This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

HOUSING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Housing (Scotland) Bill introduced in the Scottish Parliament on 21 November 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 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 41–EN.

BILL CONTENT

2. The Bill is structured in the following parts:
   • Part 1 abolishes the right to buy.
   • Part 2 amends the definition of reasonable preference in the Housing (Scotland) Act 1987 on allocating social housing; sets out the factors that may be considered in the allocation of social housing; makes provision for the use of short Scottish secure tenancies where there has been a history of antisocial behaviour and for temporary lets to homeowners; extends the term of the short Scottish secure tenancy; and introduces qualifying periods before tenants can exercise rights to assign, sub-let or request a joint tenancy.
   • Part 3 and schedule 1 transfers jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal; introduces a time limit for determining applications for landlord registration; and allows local authorities to apply to the private rented housing panel for enforcement of the repairing standard, setting out the procedure for such applications and the right of appeal.
   • Part 4 provides for a registration system for letting agents.
   • Part 5 amends the site licensing requirements for mobile home sites with permanent residents.
   • Part 6 amends local authority powers to enforce repairs and maintenance in private homes.
   • Part 7 makes a number of miscellaneous amendments in respect of the right to redeem a security after 20 years in certain circumstances; provides for the president of the private rented housing panel to designate certain functions; amends the Scottish Housing Regulator’s powers transfer assets following inquiries; and repeals defective designation provisions in the Housing (Scotland) Act 1987.
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- Part 8 makes supplementary and final provisions.

GLOSSARY

3. A list of commonly used terms and their abbreviations is provided below:

ALACHO  Association of Local Authority Chief Housing Officers
ARLA   Association of Residential Letting Agents
BRIA   Business and Regulatory Impact Assessment
CIH    Chartered Institute of Housing in Scotland
CML    Council of Mortgage Lenders
DWP    Department for Work and Pensions
FTT    First-tier Tribunal
GWSF   Glasgow West of Scotland Forum of Housing Associations
HSIS   Housing Statistics for Scotland
HOHP   Homeowners housing panel
HMO    Houses in multiple occupation
LIFT   Low-cost Initiative for First-time Buyers
MMR    Mortgage Market Review
PRHP   Private rented housing panel
PRC    Pre-cast reinforced concrete
PRS    Private rented sector
RTB    Right to buy
RICS   Royal Institution of Chartered Surveyors
RSL    Registered Social Landlord
RSS    Rent Service Scotland
SCORE  Scottish Continuous Recording System
SCJC   Scottish Civil Justice Council
SCS    Scottish Court Service
SFHA   Scottish Federation of Housing Associations
SHR    Scottish Housing Regulator
SPSO   Scottish Public Services Ombudsman
SST    Scottish secure tenancy
Short SST  Short secure Scottish tenancy
UT     Upper Tribunal

OVERVIEW OF THE BILL

3. The Scottish Government’s vision is that all people in Scotland live in high-quality, sustainable homes that they can afford and that meet their needs.

4. This Bill will contribute to that vision through its main policy objectives of:

- safeguarding the interests of consumers,
- supporting improved quality, and
- delivering better outcomes for communities.
5. The Bill will safeguard the interests of consumers by:
   - introducing a regulatory framework for letting agents to help improve overall levels of service and professionalism within the industry, and
   - modernising the licensing of mobile homes and park homes.

6. It will support improved quality by:
   - giving local authorities powers to improve the quality of houses in the private sector and
   - giving local authorities the ability to make applications to the private rented housing panel for a determination on the repairing standard.

7. It will deliver better outcomes for communities by:
   - ensuring that best use is made of existing housing to help meet the needs of those without a suitable home by abolishing the right to buy social housing,
   - increasing flexibility in the allocation and management of social housing so that landlords can deliver improved outcomes for their tenants and the communities they live in,
   - ensuring that applications for landlord registration are not subject to unnecessary delay and are consistent in terms of requirements for licensing of houses in multiple occupation, and
   - transferring private rented sector cases from the courts to a tribunal in order to provide more efficient, accessible and specialist access to justice for landlords and tenants in the sector.

