebank on lodging it. We
will sorely miss him, but the amendment will be a
good testimony.
Ted Brocklebank: I am very grateful to Margo
MacDonald for her kind words.
I draw members’ attention to the situation in St
Andrews, which I may have mentioned before.
The core of the town, which is arguably the most
complete medieval town centre in Scotland, is now
given over virtually entirely to students living in
HMOs. Some local streets have as few as eight
permanent residents and as many as 35 HMO
flats, which means that there could be as many as
140 HMO bed spaces in one thoroughfare. Many
of the houses in the historic quarter are listed, but
a large proportion are owned by absentee
landlords and there is growing concern about the
lack of maintenance of buildings and gardens in
one of the most important tourist venues in
Scotland.
Of course, students and other tenants in HMOs
have an absolute right to safe and secure
accommodation, but HMOs do not exist in
isolation. How can we have socially cohesive
neighbourhoods when, as in St Andrews town
centre, 85 per cent of the residents impose their
lifestyles on the remaining 15 per cent?
Amendment 15 does not seek to reduce the
number of HMOs, or to support some residents at
the expense of landlords, students or other
tenants, but it gives licensing authorities the
absolute right to refuse HMO applications in areas
in which they believe that there are already too
many HMOs. The proposed provision is not
retrospective but seeks, over time, to achieve a
position whereby we will have more balanced
communities in which tenants in HMOs can live in
closer harmony with existing tenants.
I move amendment 15.
15:30
Iain Smith (North East Fife) (LD): I have some
concerns about amendment 15, on which I seek
clarification from the minister and from Ted
Brocklebank. They relate, in particular, to
subsection (4)(b) of proposed new section 131A of
the 2006 act.
Ted Brocklebank has rightly highlighted the
concerns that the indigenous population in places
such as St Andrews has about the number of town
centre HMOs, but it is equally important to
recognise that students and others have a right to
somewhere to live. We must ensure that
amendment 15 has no unintended consequences.
For example, it might result in someone letting a
property as it stands and having just two residents
rather than subdividing it and letting it as an HMO
to three or four residents. That would increase the
demand for accommodation rather than reduce
the number of students who lived in the area. We
must ensure that amendment 15 does not have
such unintended consequences.
I seek an assurance that subsection (4)(b)—
“the need for housing accommodation in the locality and
the extent to which HMO accommodation is required to
meet that need”—
will be an important aspect when any limitation on
the number of HMOs in an area is considered, and
that local authorities will have an absolute duty to
ensure that housing need is being met in that
area. I seek an assurance that if there is a need
for HMOs, regardless of whether there is already a
large concentration of them, housing need will be
the main priority when a licence application is
considered.
It is very important that we have such an
assurance on record, because otherwise, in
places such as St Andrews, we might end up
forcing people out of perfectly adequate
accommodation simply to meet the requirements
of the provision. In doing so, we might leave
students homeless or facing unaffordable rents
because of a reduction in the number of residents
who would be living in accommodation that at
present is being used as HMO accommodation.
Patrick Harvie: I have more serious concerns
about amendment 15 than I had about
amendment 1. Perhaps it would be unfortunate to
interpret what Ted Brocklebank said in this way,
but there will be those who will interpret him as
having said that there are some properties that
just should not have students living in them and
that there are some neighbourhoods that just
should not have too many students because other
people do not like living in student areas. I am
sure that that was not Ted Brocklebank’s intention,
but there will be those who will draw that inference
and there are certainly those who make that case.
My concern is that if we agree to amendment
15, some of the people who just do not like
studenty areas and who think that there are just
too many HMOs—not necessarily too many, given
the level of need, but just too many for their
taste—would have an excuse to take or to
threaten action against their local authority.
Other unintended consequences could arise if a
limitation on the number of HMOs were to be put
in place by a local authority. That could prevent
good, higher-quality landlords from coming in to
provide accommodation. If an area has bad
landlords who have bad practices and who charge exploitative rents, we would obviously rather see good landlords coming into that area and offering students—or any other HMO tenants—a better deal. I worry that if we agree to amendment 15, we might prevent such improvements.

Amendment 15 does not seem to establish a relationship between the different factors to which a local authority must have regard under subsection (4) of proposed new section 131A of the 2006 act. It mentions “the number and capacity of licensed HMOs in the locality”, the level of need for HMO accommodation, and “other matters” that may be specified, but it does not say whether a higher priority should be attached to the first factor than to the second. I worry that some local authorities would be tempted, or would be put under significant pressure from residents, to attach a higher priority to the first factor—the number of HMOs and their capacity—and a lower priority to the level of need that existed and the extent to which HMO accommodation could meet that need. Therefore, I am not sympathetic to amendment 15.

Alex Neil: Having listened to Ted Brocklebank’s concerns about the issues that concentrations of HMOs are creating in St Andrews, I welcome his amendment 15. Given that Ted Brocklebank is also retiring on Tuesday, I thank him, on behalf of the whole chamber, for his enormous contribution to the Parliament and wish him well in his retirement. [Applause.] If amendment 15 is agreed to, it should be forever known as the Brocklebank amendment.

It is only right and proper that local authorities should have the powers to weigh up the needs for HMOs against their impacts on neighbours and communities in deciding whether to grant HMO licences. Making that a discretionary power—I emphasise the word “discretionary”—will allow local authorities flexibility to deal with issues in problem areas where necessary without unnecessarily overburdening those that have no need for it. To provide protection for vulnerable tenants and minimise the risk of homelessness, in using the powers local authorities will have to consider tenants’ and applicants’ views and the need for HMOs in the locality; I believe that that deals with the points made by Iain Smith and Patrick Harvie. That is especially important, given the potential impact of the welfare reform agenda.

Amendment 15 includes the power for ministers to specify through secondary legislation other matters for consideration in deciding whether to refuse a licence on the ground of overprovision or assessing whether there is overprovision. That is helpful, as it will enable the Scottish Government to make provision to ensure that full consideration is given to relevant matters before an authority decides to refuse a licence on that ground. Before making any such secondary legislation, ministers would be required to consult local authorities as well as landlord and occupier representatives.

I therefore welcome amendment 15 and invite the Parliament to support it.

Ted Brocklebank: I am very gratified by the minister’s kind words and his acceptance of my amendment. I might have more to say in a valedictory sense in my final contribution, which will be in the main debate.

I believe that the amendment will provide a small but extremely effective weapon in local authorities’ armoury when they come to deal with HMO applications in future, especially in areas where there is already overprovision.

As the minister said, the powers will still remain directly with the local authority; they are not retrospective and any decisions will be entirely at the discretion of the local authority.

Iain Smith: Will the member take an intervention?

Ted Brocklebank: I want to make one or two other points.

I pay a personal tribute to Alex Neil, who has been more than generous in the time that he has given to help solve an undoubtedly difficult problem. I am delighted that our joint efforts in this respect have borne fruit today and I wish him well in whatever future capacity he finds himself after 5 May.

I am also grateful to those from other parties who gave their support. Once again, I congratulate Suscoms on its detailed submissions and tenacity in seeing this important piece of legislation all the way from the Public Petitions Committee to—hopefully—the statute book.

The Deputy Presiding Officer (Alasdair Morgan): The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Bran, Rhona (Midlothian) (Lab)
Brown, Gavin (Lothians) (Con)
Brown, Keith (Ochil) (SNP)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Carlaw, Jackson (West of Scotland) (Con)
Amendment 2, in the name of Mary Mulligan, is the only amendment in the group.

Mary Mulligan (Linlithgow) (Lab): At stage 2, I sought to introduce an amendment that would give some reassurance to those, including Local Government and Communities Committee members, who had concerns about the measures being introduced by the section on overcrowding. We all want overcrowding to be tackled and ended, but there were concerns about unintended consequences, including homelessness.

My amendment at stage 2 sought to introduce a review of the measures after three years. However, it was pointed out to me that my amendment as worded may also have had unintended consequences and, having had the principle accepted by the committee, I was happy to withdraw my amendment.

I am grateful to the minister and his officials for meeting me and assisting in the drafting of amendment 2. I am also grateful to Shelter and NUS Scotland for supporting it. I think that the Convention of Scottish Local Authorities has raised fears about unnecessary burdens that are grossly overexaggerated, and I hope that it will reconsider its position on the amendment.

I am supportive of measures to tackle overcrowding, and amendment 2 seeks merely a review by the Scottish Government after three years to ensure that those measures are working as intended.

I move amendment 2.
The Deputy Presiding Officer: At this stage, I should say that I am extending the time limit for this group so as not to curtail debate unreasonably.

Alex Neil: I thank Mary Mulligan for moving amendment 2, which I support. I have previously told the Local Government and Communities Committee that the Scottish Government would monitor the number of overcrowding statutory notices issued and review their effectiveness in dealing with overcrowding and their impact on homelessness.

As I made clear at stage 2, I consider it to be sensible to reassure those who have concerns about overcrowding statutory notices by going further and placing a statutory requirement on ministers to publish a three-yearly report on the number of notices served and their effects. The power for ministers to obtain the necessary information from local authorities will be useful in enabling the completion of the report. I therefore welcome amendment 2 and invite the Parliament to support it.

Amendment 2 agreed to.

Section 28—Premiums
Amendment 13 moved—[Alex Neil]—and agreed to.

Section 29—Tenant information packs
Amendment 14 moved—[Alex Neil]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Private Rented Housing (Scotland) Bill

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-8128, in the name of Alex Neil, on the Private Rented Housing (Scotland) Bill.

15:45

The Minister for Housing and Communities (Alex Neil): I am pleased to open the debate and to move the motion in my name.

I thank the Local Government and Communities Committee for its detailed consideration of the bill, which was informed by evidence from a wide range of stakeholders. I appreciate the time that was taken by the committee to seek the views of key stakeholders. The bill has benefited from the debate in committee and the chamber, and from on-going dialogue with stakeholders.

I thank the clerks to the committee for their help and co-operation throughout the passage of the bill. I also particularly thank the bill team in the Scottish Government, who have been extremely helpful to me in progressing a fairly complex and complicated bill.

The Scottish Government sees a modern, thriving, high-quality Scottish private rented sector as an essential part of housing provision in Scotland. In our document, “Housing: Fresh Thinking, New Ideas”, we outlined our wish to strengthen the private rented sector. We also want to do what we can, within our limited power and resources, to make that happen. We have made submissions both to the previous Chancellor of the Exchequer, Alistair Darling, and to the current chancellor, George Osborne, asking them to extend the tax advantages that exist for investment in commercial property to investment in the housing sector. If the chancellor were prepared to do so in his budget, on 23 March, that would act as a major spur to investment in housing—in particular, in the private housing sector.

It is incumbent on us to recognise that the vast majority of landlords are good landlords. That was shown in the PRS survey that was conducted two years ago by the Scottish Government. The people whom we have to tackle are the small minority, who are often geographically concentrated, who give landlordism a bad name. Those are the people at whom the bill is targeted.

At the same time, we want to ensure that the regulation that is being put in place is proportionate while protecting the rights of tenants and landlords. We also want to develop a longer-term strategy for the sector’s growth. I believe that
the Private Rented Housing (Scotland) Bill will play its part in that by giving local authorities greater powers to tackle bad practice and penalise unlawful operators, as well as by improving tenants’ and landlords’ awareness of their rights and responsibilities.

The bill is the result of a collaborative process in which evidence was taken over many months prior to the bill’s introduction and during the committee stages.

**Tricia Marwick (Central Fife) (SNP):** Will the minister assure the chamber that the powers that the bill establishes will force local authorities to act when private landlords do not live up to the expectations of the rest of us and that local authorities will have sufficient powers to deal with those private landlords, so that we will have an end of local authorities telling members of the Scottish Parliament that there is nothing they can do?

**Alex Neil:** I agree with Tricia Marwick that enforcement is crucial. The powers are now well in place and I believe that the local authorities have the tools to do the job. As Tricia Marwick and others know, we are currently undertaking a review of enforcement practice throughout the country, which will report fairly soon. We will seek to make practical proposals and implement further practical, non-legislative proposals to ensure that there is more effective implementation of both the existing legislation and the additional legislation in the bill.

The bill process has involved the local authorities, as well as representatives of the private rented sector. I pay tribute to the work of the private rented sector strategy group, which advised me on these matters and will continue to do so. Members of the group are the expert stakeholders, including tenant and landlord representatives and local authorities, and their recommendations formed the basis of the public consultation leading up to the bill. As part of the process, I established a sounding board that brought together all those with an interest in the bill so that the Government could benefit from their views on how the bill could be enhanced and developed as it moved through its parliamentary stages. Members of all parties will recognise that we have taken on board their concerns and, I hope, accommodated them at least partially in some of the amendments that have been agreed to this afternoon.