8. Achieving those objectives will contribute to the Scottish Government’s overarching purpose “to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth” and in particular to the following National Outcomes:\footnote{Scotland Performs, National Outcomes, Scottish Government http://www.scotland.gov.uk/About/Performance/scotPerforms/outcome}:
   - “We live in well-designed sustainable places where we are able to access the amenities and services we need,
   - We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others,
   - Our public services are high quality, continually improving, efficient and responsive to local people’s needs.”
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

9. In addition, meeting the Bill’s objectives will achieve some of the commitments and actions set out in the Scottish Government’s Strategy and Action Plan for the 10 years to 2020, *Homes Fit for the 21st Century*.2

Right to buy

10. The policy objectives for ending the right to buy (“RTB”) are to protect and enhance social housing for future generations and to safeguard the investment made in social housing over many generations. Ending RTB entitlements contributes to the Scottish Government’s wider strategic objective of a wealthier and fairer Scotland and safer and stronger communities.

11. Most tenants holding a Scottish secure tenancy (“SST”) from a social landlord that began before 2 March 2011 will have some form of RTB entitlement. The Bill contains provisions that will end all of these RTB entitlements. It allows for a three-year period, from the date of Royal Assent, during which those tenants who have a RTB and are able to exercise it, can buy their home.

Social housing

12. Legislation controls tightly how social landlords manage their houses. This includes how they allocate homes and the tenancies on which they let them, as well as their powers to tackle antisocial behaviour.

13. The provisions in the Bill are intended to provide better outcomes for communities by:
   - increasing the flexibility that landlords have when allocating housing,
   - allowing landlords to make best use of social housing,
   - giving landlords more tools to tackle antisocial behaviour,
   - providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights in a number of ways,
   - clarifying existing legislation on how short SSTs operate.

Private rented housing

Private rented sector tribunal

14. The policy objectives for transferring private rented sector (“PRS”) cases from the sheriff courts to a tribunal are to provide more efficient, accessible and specialist access to justice for both landlords and tenants in that sector.

15. The Bill would transfer jurisdiction for hearing cases, including eviction cases, relating to the PRS from the sheriff courts to the new First-tier Tribunal (“FTT”) (which will be created by the Tribunals (Scotland) Bill). There would be a route of appeal to the Upper Tribunal (“UT”) in cases where an appeal is currently available from decisions of the sheriff court. The FTT and UT will collectively be known as the Scottish Tribunals. In practice this means that individual cases

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would be heard by tribunal committees in a new jurisdiction which would be part of the new Scottish Tribunals.

Third party reporting to the private rented housing panel

16. These provisions are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector. The provisions would give local authorities the power to make a direct application to the private rented housing panel where there is evidence that a landlord is not meeting a repairing standard (the property condition standard for private rented housing). The Scottish Government envisages that this would be used by local authorities as part of their strategic approach to tackling poor standards of housing in an area.

Enhanced enforcement areas

17. The Scottish Government intends to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities that would enable them to target enforcement action at an area characterised by poor conditions in the private rented sector. A local authority would apply to the Scottish Ministers for additional enforcement powers for a specified geographic area to be designated an enhanced enforcement area (“EEA”). The policy objective is to ensure that local authorities have a range of effective tools available to them to tackle poor standards in the PRS.

Landlord registration

18. The policy objective is to bring applications for landlord registration into line with other authorisation schemes, such as houses in multiple occupation, which have a specified time period in which a local authority must process an application. The provisions in the Bill are a minor technical amendment which will allow for an application to be deemed to have been approved after a period of 12 months from the date of receipt by the local authority. The Bill also provides a power for local authorities to apply to a sheriff for an extension to the 12 month period in complex cases.

Regulating letting agents

19. The scale of the letting industry has grown alongside the increase in the number of properties in the PRS in Scotland. A range of property management services for landlords is provided by solicitors, estate agents and accommodation agencies, making the sector a varied one. The industry plays an important role in helping to deliver high quality services to tenants and prospective tenants. For example, letting agents can help to ensure that landlords meet their statutory responsibilities and can enable effective management and maintenance of privately rented properties.