The bill strengthens the system of landlord registration, including by expanding the fit-and-proper person test and by making it clear to local authorities that issues such as antisocial behaviour must be taken into account. It gives local authorities new powers to obtain information to crack down on unregistered landlords, including an ability to require managing agents to provide a list of properties that they manage. It improves and enhances the system of the licensing of houses in multiple occupation that comes into force this autumn by giving local authorities powers to consider whether requisite planning permission has been obtained. That will help local authorities to strike the right balance between providing safe, decent accommodation for students and other tenants and considering the impacts on communities of concentrations of HMOs.

The bill gets tough on the worst offenders by increasing the maximum fines for HMO-licensing and landlord-registration offences to £50,000. That sends a clear message that we recognise the seriousness of such offences and that they will not be tolerated.

The bill will not only help local authorities to crack down on poor landlord practice, but help to protect tenants by improving their understanding of their and their landlords’ rights and responsibilities through the mandatory tenant information pack, and by strengthening local authorities’ powers to deal with overcrowding. By clarifying the position and enabling the Government to specify what reasonable fees can be charged, it will prevent unscrupulous agents from charging unreasonable premiums. Further, it will help landlords to meet their responsibilities with regard to the repairing standard by enabling them to access the private rented housing panel for assistance.

Amendments at stage 2 strengthened the bill’s provisions on overcrowding, taking account of concerns that were raised by the committee about the impact on vulnerable tenants and potential homelessness. As a result, the bill now requires local authorities to perform a range of additional checks and balances; that includes considering the impacts of serving the notice on the people living in the house, particularly with regard to homelessness. It also places on local authorities a duty to provide information and advice to occupants of the house when serving a notice.

David McLetchie’s amendment to the 20-year provisions on overcrowding, taking account of concerns that were raised by the committee about the impact on vulnerable tenants and potential homelessness. As a result, the bill now requires local authorities to perform a range of additional checks and balances; that includes considering the impacts of serving the notice on the people living in the house, particularly with regard to homelessness. It also places on local authorities a duty to provide information and advice to occupants of the house when serving a notice.

David McLetchie’s amendment to the 20-year rules will assist our overall approach to helping the PRS grow by unblocking barriers to new innovative funding approaches—it is a pity that Mr McLetchie is not here to hear my praise. That follows on from the powers for the social rented sector that were introduced in the Housing (Scotland) Act 2010.

I look forward to a final constructive debate on the bill, which I am confident will make an impact in areas where it is needed most.

With great pleasure, I move,

That the Parliament agrees that the Private Rented Housing (Scotland) Bill be passed.
Mary Mulligan (Linlithgow) (Lab): I am sure that I am not the only one who feels a sense of achievement when we reach stage 3 of a bill, and that is especially true when one has been particularly involved through all stages of the bill. Therefore, I am extremely pleased to have reached stage 3 of the Private Rented Housing (Scotland) Bill.

Although I welcome the measures in the bill, it is also right to point out areas in which we might have gone further and work that still needs to be done—not necessarily through legislation but perhaps, as the minister said earlier, through guidance.

The bill will strengthen landlord registration by expanding the fit-and-proper person test and increasing the level of fine for non-registration. In the stage 1 debate, I asked the minister how those measures would make it more likely that local authorities would actively pursue unregistered landlords. Unfortunately, the minister did not actually answer the question. However, he went on to ask me whether I would be willing to place a duty on councils to make them more active. I hope that whoever is the housing minister after the election will sit down with councils’ housing conveners and stress to them the importance of landlord registration. If that does not improve regulation, the Parliament will need to consider whether it needs to further strengthen the legislation.

Similar action will be required in relation to the judiciary, to ensure that it completely understands the importance of the legislation around issues such as landlord registration. If the new Government after May is a Labour Government, such discussions might be part of discussions on establishing a housing court or tribunal.

I recognise what Ted Brocklebank was trying to do with his amendment 15, which was on HMOs, and I am pleased that members supported it. I heard the witnesses who raised concerns in the committee about the overprovision of HMOs in their locality and I have frequently heard my constituents talk about the need for more houses. They have pointed out that there is likely to be increased demand for HMOs, due to changes in the housing benefit rules—perhaps up to 7,500 more properties will be needed. How will we respond to that demand?

As I did in the stage 1 debate, I support NUS Scotland’s call for a strategy to address young people’s housing needs. Whether they are students or young adults, all young people face barriers to accessing appropriate housing at this time and we owe it to them to give the issue serious consideration.

The bill will give councils powers to issue overcrowding statutory notices. I welcome that but think that fellow committee members would agree that, during the passage of the bill, we were all made aware that overcrowding is a complicated issue. I accept that parts of the legislation that we have introduced go some way towards addressing the matter, but I suspect that we cannot think that we have resolved the issue yet. I am pleased that members agreed to my amendment 2 so that there will be a review of the overcrowding measures after three years. That will allow members to be reassured that the measures in the bill are having the correct effect.

Other issues in the bill have perhaps not received quite as much attention as the issues that I have mentioned. The minister referred to one of them in his opening statement: reasonable charges. Reasonable charges are important if we are to have a responsive private rented sector that delivers housing at rates that can be afforded.

The other issue that we did not spend a lot of time considering, partly because there was a lot of agreement about it, was the provision of the tenant information pack. Again, that will benefit people. At stage 2, I moved an amendment on carbon monoxide testers, and other issues relating to gas and electricity have been raised. I look forward to the future committee working with the minister on developing the guidance that will go with the tenant information pack.

I am happy to support the bill, but there is more to do in private rented housing. Some elements will need to be legislated on and others will not, but members should be reassured that Labour will be happy to support the future housing minister in his or her efforts.

Alex Johnstone (North East Scotland) (Con): The Conservatives support and will vote for the bill.

Going through the process has been interesting and certain aspects of today’s procedures have been particularly interesting. We have before us legislation that has been arrived at through a particular route. Of course, the Conservatives opposed the last-minute introduction of landlord registration schemes in the Antisocial Behaviour etc (Scotland) Bill in 2004, because we believed that there had been no proper consultation at that
time, and the provisions focused on creating good tenants rather than on improving the landlord-tenant relationship. However, we believe that progress has been made by the means that have been used. We need to ensure that the landlord registration scheme does not simply become a tax on landlords who provide good accommodation and service, but eliminates bad practice from the sector. Again, we have made significant progress on that today.

As the minister said, at stage 2 David McLetchie took the opportunity to lodge amendments that amended the Land Tenure Reform (Scotland) Act 1974 in relation to the 20-year rule—that is, the restriction on residential leases of more than 20 years and the right to redeem heritable securities after 20 years. The approach will allow ministers, by order, to prescribe bodies for whom the rules are relaxed, which is a vital step forward in the provision of effective housing.

HMO licensing became central to our consideration at stage 2, as it was at stage 3. I apologise for frightening a few horses at stage 2. In a discussion with Ted Brocklebank, I had agreed to ensure that HMO density was properly discussed at stage 2, so I lodged an amendment that was designed to ensure that the matter was discussed. My objective was not to require planning permission for all HMOs but to get the issue on the agenda. I apologise to anyone whom I frightened—I replied to their e-mails.

The objective was achieved. I withdrew the amendment that I had lodged at stage 2 and, after negotiation, Ted Brocklebank was able to lodge amendment 15 at stage 3. The amendment’s being agreed to has resulted in a change to the bill that I hope will deal with the problem that Ted Brocklebank identified in St Andrews, which I know exists and requires to be addressed in other areas of Scotland.

Today’s proceedings have been particularly interesting. During the past few days, the Parliament has considered a number of bills at stage 3 and very few amendments have come to a vote. We voted on an amendment today only to discover that it had been agreed to with 119 votes for and none against. I congratulate Pauline McNeill, who moved the unopposed amendment 1, and Ted Brocklebank, on their clever and astute political activity in recent days. The outcome demonstrates that if a person has experience of parliamentary procedure and works the system to their advantage, they can get their way—even if many members were surprised at just how close to the wire the voting went.

I pay tribute to Ted Brocklebank and hope that amendment 15 will serve as a memorial to his time in the Parliament. It will not be the only one; he has contributed a great deal during his time here, particularly on fisheries, his knowledge of which was valuable to us.

I say to all members who, like me, have dragged themselves around various housing organisations in recent weeks to do pre-election hustings, that many people out there think that we spend all our time fighting and arguing. My experience in the Local Government and Communities Committee, my experience during the passage of several bills in recent months and my experience of working with the minister indicate to me that, although we might have different ideas, we have the same objective. I hope that that will continue in the next session of the Parliament.

16:03

Jim Tolson (Dunfermline West) (LD): I thank my colleagues on the Local Government and Communities Committee, the committee clerks, the bill team and the minister for their hard work and dedication in bringing forward this important housing bill, which the Liberal Democrats will support at decision time.

The bill will prove to be an important piece of housing legislation, which will protect many vulnerable people while ensuring that private landlords can function in a profitable and good-quality market. The amendments to which we agreed today, the vast majority of which were uncontroversial and technical in nature, tidy things up, but given the problems that can arise from subdivision of HMOs and the friction that sometimes exists between permanent residents and students in HMO areas, it was never going to be plain sailing.

Liberal Democrats had sympathy with Ted Brocklebank’s amendment 15, on overprovision of HMOs, although we were concerned that it could restrict the availability and raise the price of student accommodation in our university towns and cities. The amendment seems to block further HMOs, but in fact it gives local authorities an option to restrict the number of HMOs, to suit local needs. As Ted Brocklebank said, the provision is not retrospective, which is important.

The Liberal Democrats hope that amendment 15 will not be used to restrict student accommodation unnecessarily and to drive up costs for those least able to afford it. We have some concerns about the possible adverse effect on our student populations, but that must be balanced against the needs of permanent residents in our towns and cities. On balance, we agreed with amendment 15, and we hope that it will be used wisely by our local authority colleagues to ensure a good balance of accommodation needs for all residents.
Pauline McNeill’s amendment 1 proved just as controversial—and Alex Johnstone has just referred to the oddness of the vote. On first reading, amendment 1 seemed to be a bit all over the place. It seemed to provide more questions than answers. However, we examined it more closely and again, on balance, we felt that it provided important protection not just to the residents of subdivided accommodation but to other residents outwith subdivided properties. A lot of this bill’s aim is about discouraging landlords from practices such as subdivision and ensuring that they are able to operate in a fair and profitable market.

There has also been some disagreement over Mary Mulligan’s amendment 2. Mary, never one to court controversy—much—has upset the Convention of Scottish Local Authorities over her subsections (2)(c) and (2)(d), which COSLA claims will “place unrealistic expectations on local government.”

In the Local Government and Communities Committee, through a number of bills and Scottish statutory instruments, I have highlighted similar concerns on a number of occasions. However, with a number of possible uses of parts of this bill, we feel that a reporting mechanism is essential to ensure that the bill is used wisely once enacted.

This bill has been one of the more difficult to work through for a whole host of reasons. Amendments at both stage 2 and stage 3 have been controversial but, on balance, we feel that it will lead to a very worthwhile piece of legislation. The Liberal Democrats will be happy to support the bill at decision time.

The Deputy Presiding Officer: We now move to the open debate.

16:07

Anne McLaughlin (Glasgow) (SNP):

Sometimes it might seem to people as if we in this Parliament are navel gazing or talking only to ourselves, but nothing could be further from the truth. This bill is an example of that. We have consulted widely and have received a tremendous response from tenants and landlords—and even from groups of people who are neither. We might wonder why those latter groups would have an interest, but in a moment I will give members the example of the Croftfoot housing action group, none of whom is a tenant and none of whom is a landlord. Despite that, the action group has played its part in the development of the bill.

Far from navel gazing, we are today considering the final stage of a bill that will make a significant difference to the lives of real people. Let me give members just two examples. I will start with the Croftfoot housing action group—a force to be reckoned with in the south-east of Glasgow. It was formed because local people were fed up with rogue landlords who were not taking responsibility for the minority of antisocial tenants, for communal property or for the community from which they profit. When this bill is passed, Marilyn and Anne Marie from the action group, who are in the public gallery today, will be able to go back to Croftfoot and tell their community that things are changing—and changing for the better. Now when they come across landlords who refuse to take responsibility, who refuse to play their part in maintaining the property and who refuse to acknowledge their social responsibilities, they will know that action will be taken—action that can include the imposition of fines of up to £50,000 for registration offences. They will also finally be able to track those landlords down.

I welcome the fact that part of the fit-and-proper person test will be a consideration of how landlords deal with antisocial behaviour by their tenants. That represents the practical support that Croftfoot housing action group has been looking for. I am pleased that it will be delivered under an SNP Government with consensus across the Parliament.

The new legislation will protect some of the families I met in Govanhill who are new to Scotland—many of whom have been trafficked, which, of course, is a wider issue. Sometimes, 20 people are living in a two-bedroom flat. Their exploitation will be curtailed because the bill will make it easier for the authorities to find and stop rogue landlords whose only interest—whose raison d’être—is to make a profit at all costs.

Shared information is the way forward. For example, if a property is not registered, no housing benefit will be paid. Some local authorities already apply that rule. However, now that I feel reassured that we are doing what we can to protect tenants and local communities, I want to say something about the good landlords on the other side of the housing benefit argument—and I know that the minister has acknowledged that there are good landlords. I am talking about the landlords who register, who provide decent, safe and warm homes at a reasonable price, but who do not get their rent because housing benefit has been paid directly to the tenant who has not passed it on. I spoke to someone just last night to whom that had happened, and she was told by people at housing benefit that it was not their problem.

We must remember that not every landlord is a millionaire property developer. Often, someone rents out their home because they have had to move away for work, although they hope to return one day. It should be the housing benefit department’s problem. I realise that that will be
another bill for another day, but it is worth mentioning. It is also worth saying again that we are talking about a minority of landlords.

I was approached recently by a woman who rents out a number of flats and seems to be fulfilling the functions of a social landlord in many ways. She has a real interest in mental health and, working with other agencies, has offered tenancies to people who are recovering from mental illness and addiction issues. Incidentally, she told me that she had only once had a problem with a tenant and she has dozens of properties. Of course, letting is a commercial transaction, but many landlords are also motivated by providing decent homes.

We all say it in passing, but I will say it again: most landlords will have no difficulty with the bill because they are decent people who provide a decent service and, indeed, have been significant in the bill’s development. To those landlords who are not decent, the bill says that everyone has the right to live in peace, comfort and safety and that, if they are putting that at risk, we are on to them. The powers that be will come to get them and no longer will they be able to stick up two fingers safe in the knowledge that nothing will happen, because it will.

The bill will make sure of that, as will people such as the fearsome—some would say scary—campaigners from Croftfoot housing action group. Given the amount of time that those campaigners have spent on the bill, they must know it inside out by now. They care about their community and I say to unscrupulous landlords that if they do not care about it too, they should steer clear.

Wherever such landlords go, they will find that tenants and communities throughout the country are protected by the bill. We must now ensure that those people know about it so that they can safeguard their homes and communities.

I commend the bill and look forward to its implementation.

16:11

Patricia Ferguson (Glasgow Maryhill) (Lab): Although the bill is one of the last that we shall consider in this session of the Parliament, its gestation has been fairly long. Most of its provisions were originally contained within the most recent Housing (Scotland) Bill and, therefore, have perhaps received more than their fair share of scrutiny.

Nevertheless, the bill that we will pass today contains provisions that will help to strengthen existing legislation on landlord registration and houses in multiple occupation. It also attempts to offer some protection to people who may live in overcrowded conditions in the private rented sector.

I do not have time to discuss all the bill’s provisions, so I will concentrate on the two that are of most interest to my constituents: landlord registration and the licensing of houses in multiple occupation.

We all recognise the need to protect people from unscrupulous landlords, but it is also necessary to do that without putting undue pressure on the decent landlords who provide good-quality accommodation, register their properties as required and fulfil their obligations.

The bill broadly delivers on that aim, which is welcome. However, I am not sure that an increase in the level of fine that can be given for offences under the legislation will have the deterrent effect for which the minister hopes. I and others made that point during the passage of the bill and I would be grateful if the minister would indicate whether he has had an opportunity to discuss with the law officers how the courts could be persuaded to take breaches of the legislation seriously, to impose fines that we think are proper on those who are convicted and, thereby, to provide a real deterrent.

The Parliament passed HMO legislation in an earlier session because it recognised that young people and vulnerable people needed protection from unscrupulous landlords who exposed them to unsafe and sometimes downright dangerous situations. The issue came to a head when two young students died tragically in a fire in my constituency because they could not escape through the barred windows of the basement flat that they were renting.

HMO legislation has helped to make conditions safer for people who rent, but the time has come for us to look at the bigger picture and consider the effect that multiple occupation has on the fabric of properties and on the communities where those properties are located.

It is in no one’s interest for entire areas of our towns and cities to be swamped by properties that are rented out in this way. We must surely all desire vibrant, diverse communities that people want to live in. I hope that a strategy for young people’s housing will be developed and that those issues will be considered when that is done.

For those reasons, I very much welcome the amendments in the names of Pauline McNeill and Ted Brocklebank. I congratulate the minister on his Damascene conversion. It reminded me that, many years ago, a former colleague of mine said that Alex Neil could cause a fight in an empty house. I am happy that Mr Neil did not live up to that description this afternoon and that he showed...
that he has many qualities that are perhaps more desirable to the rest of us.

The amendments that Pauline McNeill and Ted Brocklebank lodged are important, because they address the central issue of inappropriate conversions that damage the fabric of buildings, cause nuisance—and, often, inconvenience—to neighbours and often mean that young people and vulnerable people live in properties whose standards would in all other circumstances be deemed intolerable. My only worry about Ted Brocklebank’s amendment 15 is that it leaves much of the responsibility with local authorities. However, on balance, it is probably best to allow local authorities that flexibility, so I accept the rationale that is at play.

Questions still remain in my mind about the bill’s efficacy. Will it deliver the deterrent effect that it promises? Does it put in place the right measures to deal with overcrowding, without imposing a greater burden on social landlords? Does it go far enough in controlling HMOs appropriately? I suppose that time will tell. In the meantime, I thank all those who have been involved in the bill’s passage—particularly the witnesses, whose evidence genuinely helped to shape the bill.

16:16

John Wilson (Central Scotland) (SNP): It was a privilege to be a member of the committee that examined the bill. It was clear that not all local authorities have taken a vigorous approach to landlord registration. I know that discussions have taken place with legal authorities about prioritising prosecutions in relation to registration, where the law has been flouted.

Members are only too aware of their own experiences of private rented housing and of their constituents’ experiences. The Local Government and Communities Committee generally agreed on the principles in the bill, but that was not achieved without clarification of the proposals as outlined.

The bill’s fundamental aim is to provide detailed regulation of the private rented housing sector, which will secure tenants’ rights in that increasingly important sector of the housing market. As I said in the stage 1 debate, the committee recognised that “overcrowding is a significant and serious issue”.

In practical terms, concerns have been raised about the implications of how the bill tackles overcrowding and about the obligations on local authorities. In its stage 1 report, the committee detailed the concern about whether local authorities will have the financial resources to make the bill work in practice.

At stage 2, the bulk of the examination of the bill related to overcrowding statutory notices. The Government allayed the concerns that were noted at stage 1, and two non-Government amendments were agreed to.

In considering the mechanics of a bill’s progress, it is always necessary to remember the hard-fought campaigns that people and organisations have undertaken to shine a light on the problems that they deal with daily. As part of the Public Petitions Committee’s work, I—along with Frank McAveety and Anne McLaughlin—made a visit to Govanhill that showed us that people and communities still face landlord blight and that communities are prepared to call time on shameful and, to be frank, unpleasant landlord practices.

The Local Government and Communities Committee was presented with clear evidence of the scale of disputes between landlords and tenants in the private sector. Illegal evictions and repairs that had not been undertaken were only a few of the problems that were highlighted in evidence sessions.

Part 4 of the bill enables a private landlord to apply to the private rented housing panel for assistance in accessing property to comply with the repairing standard. That is welcome. Part 4 also requires private landlords to provide tenants with a tenant information pack, which is a welcome measure and will help tenants to understand their rights and landlords’ obligations under tenancies.

Mary Mulligan referred to private landlords and obligations in relation to carbon monoxide testers, as well as monitors for gas and electrical equipment. I, too, make a plea for any future Government that comes in to look at the installation of hard-wired fire alarms. A Strathclyde Fire and Rescue report states that the majority of fatal fires in 2009-10 occurred in flats and that there were a total of 23 preventable deaths in house fires in the local authority areas that constitute the Strathclyde area. That is an obligation that should be put on private landlords and other landlords.

In terms of making communities safer, I hope that the bill will make landlords aware of their responsibilities.

Although the bill will address some of the concerns that have been identified about what can be described, at best, as a level of consumer dissatisfaction with private sector landlords, extra diligence by local authorities is required.

I welcome the stage 3 debate and the bill’s key principles. I look forward to the bill coming into force, as I believe that it will have a positive effect in reducing the number of rogue landlords. It is important to understand that the bill is aimed at
rogue landlords; it is not aimed at the vast majority of landlords who carry out their duties, work with tenants in a meaningful way and provide a useful service to Scotland.

I thank all those who provided both written and oral evidence during the various stages of the bill. I also thank the committee clerks, the Scottish Parliament information centre, the minister and his civil servants, and my colleagues on the Local Government and Communities Committee, who have made this a worthwhile bill. I hope that it will be passed at decision time.

16:21

Charlie Gordon (Glasgow Cathcart) (Lab): I welcome the opportunity to make a brief contribution. In the stage 1 debate I spoke exclusively on the rogue landlord aspects of the bill, given the antisocial behaviour of the tenants of rogue landlords in my constituency. I make no apology for reiterating my concerns, because the problems are on-going.

A new case that landed on my desk the other day made me reconsider my previous definition of a rogue landlord. Hitherto, all my casework involved complaints about the antisocial behaviour of the tenants of landlords who are unregistered under current legislation and who are therefore, by definition, rogue landlords. In this new case, the landlord is registered, but he has told the exasperated neighbours of his antisocial tenants that he is just an investor and that they should talk to his managing agent.

I have written to the landlord in question at his home in a leafy suburb outside Glasgow, to ask him not to act like a rogue landlord and to restore my constituents’ quality of life.

I would have hoped for more effective enforcement of the existing legislation in such cases, but the enforcement authorities in Glasgow have been adamant that the legislation needed strengthening. As the minister says, after today they will have the full set of tools for the job and I, for one, intend to ensure that they do their job with those tools.

When the bill is enacted, it should spell the beginning of the end for rogue landlords. It should also be a big setback for unregulated, irresponsible letting agents. That is a good thing, as they currently do little or nothing to vet the suitability of potential tenants.

When some aspects of the bill were removed from the recent Housing (Scotland) Bill, I expressed fears in the chamber that we would run out of parliamentary time to deal with those important matters. I am delighted to have been proven wrong, but it was a close-run thing.

16:24

Bob Doris (Glasgow) (SNP): I start by saying something that I think that we all agree on: the private rented sector must become increasingly important in the provision of good-quality, affordable housing. Given the significant cuts of £800 million that have been made to Scotland’s capital budget in the coming financial year alone by the United Kingdom Government, it will be ever more difficult to meet housing need within the public sector alone.

We do not want it to be that way, but we have to acknowledge that it is. Therefore, we need the private sector and we have to work in partnership with it. As has been pointed out, most private sector landlords are excellent. Our discussions with the Scottish Association of Landlords show that those at the top of the game in the private sector can be a power for good in meeting housing need. That is why the bill must ensure that we regulate effectively to achieve the highest standards. Regulation under the bill will allow us to move a significant way towards doing that.

The lack of prosecution of unregistered landlords has concerned us all for a while. The only prosecution that we have had of an unregistered landlord resulted in a derisory fine being handed out. The issue has been mentioned, but it is important to reinforce the point that there is a need for better and more effective prosecution and more significant fines. I therefore welcome the increase in the maximum fine for unregistered landlords to £50,000, which I hope will drive change, although time will tell on that. I look forward to seeing the guidelines that the minister has talked about on best practice in securing prosecutions and engaging in enforcement.

Fines that are given to unregistered landlords should be retained in Scotland and used to pay for enforcement and the regulation of the private rented sector. The money should not simply flow to the London Exchequer, as currently happens. To put it bluntly, why should Scotland’s local authorities have to pay to enforce regulation while any profit—if I can use that terminology—from court fines travels south? Perhaps that is an argument for another day, but if prosecutions become increasingly successful, as we all hope that they will, that situation would surely stick in the craw of Scottish councils. Regulating the sector is hardly inexpensive, but local authorities get no cash benefit to reinvest in that area. I draw the distinction that the cash benefit would not cross-subsidise anything else; the money would come back to pay for effective regulation of the sector.

I welcome the introduction of landlord registration numbers, which should be a driver for consumer change, as I have said previously. I
would hope that no one would buy a car that was not MOT’d, so why do people move into houses that are unregistered and do not have all the safety features that they should? We must drive that consumer change and ensure that there is consumer responsibility.