20. In bringing forward provisions to regulate letting agents, the Scottish Government has two aims. The first is to promote high standards of service and levels of professionalism across the country and the second is to provide landlords and tenants with easy access to a mechanism that will help to resolve disputes where these arise.
21. To achieve these aims, the Bill provides for the creation of

- a mandatory register of letting agents in Scotland, with an associated “fit and proper
  person test”;
- statutory provisions regarding letting agents’ practice, produced in partnership with
  key industry stakeholders, and
- a mechanism for resolving disputes between letting agents and their customers
  (landlords and tenants).

Mobile home sites with permanent residents

22. There are 92 mobile home sites across Scotland. Between them they have around 3,314 mobile homes spread across 22 local authority areas. An increasing number of people, many of whom are elderly, live permanently in mobile homes or park homes. While many sites are well run, there is evidence that some site owners do not comply with existing statutory obligations.

23. By amending the legislation, the Scottish Government’s objective is to improve and strengthen the licensing regime that applies to mobile park home sites on which people live permanently.

Private house conditions

24. The policy objective is to ensure that local authorities have a range of powers to tackle poor conditions in the private sector. The intention is that these new discretionary powers in relation to private sector housing would give local authorities more tools to use in a strategic approach to tackling poor standards of owner-occupied and privately rented housing in their areas.

25. The Bill contains a number of provisions in relation to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties. The Bill will clarify existing powers in relation to maintenance orders, streamline the process for issuing those orders and ensure that local authorities have an effective means to recover the cost of works from owners of commercial properties in housing blocks (for example where there is a shop or office on the ground floor of a block of flats). The Bill will provide local authorities with a number of new discretionary powers.

Right to redeem a security after 20 years: power to exempt

26. The 20 year security rule provisions provide powers for the Scottish Ministers to designate schemes which would be exempt from the “20 year security rule” in the Land Tenure Reform (Scotland) Act 1974. The policy objective of the provisions is to ensure the Scottish Ministers are not exposed to the financial risks associated with the 20 year security rule which allows borrowers to redeem their equity loan at its original value after the security has been in force for 20 years.
Delegation of certain functions

27. The expansion of the private rented housing panel’s jurisdiction to deal with third party applications will lead to an increased workload for the president. This is also likely to have an impact on the workload of the president in relation to the homeowners housing panel. The policy objective of the provisions is to provide greater flexibility to allow both the private rented housing and the homeowners housing panels to effectively manage this increased workload.

Scottish Housing Regulator: transfer of assets following inquiries

28. The policy objective is to equip the Scottish Housing Regulator (“SHR”) to meet its statutory objective, to safeguard and promote the interests of tenants of social landlords, in an increasingly difficult and challenging financial climate, particularly in cases where there is an imminent threat of a registered social landlord (“RSL”) becoming insolvent. The provisions would achieve the objective by making two amendments to the SHR’s powers, under section 67 of the Housing (Scotland) Act 2010, to direct a RSL to transfer some or all of its assets to other RSLs.

Repeal of defective designation provisions

29. By repealing the defective designation provisions in Part 14 of the Housing (Scotland) Act 1987, the Scottish Government’s intention is to remove an obsolete provision.

ALTERNATIVE APPROACHES

30. The Bill content covers a number of housing policy areas. Stakeholders identified some areas for legislative change through their engagement with the Scottish Government’s discussion on its paper Housing: Fresh Thinking, New Ideas. Having committed to exploring these further, the Government then consulted on proposals for each policy area. These consultations explored a number of options, including the option to do nothing and options to take a different policy approach. Details of the alternative approaches considered are set out under each policy area in this document.

CONSULTATION

31. The policy objectives of the Bill have been developed through extensive consultation and discussion with stakeholders. Following the publication of its Strategy and Action Plan - Homes Fit for the 21st Century in February 2011, the Scottish Government carried out seven consultations on policy areas where it was considering legislation. As well as publishing the consultations on its website, the Scottish Government used a range of methods for widening the reach to stakeholders. These included social media, face-to-face workshops, establishing advisory groups and presentations at conferences. Further information on the level of engagement and the outcomes of these consultation exercises is provided in the detailed narrative about each part of the Bill.