I would like to know more about how the tenancy deposit scheme, which would secure deposits for tenants should they leave a landlord, will work. I am interested in whether registered landlords will be the only people who will be able to opt into that scheme. I would also like to know how the benefits system will interact with landlord registration. The minister has spoken about considering greater tenancy security for social tenants in the private sector to meet affordable housing need. There is a lot of work to do as we move forward. I cannot say whether the housing minister in the next Scottish Government will be male or female, but I am content with the one that we have. Of course, I suspect that appointing the next housing minister will be Alex Salmond’s job as First Minister.

16:28

Jim Tolson: One principal element of the bill is the measures on the registration of private landlords. Alex Neil said that the bill is targeted at a minority of landlords who give the industry a bad name. The bill targets the worst offenders, which was the point that I made during the stage 1 debate when I suggested that good landlords have “nothing whatever to fear” from the bill. Let us hope and pray that that means the majority of landlords. Other landlords will have to either shape up or ship out. There will be no room for poor landlords in the future.

The danger to residents cannot have been set out more starkly than in the example that Patricia Ferguson gave, which was a welcome reminder to us all. Charlie Gordon said that the bill is “the beginning of the end for rogue landlords.” As is often the case, he hit the nail on the head quite well.

Mary Mulligan sought to expand the fit-and-proper person test that is in the bill and I welcome that. She also talked about impressing the proposed changes on local authorities and the judiciary, which is also key. There is no point in our raising the level of fines or making sure that local authorities do the checks if there is no enforcement. The carrot and the stick are often required in legislation, and that is no less true than for the bill we are discussing today.

Overcrowding was another key area for me while I worked through the stages of the bill in committee and in the Parliament. Mary Mulligan said that it is a complicated issue. I certainly found some of the amendments—including those on overcrowding in particular—very complicated, because of their potential outcomes. We had to make sure that we got things as right as possible, which is why, at the end of the day, the Liberal Democrats were happy to support the amendments on overcrowding.

Alex Johnstone mentioned the stage 2 amendment that he lodged so that HMO density would be discussed. Although that discussion was certainly welcome, I have also discussed the issue with permanent residents in St Andrews, who, like people in other places in the country, have deep and long-held concerns that must be listened to. In agreeing to Ted Brocklebank’s amendment today, the Liberal Democrats feel that the bill now strikes a reasonable balance between the needs of all residents in areas where there are HMOs.

The bill has meant a significant amount of work for the committee, and I paid tribute earlier to all those who were involved. We had extensive and sometimes testing committee sessions on the bill. We had concerns about some of the stage 2 amendments, although the evidence from and on behalf of students and permanent residents was clear for all to see. We have agreed to amendments today that should, in time, provide solutions for both sides and help them to live in harmony in their communities.

I am glad that John Wilson mentioned hard-wired smoke alarms. I promoted them as part of the Scottish housing quality standards while I was on Fife Council. As a homeowner who once had a fire—fortunately, I was not at home at the time—I know that the smoke alarm allowed the fire service to take quicker action. I personally welcome any action that ensures that hard-wired smoke alarms are provided.

The Liberal Democrats believe that private rented accommodation plays an essential part in meeting our housing needs and we support the benefits and improvements that the bill will bring.

16:32

Ted Brocklebank (Mid Scotland and Fife) (Con): In winding up for the Conservatives today, I begin what will possibly be my final contribution in this place by saying how grateful I am for the kind words of my friend and colleague Alex Johnstone, the minister, Margo MacDonald and others who referred to my impending departure.

Enoch Powell said: “All political lives ... end in failure.”

Although I do not place myself on quite the same pedestal as the sainted Enoch, today’s events at least give the lie to his gloomy prognosis of the
careers of folk who devote themselves to the dark art of politics. Here I am, in my final contribution in this chamber, with a genuine achievement to boast about. Okay, it has taken me nearly eight years, but better late than never.

To those who have some fears about the amendment that I lodged, I should say that, as a landlord, I know that there are excellent and responsible landlords. I know that there are also splendid tenants, and I have had few problems with my tenants over the years.

Alex Neil: Can the member confirm that he is registered? [Laughter]

Ted Broicklebank: Absolutely, as the minister will discover if he checks the register of landlords.

However, there have been problems. Pauline McNeill and Patricia Ferguson alluded to some of them, and I mentioned particular problems in relation to the overconcentration of HMOs in some areas and the apparent lack of courage of certain local authorities to use existing legislation to resolve those problems. At least as a result of today’s business—and we leave it very much up to the local authorities—there will be no excuse that they didnae ken: it is there in the text of the bill.

Following the housing minister’s personal endorsement, I firmly believe that new section 131A of the Housing (Scotland) Act 2006, which comes into effect in August and will give local authorities the power to end ghettos of HMOs in our towns and cities, will be referred to by future generations as the Broicklebank amendment, much as John Sewel gave his name to Sewel motions and Joel Barnett gave his to his famous formula, with its consequentials et al. For once, if only in my home town, I may at last be regarded as not a total waste of space.

I crave your indulgence, Presiding Officer, and wonder if I might make a few valedictory remarks. I offer genuine thanks to colleagues from all parties who supported my amendment today, and who have made my time in this place such a genuinely pleasurable experience.

Dammit, I’ve enjoyed learning about public transport in Lower Westphalia from Chris Harvie; Stewart Stevenson has enthralled me with the load of learned lumber contained in that remarkable head of his; and when it comes to plucking on the heartstrings, nobody does it better than the coal miner’s daughter, Helen Eadie. But there are also some fairly impressive performers in this place—mostly, I have to say, on the benches around me, as members would imagine, but also from other parties. They know who they are, and I am going to miss them.

As a born poacher rather than a gamekeeper, it will be good to shake off the shackles and the whips and speak my mind again, not least on such subjects as the common fisheries policy, on which my views have changed not one iota in eight years, the future of the media in Scotland and—particularly close to my heart these days—that warmest of sub-Saharan African countries, Malawi.

Since he believes that I never give him the credit that he is due, I pay a final and public tribute to my loyal chief of staff—that is his chosen job title—Dominic Heslop. His name will appear in the Official Report at long last.

In what is likely to be my final utterance in this place, I venture the hope—to paraphrase Fu Manchu—that the wider world of Scottish politics may not yet have heard the last of me. But that is for another day. In whatever capacity I find myself after next Tuesday, I will continue to take a very close and personal interest in this place.

Thanks for the memories—it’s been a ball. [Applause.]

16:37

Mary Mulligan: I offer my best wishes to Ted Broicklebank for all that he has done, particularly today. He said that his closing speech will probably be his last contribution; we should all remember that this could be our last contribution. I am glad to hear that he is a registered landlord.

The debate has been very consensual—or at least that is what I was going to say until I heard Bob Doris. His speech was probably fairly light for him, but I realised when he got to his final sentence that he was not serious after all, so I will not comment further.

I must say how grateful I am to fellow committee members for the way in which we have been able to progress not only this piece of legislation but others that have gone before. I thank the committee clerks, who have been ever helpful, and the minister and his officials for the way in which they have supported us through the bill process. We have had two gos at getting to this stage, as other members have mentioned, but I hope that what we have finally arrived at will deliver on our intentions. Finally, I thank those who provided oral and written evidence to the committee, as it was thorough and clearly guided us as to how we should act.

The minister and others, such as Anne McLaughlin and Patricia Ferguson, referred to the very many good landlords who operate throughout Scotland, and I associate myself with those remarks. It is true that the majority of landlords act responsibly but, unfortunately, as we know from our casework and from the examples that we
heard about in evidence, there are others who do not. That is why the bill was necessary.

The minister’s establishment of the private rented sector strategy group was welcome, and I think that it was the right thing to do to ensure that we got a broad range of opinions on how we could further improve the private rented sector. I notice that he said that he intended to continue with the group, and I approve of that, but I wonder whether he might also want to support some of the suggestions that Shelter made in its briefing. It suggested that there should be a review of the short assured tenancy regime, and I have some sympathy with that; I wonder whether the minister and others do, too. It is important that we have a scheme that delivers for tenants and for landlords, and it may be that there is a need for an assessment of short assured tenancies.

I support Shelter’s proposal for the development of a new approach to providing tenants with information and advice. Earlier, I mentioned the information pack that will be available. It is important that tenants and landlords are fully informed of their roles, and the rights and responsibilities that they have in playing those roles. More work could be done on that.

Alex Johnstone was in repentant mood. He willingly confessed that the Conservatives had opposed landlord registration in the Antisocial Behaviour etc (Scotland) Bill, but he can rest assured that there is much rejoicing in heaven for every repentant sinner who sees the error of their ways. I am pleased that he thinks that the bill before us provides a better way of ensuring that registration for landlords is enacted appropriately.

Alex Johnstone also confessed that he thought that he might have scared us with his amendments at stage 2, but it takes much more than that to scare Labour members. I think that those amendments led to today’s amendment 15, in the name of Mr Brocklebank, which the Parliament agreed to unanimously, so Mr Johnstone was headed in the right direction.

Patricia Ferguson reminded us that it has taken us a while to get here. The Housing (Scotland) Bill originally contained an attempt to tackle the private rented sector. At the time, I was quite critical of the minister for withdrawing the relevant provisions from that bill, because I was concerned that we would not get to the stage that we have reached today. I shared Charlie Gordon’s concerns, so I am pleased that we have got to this stage.

John Wilson mentioned the campaigns that led to the Parliament considering some of the difficulties that people have to live with. We should all recognise the benefits of the Public Petitions Committee, which introduced us to issues such as overcrowding, in particular, and I hope that the measures that will be agreed to at decision time will make a difference. It is to the Parliament’s credit that we have responded to the petition on that. John Wilson suggested that there needs to be guidance on hard-wired fire alarms, and I support that suggestion.

Charlie Gordon mentioned the issue of letting agents, which we may need to come back to in the future. I hope that the minister agrees that further work needs to be done on that. I heard recently about work that is being done on letting agents south of the border and, as someone who is always willing to learn a lesson, wherever it comes from, I think that we should consider the measures that are proposed there.

I believe that the bill will move us on and that the measures that it proposes are good. I suspect that further measures may still need to be taken, but I am sure that the Parliament will return to those in good time. My final request to the minister is to ensure that the measures that the bill contains are implemented quickly. We referred today to measures from the Housing (Scotland) Act 2006, which are not due to come into effect until August of this year—five years later, which is an awfully long time. People within the private rented sector deserve to have the bits of legislation that we are agreeing to today enacted more quickly.

I am pleased that we accepted all today’s amendments, particularly those in the name of Pauline McNeill. I was accused yesterday of doing U-turns. I say to the minister that his was the fastest U-turn that I have seen in a long time, but it is much appreciated. On that consensual note, I welcome the bill.

The Presiding Officer (Alex Fergusson): Given Patricia Ferguson’s earlier warning about what Alex Neil is capable of doing in an empty house, I am a little bit loth to let him loose on a fairly empty chamber. Nonetheless, as Mary Mulligan has just said, we are on fairly consensual ground, so I am happy to call the minister to wind up the debate.

16:45

Alex Neil: I am delighted that Mary Mulligan is confident that I am going to be the minister moving the commencement order after the election.

Earlier, when we were discussing the amendments, I rightly paid tribute to Ted Brocklebank. I say to him that, given his on-going interest in fishing and the policy position that he has taken, with which we agree but his party leader does not, there is a membership card awaiting him at any time. [Interruption.] I hear that Mr Russell disagrees with that.
The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Indeed.

Alex Neil: This has been a consensual debate, with good contributions from throughout the chamber. It is appropriate that it has been consensual, because the issue that we are tackling should not be one on which there is major ideological difference between the parties; it is about what we do for tenants who find themselves in a position where their landlord is not delivering the services that they should be providing and what we do about the fact that, in too many of our communities, groups of landlords give the industry a bad name. One of those areas, but certainly not the only one, is Govanhill in Glasgow. We have made substantial progress there, in which we were helped—again—by the work of the Public Petitions Committee and others.

It is not just Govanhill where there is a problem. Because the problem has been allowed to fester for so long, it has started to spread out geographically. That is why the people of Croftfoot in Glasgow are now, as Anne McLaughlin rightly said, facing similar problems, which have a duty to try to address. On Monday, I was in Clune Park in Inverclyde, which is another area where there is a major landlord problem. The bill is part—only part—of the answer there, too.

As members from all parties have said, it is important to get a strong message out to every local authority in Scotland that we have equipped them with the tools to do the job and that we expect them to deliver and robustly enforce both the existing legislation and the new legislation.

Over the past three or four months, we have had three housing bills: the Housing (Scotland) Act 2010 was signed by the Queen just before Christmas; we had the Property Factors (Scotland) Bill; and we now have the Private Rented Housing (Scotland) Bill, which I hope will become an act after tonight. Taken together, those three pieces of legislation represent a major advance in all those sectors of housing. The Housing (Scotland) Act 2010 reforms the right to buy, on which there is some disagreement. The Property Factors (Scotland) Bill brings more control into the property factors industry. The Private Rented Housing (Scotland) Bill will, I hope, bring more sanity and common sense into the private rented sector.

Bob Doris: I just want to add to the list the Home Owner and Debtor Protection (Scotland) Act 2010, under which all evictions for mortgage arrears must call in court, which is another powerful success.

Alex Neil: That is a good point from Mr Doris. I am always one to undersell our achievements. [Laughter.] The legislation is extremely important, but it is also important that we move forward on other fronts, particularly on investment. Whether we are talking about Govanhill and Clune Park or the wider housing sector—both the social and private housing sectors—investment and development are essential. I have charged the private rented sector strategy group with preparing, in consultation, a long-term development plan for the private rented sector in Scotland.

Bob Doris was right: given the challenges that we face in the housing sector—the waiting lists, the difficulty that first-time buyers have in putting together a deposit to get a mortgage, an ageing population and a rising population—the demand for housing will rise exponentially in the years ahead. We require a major contribution from every sector—the owner-occupied sector, the social housing sector, the intermediate market sector, the private rented sector, the shared equity sector and every variation of those different sectors—to meet the demands and need for housing that will be placed on us in the years ahead.

I want to update members on some of the specific issues that were raised during the debate and which require some answer. Patricia Ferguson rightly raised the role of the courts and in particular their taking a more robust approach to the issues that are referred to them, not only in relation to the private rented sector but more widely in housing issues. Mary Mulligan and others also mentioned that.

There is no doubt in my mind that there is a need for a more robust approach. As I promised I would, I have written to the Lord Advocate about how judgments in sheriff courts are not as robust as many believe that they should be. I will continue the dialogue with both this Lord Advocate and the new one to ensure that the issue is properly addressed without interfering in any way with the right of a sheriff to make an appropriate decision.

Like Mary Mulligan and others, I think that whoever wins the election on 5 May will have to take up the issue of the future jurisdiction of housing issues in the courts. At the moment, matters are settled in a range of different ways. For example, evictions for antisocial behaviour and disputes in relation to private landlords often end up in the sheriff court, while other matters are decided by the housing panel or referred to ombudsmen of different types. I believe, particularly in the light of Lord Gill’s report last year, that, whoever forms the new Government, it will be a matter of priority attention to get a more streamlined approach to the jurisdiction of housing disputes across the sector.

Patricia Ferguson: Does the minister accept that the issue is not just the location of the
judgment but the courts having an understanding of the effects that behaviour can have on a wider community? I cite the example that I have raised before of people who have been convicted of drug dealing—it may be impossible to secure an eviction even though there has been a conviction. Does the minister agree with that summary?

Alex Neil: Absolutely. My view is that some kind of tribunal system may be more appropriate, certainly in some circumstances, than a case immediately going to the sheriff court. Obviously, that is a matter for wide discussion and, I believe, for action in the new session of Parliament. As Patricia Ferguson will know, Lord Gill recommended a dedicated housing court. The Government’s position—and mine personally—is that going that far is not necessarily the right way to approach the situation, but we are open to suggestions. It is important to get agreement on the issue, and we all agree that reform is required.

Bob Doris raised the issue of the recycling of revenue from fines back into Scotland. As he and others know, I have taken that issue up with the Treasury on more than one occasion. The most recent response that I received was from Justine Greening MP, deputy to Mr Shapps, the minister with responsibility for housing, who did not agree to review the position or to recycle the fine money into Scotland, so I am afraid that that will have to wait for another day.

Some other important points were made in the course of the debate. Many points were made about enforcement. I can tell the chamber—as I have informed the Local Government and Communities Committee—that there are, at present, three areas in which there is close physical joint working between the land registration teams in local authorities and the Department for Work and Pensions teams, especially those dealing with housing benefit. We have found that, through sharing data, working together and taking a joint approach in those areas, our effectiveness in catching those who are engaged in housing benefit scams and in identifying unregistered landlords has been greatly enhanced. Indeed, there is a correlation between those two groups. I would like to see that joint working between the landlord registration teams and the Department for Work and Pensions being rolled out across all local authority areas in Scotland, as it is achieving an effective implementation of landlord registration as well as dealing with those who are engaged—sometimes on a large scale—in benefit fraud. That would be a welcome development.

Mary Mulligan asked specifically about Shelter’s proposals on the short assured tenancy and on the provision of information and advice. In relation to the provision of information and advice, we are all agreed that the provision on a statutory basis of a tenants information pack containing basic information about a range of issues including fire and safety will be a major step forward both for tenants and for landlords. It is right that, once that is up and running, we should consider whether further developments are required in the provision of information and advice both in the private rented sector and more generally. We would certainly approach Shelter’s ideas with an open mind.

I will make two points on short assured tenancies. As Shelter has proposed, there is a need to consider the situation and review it. However, I emphasise that the Scottish Government will not go down the same road as the UK Government by imposing rules under which tenancies will have a possible maximum life of two years before people have to move out of their homes. We believe that that is a recipe for disaster and for social unrest and that it would be extremely damaging to family life. Therefore, although there is a need to consider reform, that must be kept within the clear parameter that the Scottish secure tenancy is safe with all of us in the Parliament.

I have enjoyed the past 15 minutes—the longest that I have ever spoken in the Scottish Parliament. I hope that I have enlightened proceedings. I thank everybody for their help in this consensual debate and look forward to passing, in the next few minutes, the fourth piece of housing legislation in the past five or six months—an achievement of which not only the Government but the Parliament can be proud. We look forward to continuing our programme of reform after the election.
Private Rented Housing (Scotland) Bill
[AS PASSED]

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Private Rented Housing (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about private rented housing.

PART 1
REGISTRATION OF PRIVATE LANDLORDS

1 Fit and proper person: considerations

(1) In section 85 of the 2004 Act (section 84: considerations)—

(a) in subsection (2)—

(i) in paragraph (a), after sub-paragraph (i) insert—

“(ia) firearms (within the meaning of section 57(1) of the Firearms Act 1968 (c. 27));”,

(ii) after that paragraph, insert—

“(aa) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c. 46));”,

(b) after subsection (5) insert—

“(6) Examples of material which falls within subsection (2) (as mentioned in paragraph (c)(i) or (ii)) are (without prejudice to the generality of that provision)—

(a) an offence or disqualification under—

(i) this Part;

(ii) Part 5 of the Housing (Scotland) Act 2006 (asp 1);

(b) a repairing standard enforcement order made under section 24(2) of that Act.

(7) Examples of material which falls within subsection (3) are (without prejudice to the generality of that provision)—

(a) an antisocial behaviour order (or any interim order) within the meaning of Part 2;

(b) an antisocial behaviour notice within the meaning of Part 7.

(8) Examples of material which falls within subsection (4) are (without prejudice to the generality of that provision)—
Private Rented Housing (Scotland) Bill
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(2) In section 141(4)(a) of that Act (orders and regulations), after “83(7),” insert “85(9),”.

2 Fit and proper person: criminal record certificate

After section 85 of the 2004 Act insert—

“85A Fit and proper person: criminal record certificate

(1) A local authority may, in deciding for the purposes of section 84(3) or (4) whether a relevant person is, or is no longer, a fit and proper person, require the relevant person to provide the local authority with a criminal record certificate (within the meaning of section 113A of the Police Act 1997 (c. 50)).

(2) A local authority may require a criminal record certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided with an application for entry in the register maintained under section 82(1) in relation to material falling within subsection (2), (3) or (4) of section 85 is, or has become, inaccurate.

(3) Where a local authority has required a criminal record certificate to be provided under subsection (1)—

(a) in the case of an application for entry in the register maintained under section 82(1), a relevant person may not be entered in the register until the certificate has been received by the local authority;

(b) in the case of a relevant person entered in the register, the relevant person must provide the certificate within such reasonable period as the local authority directs.”.

3 Landlord registration number

(1) In section 84 of the 2004 Act (registration), after subsection (5) insert—

“(5A) An entry in a register under subsection (2)(a) shall state, in relation to the relevant person, a registration number (to be known as the “landlord registration number”).”.

(2) In section 86 of that Act (notification of registration or refusal to register), after subsection (1) insert—

“(1A) Where a local authority gives notice of the fact of registration under subsection (1)(a) it must, in doing so, give notice of the landlord registration number.”.

(3) In section 101 of that Act (interpretation of Part 8), after the definition of “landlord” insert—
““landlord registration number” has the meaning given by section 84(5A);”.

4 Appointment of agents

In section 88 of the 2004 Act (registered person: appointment of agent)—

(a) after subsection (2) insert—

“(2A) Subject to subsections (2B) and (2C), the notice shall be accompanied by such fee as the local authority may determine.

(2B) No fee shall be payable under subsection (2A) if, when the notice is given—

(a) the person appointed is entered in the register as a relevant person; or

(b) another relevant person’s entry in the register states that the person appointed acts for the other relevant person.

(2C) The Scottish Ministers may by regulations prescribe for the purposes of subsection (2A)—

(a) fees;

(b) how fees are to be arrived at;

(c) other cases in which no fee shall be payable.”,

(b) after subsection (8) insert—

“(9) A registered person is guilty of an offence who, without reasonable excuse—

(a) in giving notice under subsection (2), specifies information which is false in a material particular; or

(b) fails to comply with subsection (2).

(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

5 Access to register: additional information

(1) In section 88A(1) of the 2004 Act (access to register)—

(a) in paragraph (a), before sub-paragraph (i) insert—

“(zi) confirmation of whether any application relating to the house has been made in accordance with section 83 but has not yet been determined;”,

(b) in paragraph (a)(i), for “the owner” substitute “any owner of the house”,

(c) in paragraph (b)—

(i) after “applicant” insert “—

(i)”,

(ii) after “register” insert “; and

(ii) whether its register includes a note under section 92ZA of a decision to refuse that other person’s entry in, or to remove that other person from, the register.”.

(2) After section 92 of the 2004 Act insert—
“92ZA Duty to note refusals and removals

(1) Subsection (4) applies where—

(a) a local authority decides to—

(i) refuse to enter a person in its register under section 84(2)(b) or (7); or

(ii) remove a person from its register under section 88(8) or 89(1) or (4); and

(b) either—

(i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or

(ii) such application is refused by the sheriff and—

(A) the period for appealing against the sheriff’s decision expires without an appeal being made; or

(B) such an appeal is refused by the sheriff principal.

(2) Subsection (4) applies where—

(a) a local authority decides to refuse to enter a person in its register under section 84(8); and

(b) either—

(i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or

(ii) such application is refused by the sheriff and—

(A) the period for appealing against the sheriff’s decision expires without an appeal being made; or

(B) such an appeal is refused by the sheriff principal.

(3) Subsection (4) applies where a local authority removes a person from its register under section 89(5).

(4) Where this subsection applies, the local authority must note the fact in its register that the person has been refused entry to, or removed from, its register.

(5) Where a fact is noted by virtue of subsection (1) it must, subject to subsection (6)—

(a) remain on the register for 12 months from the date on which the local authority is required to note it in its register; and

(b) be removed from the register at the end of that period.

(6) Where a person in respect of whom a local authority notes a fact in its register by virtue of subsection (1) is subsequently entered in the register before the end of the period mentioned in subsection (5)(a), the local authority must remove the fact from the register when the person is so registered.

(7) Where a fact is noted by virtue of subsection (2) or (3) it must—
6 Duty to include certain information in advertisements

After section 92A of the 2004 Act insert—

“92B Duty of certain persons to include landlord registration number in advertisements

(1) Where—

(a) a person who is registered by a local authority ("the registered person"),
in relation to a house that the person owns in the area of the authority,
communicates with another person with a view to entering into a lease or
an occupancy arrangement such as is mentioned in section 93(1)(a); and
(b) the communication is by way of an advertisement in writing,
the registered person must ensure the advertisement includes the landlord
registration number given by the authority.

(1A) Where the house is owned jointly by two or more persons registered by the
local authority, the duty in subsection (1) is complied with if the advertisement
includes the landlord registration number given by the authority in relation to
one of the persons.

(2) Where—

(a) subsections (2) and (5) of section 93 apply; and
(b) the communication referred to in subsection (2)(b) of that section is by
way of an advertisement in writing,
the relevant person must ensure the advertisement includes the words “landlord
registration pending”.

(2A) Subsection (2B) applies where the house is owned jointly by—

(a) one or more persons who are registered by the local authority ("the
registered persons"), and
(b) one or more relevant persons in relation to whom subsections (2) and (5)
of section 93 apply.

(2B) The duties in subsections (1) and (2) are complied with if the advertisement
includes either—

(a) the landlord registration number given by the local authority in relation
to one of the registered persons, or
(b) the words “landlord registration pending”.

(3) In this section, “advertisement”—

(a) includes any form of advertising whether to the public generally, to any
section of the public or individually to selected persons; but
(b) does not include a notice board at or near the house concerned.”.
7 **Penalty for acting as unregistered landlord etc.**

In section 93(7) of the 2004 Act (offences), for “level 5 on the standard scale” substitute “£50,000”.

8 **Disqualification orders for unregistered landlords**

After section 93 of the 2004 Act insert—

“93A **Disqualification orders etc.**

(1) This section applies where a court convicts a person of an offence under section 93(1) or (2).

(2) The court may, in addition to imposing a penalty under section 93(7), by order disqualify the convicted person (and, where the person is not an individual, any director, partner or other person concerned in the management of the person) from being registered by any local authority for such period not exceeding 5 years as may be specified in the order.

(3) A person may appeal against an order under subsection (2) in the same manner as the convicted person may appeal against sentence.

(4) The court may suspend the effect of an order made under subsection (2) pending such an appeal.

(5) The court may, on summary application by a person disqualified by an order under subsection (2), revoke the order with effect from such date as the court may specify.

(6) But no such revocation may be made unless the court is satisfied that there has been a change of circumstances which justifies the revocation of the order.

(7) No application may be made for the purposes of subsection (5) during the first year of a disqualification.

(8) The court may order the applicant to pay the whole or part of the expenses arising from an application made for the purposes of subsection (5).

(9) Within 6 days of the court—

(a) disqualifying a person under subsection (2); or

(b) revoking an order under subsection (5),

the clerk of court must provide an extract of the disqualification or, as the case may be, the revocation to the local authority for the area in which the house concerned is situated.”.

9 **Power to obtain information**

After section 97 of the 2004 Act insert—

“97A **Power to obtain information**

(1) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (2) to provide the local authority with, in relation to any house within the local authority’s area—
(a) confirmation of the nature of that person’s interest in the house;
(b) the name and address of, and information about that person’s relationship with, any other person whom that person knows to—
   (i) own, occupy or have any other interest in the house;
   (ii) act in relation to a lease or occupancy arrangement to which that house is subject; or
   (iii) act for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house;
(c) such other information relating to the house, or such other person, as the local authority may reasonably request.

(2) A person falls within this subsection if the person—
   (a) owns, occupies or has any other interest in the house concerned;
   (b) acts in relation to a lease or occupancy arrangement to which that house is subject; or
   (c) acts for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house.

(3) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (4) to provide the local authority with—
   (a) confirmation of the nature of that person’s interest in any house within the local authority’s area in relation to which the person acts;
   (b) the address of any such house;
   (c) the name and address of, and information about that person’s relationship with, any other person whom that person knows to own any such house;
   (d) such other information relating to any such house, or such other person, as the local authority may reasonably request.

(4) A person falls within this subsection if the person—
   (a) acts in relation to a lease or occupancy arrangement to which any house within the local authority’s area is subject; or
   (b) acts for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to such a house.

(5) A requirement under subsection (1) or (3) is to be made by serving it on the person concerned in accordance with section 97B.

(6) It is an offence for a person—
   (a) without reasonable excuse, to fail to comply with a requirement made under this section; or
   (b) knowingly or recklessly to provide information which is false or misleading in a material respect to a local authority or any other person—
(i) in purported compliance with a requirement made under this section; or

(ii) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, a local authority in connection with its functions under this Part.

(7) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

97B Power to obtain information: service of requirement

(1) A requirement under section 97A(1) or (3) must be in writing.

(2) A requirement under section 97A(1) or (3) is served on a person if it is—

(a) delivered to the person at the place mentioned in subsection (3);

(b) sent, by post in a prepaid registered letter or by the recorded delivery service, to the person at that place; or

(c) sent to the person in some other manner (including by electronic means) which the local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.

(3) The place referred to in subsection (2) is—

(a) where the person is an individual, that person’s place of business or usual or last known place of abode;

(b) where the person is an incorporated company or body, its registered or principal office.

(4) Subsection (5) applies where service of a requirement by one of the methods described in subsection (2) has been attempted and failed.

(5) Where this subsection applies, a requirement under section 97A(1) or (3) may be served on the person by—

(a) where the person is an individual, leaving a copy of the requirement at that person’s place of business or usual or last known place of abode;

(b) where the person is an incorporated company or body, leaving a copy of the requirement at the person’s registered or principal office.

(6) Subsection (7) applies where the local authority is unable to deliver or send a requirement under section 97A(1) or (3) to the owner or occupier of any house or other premises because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.

(7) Where this subsection applies, a requirement under section 97A(1) or (3) may be served by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the house or other premises.

(8) A requirement which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.”.

10 Part 8 of the 2004 Act: guidance

After section 99 of the 2004 Act, insert—
99A Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers about—

(a) the discharge of its functions under this Part; and
(b) matters arising in connection with the discharge of those functions.

(2) Before issuing any such guidance the Scottish Ministers must consult—

(a) local authorities; and
(b) such other persons as they think fit.”.

10 Information to be given to local authority

After section 22 of the 2006 Act insert—

“22A Information to be given to local authority

(1) On receipt of an application under section 22(1), the private rented housing panel must provide the information mentioned in subsection (2) to the local authority for the area in which the house concerned is situated for the purpose of the local authority maintaining the register under section 82(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(2) The information is—

(a) the address of the house concerned,
(b) the name of the landlord of the house (if known),
(c) the landlord’s address (if known),
(d) the landlord registration number of the landlord (if known), and
(e) the name and address (if known) of any person who acts as agent for the landlord.”.

12 Minor and consequential amendments

The schedule to this Act (which makes minor modifications and modifications consequential on this Part) has effect.

PART 2

HOUSES IN MULTIPLE OCCUPATION

13 Amendment of HMO licensing regime

(1) In section 125 of the 2006 Act (meaning of “house in multiple occupation”)—

(a) in subsection (1)—

(i) for the words from “Any” to second “is” substitute “‘HMO’ means any living accommodation”, and

(ii) after “families” insert “—

(a) which—
(i) falls within subsection (2), and
(ii) is occupied by those 3 or more persons as an only or main residence, or
(b) which is of such type, or which is occupied in such manner, as the
Scottish Ministers may by order specify.”,

(b) after subsection (1) insert—
“(1A) Before making an order under subsection (1)(b), the Scottish Ministers must consult—
(a) local authorities, and
(b) such tenants (or tenants’ representatives) and such landlords (or landlords’ representatives) as they think fit.”,

(c) subsection (4)(a) is repealed.

(2) After section 129 of the 2006 Act insert—

“129A Preliminary refusal: breach of planning control
(1) The local authority may, within 21 days of an application for an HMO licence, refuse to consider the application if it considers that occupation of the living accommodation concerned as an HMO would constitute a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997 (c. 8) (“the 1997 Act”) by virtue of section 123(a) or (b) of that Act.

(2) The local authority must, within 7 days of deciding to refuse to consider an HMO application, serve notice of its decision on—
(a) the applicant,
(b) the enforcing authority, and
(c) the chief constable.

(3) The notice must—
(a) give the local authority’s reason for refusing to consider the HMO application, and
(b) inform the applicant of the effect of subsection (4).

(4) No fee may be charged in respect of a further application for an HMO licence in relation to the living accommodation concerned made within 28 days of the applicant subsequently obtaining—
(a) planning permission under Part 3 of the 1997 Act, or
(b) a certificate of lawfulness of use or development under section 150 or 151 of the 1997 Act,

in respect of the occupation of the living accommodation as an HMO.

(5) This section applies regardless of whether the local authority is the planning authority for the area in which the living accommodation concerned is situated.

(6) For the purposes of this Part, a refusal to consider an application under subsection (1) is not to be treated as a refusal to grant an HMO licence under section 129(2)(b).”.
(2A) In section 131 of the 2006 Act (suitability of living accommodation), after subsection (2)(d) insert—

“(da) whether any rooms within it have been subdivided,

(db) whether any rooms within it have been adapted and that has resulted in an alteration to the situation of the water and drainage pipes within it.”.

(2B) After section 131 of the 2006 Act insert—

“131A Overprovision

(1) The local authority may refuse to grant an HMO licence if it considers that there is (or, as a result of granting the licence, would be) overprovision of HMOs in the locality in which the living accommodation concerned is situated.

(2) In considering whether to refuse to grant an HMO licence under subsection (1), the local authority must have regard to—

(a) whether there is an existing HMO licence in effect in respect of the living accommodation,

(b) the views (if known) of—

(i) the applicant, and

(ii) if applicable, any occupant of the living accommodation,

(c) such other matters as the Scottish Ministers may by order specify.

(3) It is for the local authority to determine the localities within its area for the purpose of this section.

(4) In considering whether there is or would be overprovision for the purposes of subsection (1) in any locality, the local authority must have regard to—

(a) the number and capacity of licensed HMOs in the locality,

(b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need,

(c) such other matters as the Scottish Ministers may by order specify.

(5) Before making an order under subsection (2)(c) or (4)(c), the Scottish Ministers must consult—

(a) local authorities,

(b) such persons or bodies as appear to them to be representative of the interests of—

(i) landlords,

(ii) occupiers of houses, and

(c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).”.

(4) In section 135 of the 2006 Act (application for new HMO licence: effect on existing HMO licence)—

(a) in subsection (2)—

(i) the word “and” immediately following paragraph (a) is repealed,

(ii) after that paragraph insert—
“(aa) where the local authority refuses to consider the application for the new HMO licence—
   (i) the date on which the existing HMO licence would expire had an application for a new HMO licence not been made, or
   (ii) such later date as the local authority considers reasonable in the circumstances, and”,
   (b) after subsection (2) insert—
   “(3) The local authority must serve notice of a decision under subsection (2)(aa)(ii) to extend (or further extend) the duration of an existing HMO licence on—
   (a) the licence holder,
   (b) the enforcing authority, and
   (c) the chief constable.”.

(6) In section 191(4)(a) of the 2006 Act (orders and regulations), after “section” insert “125(1)(b)”,.

14 Penalty for certain offences in relation to houses in multiple occupation

In section 156(1)(a) of the 2006 Act (penalties etc.), for “£20,000” substitute “£50,000”.

15 Reasons for decisions

(1) In section 158 of the 2006 Act (notice of decisions)—
   (a) in subsection (12)(a), for “give” substitute “subject to subsection (17), advise of the right to request”,
   (b) after that subsection insert—
   “(13) A person on whom a notice of a decision to which this section applies has been served may request the local authority to give its reasons for the decision.
   (14) A request under subsection (13) must be made within 14 days of the person receiving notice of the decision.
   (15) Where a local authority receives such a request it must notify the person of its reasons for the decision within 14 days of receiving the request.
   (16) A local authority must, at the same time as notifying the person under subsection (15), so notify any other person on whom a notice of the decision has been served.
   (17) The requirement for the notice to advise of the right to request the local authority’s reasons does not apply where the reasons are included in the notice (or accompany it in writing).”.

(2) In section 159 of the 2006 Act (Part 5 appeals), after subsection (5) insert—
   “(5A) For the purposes of an appeal, the sheriff may require the local authority to give reasons for the decision (if the authority has not already done so), and the authority must comply with such a requirement.”.
16 **Guidance**

In section 163(1) of the 2006 Act (guidance), after “Part” insert “and section 186 (so far as that section relates to this Part)”.

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**PART 3**

**OVERCROWDING STATUTORY NOTICES**

17 **Overcrowding in private rented housing: statutory notice**

(1) A local authority may, subject to section 17A, require the landlord of a house to which subsection (2) applies to take steps to ensure the house is not overcrowded.

(2) This subsection applies to any house in the local authority’s area—

(a) which is overcrowded, and

(b) the overcrowding of which is, in the local authority’s opinion, contributing or connected to (or is likely to contribute or be connected to)—

(i) an adverse effect on the health or wellbeing of any person,

(ii) an adverse effect on the amenity of the house or its locality.

(3) A requirement under subsection (1) must be made by serving a notice (an “overcrowding statutory notice”) on the landlord in accordance with section 26.

(4) Where there are joint landlords, the duty under subsection (3) may be satisfied by service on any one of them.

(5) An overcrowding statutory notice—

(a) must specify—

(i) the steps which require to be carried out to ensure the house is no longer overcrowded, and

(ii) the period within which the steps must be completed (being a period not shorter than 28 days),

(b) must state the conditions set out in section 19, and

(c) may specify other steps which require to be carried out for the purposes of section 19(b) or otherwise.

(6) An overcrowding statutory notice may not specify any step which would require the landlord to breach any statutory or contractual obligation.

(7) The Scottish Ministers may by order prescribe—

(a) the form of an overcrowding statutory notice,

(b) other information to be included in the notice,

(c) persons who must be given a copy of the notice by the local authority.

(7A) Before making an order under subsection (7), the Scottish Ministers must consult—

(a) local authorities,

(b) such persons or bodies as appear to them to be representative of the interests of—

(i) landlords,
(ii) occupiers of houses, and
(c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

17A Matters to be considered prior to service of overcrowding statutory notice

(1) This section applies where a local authority is considering serving an overcrowding statutory notice in relation to a house.

(2) The authority may serve the notice only if it is reasonable and proportionate in the circumstances to do so having regard to—

(a) the nature of the adverse effect referred to in section 17(2)(b) by reference to which the notice would be served,
(b) the degree to which the overcrowding of the house is contributing to or connected to that adverse effect,
(c) the likely effects of service of the notice, and
(d) whether there are means other than by service of the notice by which the adverse effect could be mitigated or avoided.

(3) The authority must take into account—

(a) the circumstances of the occupier of the house and of any other persons residing in the house (including, in particular, whether any of them is, as a result of the overcrowding of the house, homeless),
(b) the views (if known) of the landlord, the occupier and any other persons residing in the house, and
(c) the likely effects of service of the notice on the occupier and any other persons residing in the house (including, in particular, whether it may lead to the occupier or any such person becoming homeless or threatened with homelessness).

(4) For the purposes of subsection (3), whether a person is homeless or threatened with homelessness is to be determined in accordance with section 24 of the Housing (Scotland) Act 1987 (c.26).

17B Information and advice for occupiers

(1) This section applies where a local authority serves an overcrowding statutory notice in relation to a house.

(2) The authority must, at the same time as serving the overcrowding statutory notice, also serve on the occupier of the house a notice containing prescribed information and advice in connection with the overcrowding statutory notice.

(3) If the occupier of the house or any other person residing in the house requests information or advice from the local authority in connection with the overcrowding statutory notice, the local authority must comply with the request, unless the authority considers the request to be unreasonable.

(4) The local authority may give the occupier of the house such other information and advice as the authority considers appropriate in connection with the overcrowding statutory notice.
(5) In subsection (2), “prescribed” means prescribed by order made by the Scottish Ministers.

(6) Such an order may also prescribe the form of the notice to be served under subsection (2).

(7) Before making an order under this section, the Scottish Ministers must consult—

(a) local authorities,

(b) such persons or bodies as appear to them to be representative of the interests of—

(i) landlords,

(ii) occupiers of houses, and

(c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

19 Mandatory conditions

The conditions are, where the steps have been taken as specified in the notice to ensure the house is no longer overcrowded, that the landlord must—

(a) not cause the house to become overcrowded,

(b) take reasonable steps to prevent the house becoming overcrowded.

20 Duration of notice

(1) An overcrowding statutory notice—

(a) has effect from, and

(b) expires 5 years (or such shorter period of not less than one year as may be specified in the notice) after,

the latest of the dates set out in subsection (2).

(2) Those dates are—

(a) the last date on which the notice may be appealed to the sheriff under section 22,

(b) where such an appeal is made, the date on which—

(i) an order is made under section 22(4), or

(ii) the application is abandoned, and

(c) any later date as may be specified in the notice.

(3) An overcrowding statutory notice ceases to have effect in relation to a person if that person ceases to be the landlord of the house.

21 Representations

(1) A person on whom an overcrowding statutory notice is served may make representations to the local authority concerning the notice within 7 days of the notice being served.

(2) A local authority must consider any representations made under subsection (1) and respond to the person within 7 days of the representations having been made by—

(a) confirming the notice,
(b) varying the notice, or
(c) revoking the notice.

(3) Where the local authority fails to respond in accordance with subsection (2), the overcrowding statutory notice is revoked.

(4) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 23(4)(a), subsection (3) of this section only applies to the variation of the overcrowding statutory notice.

22 Appeals

(1) The landlord may appeal against an overcrowding statutory notice by summary application to the sheriff.

(2) An application under subsection (1) must be made—
   (a) where representations under section 21(1) have been made, before the expiry of the period of 28 days beginning with the service of the notice,
   (b) in any other case, before the expiry of the period of 21 days beginning with the service of the notice.

(3) But the sheriff may, on cause shown, hear an appeal made after the deadline set by subsection (2).

(4) The sheriff may determine the appeal by making an order—
   (a) confirming the notice,
   (b) varying it in such manner as may be specified in the order, or
   (c) revoking the notice.

(5) The sheriff’s decision on any such appeal is final.

(6) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 23(4)(b), the sheriff’s powers under subsection (4) of this section are not prejudiced in relation to the overcrowding statutory notice.

23 Variation

(1) The local authority may vary an overcrowding statutory notice (including extending the duration of its effect) at any time.

(2) But a notice may not be so varied so as to shorten the duration of its effect.

(3) The local authority must serve notice of any variation of an overcrowding statutory notice on the landlord in accordance with section 26.

(4) The following sections apply to a notice of variation of an overcrowding statutory notice as they apply to an overcrowding statutory notice—
   (a) section 21 (representations),
   (b) section 22 (appeals).

(5) A variation of an overcrowding statutory notice has effect from the latest of the dates set out in subsection (6).

(6) Those dates are—
Part 3—Overcrowding statutory notices

(24) Revocation

(1) The local authority may revoke an overcrowding statutory notice at any time.

(2) The local authority must serve notice of any revocation of an overcrowding statutory notice on the landlord in accordance with section 26.

(3) A revocation of an overcrowding statutory notice has effect from the date on which the notice of revocation is served on the landlord.

(25) Offences

(1) A landlord commits an offence if the landlord fails, without reasonable excuse, to comply with any requirement or condition contained in an overcrowding statutory notice within the period (if any) specified for completion.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(25A) Power to obtain information

(1) A local authority may, for the purpose of enabling it to discharge its functions under this Part, serve a notice on a person falling within subsection (2) (referred to as “A”) requiring A to provide the authority with any of the information mentioned in subsection (3).

(2) A person falls within this subsection if the person appears to the local authority to—

(a) own, occupy or have any other interest in a house in the local authority’s area, or

(b) act in relation to the lease or occupancy arrangement to which any such house is subject.

(3) The information is—

(a) confirmation of the nature of A’s interest in the house,

(b) the name and address of, and information about A’s relationship with, any other person whom A knows to—

(i) own, occupy or have any other interest in the house, or

(ii) act in relation to the lease or occupancy arrangement to which the house is subject,

(c) such other information relating to the house, or such other person, as the local authority may reasonably require.
(4) A person commits an offence if the person—
   (a) without reasonable excuse, fails to comply with a requirement of a notice served
       on the person under subsection (1), or
   (b) knowingly or recklessly provides information which is false or misleading in a
       material respect to a local authority or other person—
       (i) in purported compliance with a requirement of such a notice, or
       (ii) otherwise if the person knows, or could reasonably be expected to know,
            that the information may be used by, or provided to, a local authority for
            the purpose of the discharge of its functions under this Part.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a
      fine not exceeding level 2 on the standard scale.

26 Service of notices

(1) A notice is served on a person if it is—
   (a) delivered to the person at the place mentioned in subsection (2),
   (b) sent, by post in a prepaid registered letter or by the recorded delivery service, to
       the person at that place, or
   (c) sent to the person in some other manner (including by electronic means) which the
       local authority reasonably considers likely to cause it to be delivered to the person
       on the same or next day.

(2) The place referred to in subsection (1) is—
   (a) where the person is an individual, that person’s place of business or usual or last
       known place of abode,
   (b) where the person is an incorporated company or body, its registered or principal
       office.

(3) Subsection (4) applies where service of the notice by one of the methods described in
     subsection (1) has been attempted and failed.

(4) Where this subsection applies, service of the notice may be on the person by—
   (a) where the person is an individual, leaving a copy of the notice at that person’s
       place of business or usual or last known place of abode,
   (b) where the person is an incorporated company or body, leaving a copy of the notice
       at the person’s registered or principal office.

(5) Subsection (6) applies where the local authority is unable to deliver or send a notice to
     the person because the local authority is not (having made reasonable enquiries) aware
     of the name or address of that owner or occupier.

(6) Where this subsection applies, service of the notice may be by addressing a copy of it to
     “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the
     house or other premises.

(7) A notice which is sent by electronic means must be received in a form which is legible
     and capable of being used for subsequent reference.
26A  Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers about—
   (a) the discharge of its functions under this Part, or
   (b) matters arising in connection with the discharge of those functions.

(2) Before issuing any such guidance, the Scottish Ministers must consult—
   (a) local authorities,
   (b) such persons or bodies as appear to them to be representative of the interests of—
      (i) landlords,
      (ii) occupiers of houses, and
   (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

26B  Reports

(1) The Scottish Ministers must, as soon as practicable after the end of each 3 year period, publish a report containing the information referred to in subsection (2).

(2) That is information, in relation to each local authority area, about—
   (a) the number of overcrowding statutory notices served during the period to which the report relates,
   (b) the extent to which service of the notices has reduced the overcrowding of houses,
   (c) the extent to which persons have become homeless as a result of the service of the notices, and
   (d) any other measures that have been taken or considered by the local authority during the period for the purpose of reducing the overcrowding of houses.

(3) A local authority must provide the Scottish Ministers with such information as they may reasonably require to comply with subsection (1).

(4) In subsection (1), “3 year period” means—
   (a) the period of 3 years beginning with the day on which section 17 comes into force, and
   (b) each subsequent period of 3 years.

27  Interpretation of Part 3

(1) In this Part—
   “house” means premises—
   (a) which are subject to a lease or occupancy arrangement by virtue of which they may be used as a separate dwelling, and
   (b) the owner of which would, if not registered in the register maintained by a local authority under section 82(1) of the 2004 Act, be guilty of an offence under subsection (1) of section 93 of that Act (disregarding subsection (3) of that section),
“landlord”, in relation to a house, means the owner of the house.

(2) In this Part references to a house being overcrowded are to be construed according to the definition of overcrowding in section 135 of the Housing (Scotland) Act 1987 (c. 26); but do not include any house to which the matters mentioned in section 139(2)(a) or (b) of that Act apply.

PART 4
MISCELLANEOUS

28 Premiums

(1) In section 82 of the Rent (Scotland) Act 1984 (c. 58) (prohibition of premiums and loans on grant of protected tenancies)—

(a) in subsection (1), “in addition to the rent,” is repealed,

(b) in subsection (2), “in addition to the rent” is repealed.

(2) After section 89 of that Act insert—

“89A Premiums: regulations

(1) The Scottish Ministers may by regulations make provision about sums which may be charged in connection with the grant, renewal or continuance of a protected tenancy.

(2) Such regulations may, in particular, specify—

(a) categories of sum which are not to be treated as a premium for the purposes of this Part;

(b) the maximum amount which tenants may be asked to pay in respect of such a sum.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) such persons or bodies as they consider representative of the interests of—

(i) tenants;

(ii) private sector landlords;

(iii) persons who act as agents for such landlords,

as they consider appropriate; and

(b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).

(4) The power conferred by subsection (1) on the Scottish Ministers to make regulations—

(a) must be exercised by statutory instrument;

(b) may be exercised so as to make different provision for different purposes.
(5) No regulations are to be made under subsection (1) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

(3) In section 90(1) of that Act (interpretation of Part 8), for the entry for “premium” substitute—

““premium” means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge;”.

(4) In section 115(1) of that Act (interpretation), for the entry for “premium” substitute—

““premium” has the meaning given in section 90;”.

29 Tenant information packs

After section 30 of the 1988 Act insert—

“30A Duty of landlord to provide certain information

(1) A person who is to be the landlord under an assured tenancy (of whatever duration) must provide the person who is to be the tenant of that tenancy with the documents specified by virtue of section 30B(1) (“the standard tenancy documents”).

(2) The standard tenancy documents must be provided no later than the date on which the assured tenancy commences.

(3) Where there are to be joint landlords under the tenancy, the duty under subsection (1) may be satisfied by any one of them.

(4) A person under the duty mentioned in subsection (1) who (without reasonable excuse) does not comply with that duty is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Where an offence under subsection (4) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or similar officer of the body, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished accordingly.

30B Duty of landlord to provide certain information: further provision

(1) The Scottish Ministers may by order—

(a) specify the documents to be provided under section 30A(1) which may, in particular, include—

(i) documents containing information about the tenancy;

(ii) documents containing information about the house;

(iii) documents containing information about the person who is to be the landlord;

(iv) documents containing information about the rights and responsibilities of tenants and landlords;
(v) copies of documents which the person who is to be the landlord is under a duty to provide by virtue of this Act (other than section 30A(1)) or any other enactment;

(b) make such further provision about the documents as they think fit, including, in particular, provision about the form of, and the information to be included in (or excluded from), any of the documents;

(c) make provision so that the giving of a document (or copy of a document) specified under subsection (1)(a)(v), either in pursuance of the duty under section 30A(1) or by virtue of another provision of this Act or any other enactment, has the effect of satisfying all or any such obligations;

(d) make provision about whether the documents may be provided separately or whether they must all be provided at the same time.

(2) Before making an order under subsection (1), the Scottish Ministers must consult—

(a) such persons and bodies as they consider representative of the interests of—

(i) tenants;

(ii) private sector landlords;

(iii) persons who act as agents for such landlords, as they consider appropriate; and

(b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).”.

30 Notices required for termination of short assured tenancy

In section 33 of the 1988 Act (recovery of possession on termination of a short assured tenancy), after subsection (4) insert—

“(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”.

31 Landlord application to private rented housing panel

(1) The 2006 Act is amended as follows.

(2) In section 21 (naming of panel and re-naming of committees)—

(a) in subsection (3), after “panel,” where it first occurs, insert “the members of the panel,”,

(b) in subsection (4)—

(i) the words from “the exercise” to the end become paragraph (a), and

(ii) after that paragraph insert—

“(b) the exercise by members of the panel of the functions conferred on them under sections 28A and 28C.”.

(3) At the beginning of the title of section 22 (application to private rented housing panel) insert “Tenant”.
(4) After section 28 insert—

**Landlord application to private rented housing panel**

(1) A landlord may apply to the private rented housing panel for assistance under section 28C in exercising the landlord’s right of entry to the house concerned under section 181(4).

(2) The president of the panel must allocate an application under subsection (1) to an individual member of the panel, and may subsequently reallocate it at any time to another individual member of the panel (the member to whom it is, for the time being, allocated being referred to as “the panel member”).

(3) The panel member must decide whether—

- (a) to assist the landlord in exercising the landlord’s right of entry to the house concerned under section 181(4) in accordance with section 28C, or
- (b) to reject the application (and notify the landlord accordingly).

(4) The panel member may require the landlord to produce such further information as the panel member considers necessary to reach a decision on the application.

(5) Where the panel member decides to assist the landlord under subsection (3)(a) the panel member must send the landlord and the tenant a notice—

- (a) indicating that—
  - (i) the panel member has decided to assist the landlord, and
  - (ii) the panel member will be seeking to arrange a suitable time for the landlord to exercise the landlord’s right of entry under section 181(4), and
- (b) informing the tenant of the tenant’s right under subsection (6).

(6) A tenant may, within the period of 14 days beginning with the date of receipt of a notice under subsection (5) (or such longer period as the panel member considers appropriate in the circumstances), make representations to the panel member as to why it is inappropriate or unnecessary for the landlord to exercise the landlord’s right of entry under section 181(4) at that time.

(7) Where representations are made by the tenant under subsection (6), the panel member—

- (a) may make such further enquiries of the landlord and tenant as the panel member considers appropriate, and
- (b) must decide whether to—
  - (i) continue to assist the landlord, or
  - (ii) stop assisting the landlord.

(8) A decision—

- (a) to reject an application under subsection (3),
- (b) of the panel member under subsection (7),
- (c) by the panel member to stop acting in accordance with section 28C(9),

is final.
(9) No application may be made under subsection (1) where the landlord is—
   (a) a local authority landlord (within the meaning of the Housing (Scotland) Act 2001 (asp 10)),
   (b) a registered social landlord (being a body registered in the register maintained under section 57 of that Act), or
   (c) Scottish Water.

28B Landlord application to private rented housing panel: further provision

(1) The Scottish Ministers may by regulations make further provision about the making or deciding of applications under section 28A.

(2) Those regulations may, in particular, make provision—
   (a) about the form and content of applications and notices,
   (b) prescribing a fee to accompany applications,
   (c) specifying circumstances when the panel member must decide to reject an application or stop assisting a landlord,
   (d) about the procedure for—
      (i) making decisions under section 28A(3) or (7),
      (ii) giving notice under section 28A(5),
      (iii) making representations under section 28A(6).

(3) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).

28C Panel member to arrange suitable time for access

(1) Subsection (2) applies where the panel member has decided to assist the landlord under section 28A(3)(a).

(2) The panel member must liaise with the landlord and the tenant with a view to agreeing a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(3) Subsection (4) applies if the tenant (without reasonable excuse) has failed or refused, within a reasonable time, to—
   (a) respond to the panel member, or
   (b) agree a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(4) The panel member may fix a date and time (or dates and times) for the landlord to exercise the landlord’s right of entry to the house under section 181(4).

(5) Where a date and time has been agreed under subsection (2), the panel member may, on the request of either the landlord or the tenant and where there are reasonable grounds for doing so, liaise with the parties with a view to agreeing a different date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).
(6) The panel member must as soon as reasonably practicable notify the landlord and tenant of any date and time (or dates and times) agreed or fixed under this section for the landlord to exercise the landlord’s right of entry under section 181(4).

(7) When notifying the parties of the date and time (or dates and times) agreed or fixed under this section, the panel member must also—

(a) provide the tenant with information about the action that the panel member may take under section 182 if the tenant refuses the landlord’s exercise of the landlord’s right of entry to the house under section 181(4), and

(b) inform both parties that the panel member (or a person authorised by the panel member) may be requested to attend when the landlord exercises such right of entry.

(8) The panel member may, at the request of the landlord or the tenant, attend at the house at the time agreed or fixed for the landlord to exercise the landlord’s right of entry under section 181(4).

(9) The panel member may, at any time, stop assisting the landlord under this section if the panel member considers it appropriate to do so.

(10) The panel member may—

(a) authorise a person (other than the landlord or a representative of the landlord) to exercise any function conferred on the panel member under this section, or

(b) arrange for any such function to be carried out by another panel member.

(11) The Scottish Ministers may by regulations make further provision about the action the panel member is to take under this section.

(12) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).”.

(5) In section 29 (annual report)—

(a) in subsection (1), after “panel” where it second occurs insert “, by the members of the panel”,

(b) in subsection (2)—

(i) the words from “the frequency” to the end become paragraph (a), and

(ii) after that paragraph insert—

“(b) the number of—

(i) applications made under section 28A,

(ii) cases in which it has been possible to agree a suitable date and time (or dates and times) under section 28C for the landlord to exercise the landlord’s right of entry under section 181(4),

(iii) houses attended by a member of the private rented housing panel (or a person authorised by such a member) as a result of a request made under section 28C(8), and

(iv) warrants sought to authorise entry under section 182(1) in pursuance of section 181(2A).”.


(6) In section 181 (rights of entry: general), after subsection (2) insert—

“(2A) A member of the private rented housing panel, and any other person authorised by any such member, is entitled to enter any house in respect of which a decision has been made under section 28A(3) to assist the landlord’s exercise of the landlord’s right of entry under subsection (4) of this section for the purpose of enabling the landlord to exercise such right of entry.”.

(7) In section 182(1) (warrants authorising entry), for “or (2)” substitute “, (2) or (2A)”.

(8) In section 191 (orders and regulations), after subsection (4) insert—

“(4A) Regulations under subsection (1) of section 28B (other than such regulations containing only provision under subsection (2)(b) of that section) are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

31A Relaxation of residential restriction on leases of more than 20 years

(1) Section 8 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (property let under a future long lease, etc. not to be used as a private dwelling) is amended as follows.

(2) In subsection (3A)—

(a) the word “or” immediately following paragraph (b) is repealed, and

(b) after paragraph (c), add “; or

(d) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—

“(3B) An order under subsection (3A)(d) may—

(a) prescribe a body or type of body subject to conditions or restrictions,

(b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),

(c) restrict the application of subsection (3A) to specified leases, or leases of specified descriptions,

(d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any lease,

(e) make provision about the consequences, in relation to any lease, of—

(i) a breach of any condition or restriction prescribed by the order, or

(ii) subsection (3A) otherwise ceasing to apply in relation to a body or type of body or the lease.

(3C) Provision made by virtue of subsection (3B)(e) may, in particular, include provision for the protection of the interests of tenants or occupiers of any dwelling-houses on the property which is subject to the lease.

(3D) An order under subsection (3A)(d)—

(a) may modify any enactment, and

(b) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.”.
Part 5—General

31B Restriction of right to redeem heritable securities after 20 years

(1) Section 11 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling) is amended as follows.

(2) In subsection (3A)(b)—

(a) the word “or” immediately following sub-paragraph (ii) is repealed, and

(b) after sub-paragraph (iii), add “; or

(iv) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—

“(3B) An order under subsection (3A)(b)(iv) may—

(a) prescribe a body or type of body subject to conditions or restrictions,

(b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),

(c) restrict the application of subsection (3A) to specified heritable securities, or heritable securities of specified descriptions,

(d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any heritable security.

(3C) A statutory instrument containing an order under subsection (3A)(b)(iv) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

Part 5

General

32 Interpretation

In this Act—

“the 1988 Act” means the Housing (Scotland) Act 1988 (c. 43);

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8); and

“the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1).

33 Ancillary provision

(1) The Scottish Ministers may by order make such consequential, supplementary, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for the purposes of giving full effect to, any provision of this Act.

(2) An order under this section may modify any enactment, instrument or document.

34 Orders

(1) Any power conferred by this Act on the Scottish Ministers to make an order—

(a) must be exercised by statutory instrument,
(b) includes power to make different provision for different purposes.

(2) An order under section 33 containing provisions which add to, omit or replace any part of the text of an Act, may be made only if a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

(3) Any other statutory instrument containing an order (other than under section 35(3)) is subject to annulment in pursuance of a resolution of the Parliament.

35 **Short title and commencement**

(1) This Act may be cited as the Private Rented Housing (Scotland) Act 2011.

(2) This Part comes into force at the beginning of the day following the day on which the Bill for this Act receives Royal Assent.

(3) The remaining provisions of this Act come into force on such day as the Scottish Ministers may appoint by order.

(4) An order under subsection (3) may include transitional, transitory or saving provision.
SCHEDULE
(introduced by section 12)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

1 The 2004 Act is amended as follows.

2 In section 84 (registration)—
   (a) in subsection (2), after “Where” insert “(subject to subsections (7) and (8))”,
   (b) after subsection (6) add—
      “(7) The local authority may refuse to enter a person in the register maintained by
          the authority under section 82(1) if the person fails to comply with the duty, if
          applicable, imposed by section 92B(2).

      (8) The local authority must refuse to enter a person in the register maintained by
          the authority under section 82(1) if the person is disqualified by an order made
          under section 93A(2).”.

3 In section 86 (notification of registration or refusal to register)—
   (a) in subsection (1)(b), after “section” insert “or subsection (7) or (8) of section 84”,
   (b) in subsection (2), after “84(2)(b),” insert “(7) or (8),”.

4 In section 89 (removal from register), after subsection (3) add—
   “(4) Where a registered person, without reasonable excuse, fails to comply with the
duty imposed by section 92B(1) the authority may remove the person from the
register.

   (5) Where—
      (a) a person is registered by a local authority; and
      (b) the person is disqualified from being registered by virtue of an order
          under section 93A(2),
          the authority shall remove the person from its register.”.

5 In section 90(1) (notification of removal from register: registered person), after “89(1)”
   insert “, (4) or (5)”.

6 In section 91(1) (notification of removal from register: other persons), after “89(1)”
   insert “, (4) or (5)”.

7 In section 92(1) (appeal against refusal to register or removal from register)—
   (a) in paragraph (a), after “84(2)(b)” insert “, (7) or (8)”,
   (b) in paragraph (b), after “89(1)” insert “or (4)”.

8 In section 93(5) (offences), after paragraph (aa) insert—
   “(aaa) the relevant person is not disqualified from being registered by virtue of
an order under section 93A(2);”.

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Private Rented Housing (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision about private rented housing.

Introduced by: Nicola Sturgeon
On: 4 October 2010
Supported by: Alex Neil
Bill type: Executive Bill