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EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT AND SUSTAINABLE DEVELOPMENT

32. Information on the impact of the Bill 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 well-being of communities generally, including island communities. The Scottish Government has considered the potential effect of the Bill on human rights. It is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights. The Bill creates a number of criminal offences where necessary, each of which is compatible with Convention rights. The Scottish Government considers that the provisions do not have any adverse effect on sustainable development.

33. The following sections of this Policy Memorandum set out the rationale for each part of the Bill.

DETAILED POLICY OBJECTIVES OF THE BILL

PART 1 – RIGHT TO BUY

Policy objectives

34. The Scottish Government wants to end all right to buy (“RTB”) entitlements in Scotland in order to protect and enhance social housing and to safeguard the investment made in social housing over many generations. Ending RTB entitlements contributes to its strategic objective of a wealthier and fairer Scotland and safer and stronger communities.

35. RTB has extended the benefits of home ownership to many families. It has been a major contributor to the change in the number of homes owned in Scotland. Whereas home ownership stood at 36% in 1981, 65% of Scottish homes are now owner-occupied. However, the Scottish Government considers that RTB is outdated and has no place in Scotland because when it was introduced there were no other routes into low-cost home ownership. That is not the case now. The impact of RTB goes beyond tenants to their landlord and the wider community. Around 455,000 houses have been sold in Scotland since right to buy was introduced. It has severely reduced the number of homes available to rent from social landlords at a time demand exceeds supply in many areas. The Scottish Government set out its priorities for housing in Homes Fit for the 21st Century, its Strategy and Action Plan to 2020. This made clear its intention to increase supply across all tenures. The continuing depletion of social housing stock is unsustainable in the face of continued high levels of need for this form of housing in Scotland. For example, on 31 March 2013 there were 184,887 people on local-authority waiting lists.¹

36. As a result, those on the waiting lists often have to wait longer for properties to become available and existing tenants who want to move to a home more suited to their needs can encounter difficulty because of a lack of available homes of the right type.

37. While new-supply social housing is not subject to RTB, social landlords can still lose existing stock. Although RTB sales have fallen substantially from their peak, there are still around 1,400 homes sold under RTB each year. Around 500,000 tenants still have a RTB, with around 207,000 of these having a preserved RTB. These are tenants who retain a right to buy that they held prior to 30 September 2002. One reason for the relatively low level of sales in recent years could be the lack of mortgage availability due to the current economic situation. It is possible that the annual sales figure could increase should the economic situation, and access to finance, improve.

38. RTB sales erode the asset base of landlords and can cause pressure to increase rent levels for other tenants. RTB discounts are calculated on the aggregated length of tenure in social housing and result in landlords selling homes for less than it will cost them to build a replacement. This is particularly true of sales under preserved RTB, where the maximum discount is 70% of the value of a flat or 60% of the value of a house. In these sales, the large discount leaves the landlord with an average receipt of only £31,000, yet it costs around £120,000 to build a replacement house. Most of the cost of new build is usually financed through borrowing against future rental surplus. Nevertheless, the shortfall under preserved RTB sales is too great to be sustainable. The average RTB discount is £42,000, and under “preserved” RTB it is over £50,000, but one third of tenants get a higher discount. In the last two financial years, 141 tenants got discounts of over £75,000. The highest discount was £119,000.

39. Statistics on market values, sale prices and discounts are published by the Scottish Government – *Sales to Sitting Tenants*. As well as meeting the needs of those on the housing list, local authorities also have responsibilities for housing homeless people. Between October and December 2012 alone there were 8,374 applications for homelessness assistance and 7,200 applications were assessed as priority.

40. There is emerging evidence that RTB properties end up in the private rented sector (PRS). A recent study by Glasgow University suggests that 43% of local housing allowance PRS housing benefit claims in Renfrewshire are for ex-RTB properties. Because housing benefit claims by PRS tenants are higher than claims by social rented tenants, the report estimates that the UK Government is paying an extra £3 million each year in housing benefit in Renfrewshire alone, compared to what it would have paid if those houses had still been owned by the council.

41. Through this reform, the Scottish Government aims to ensure that social housing should never be available for sale under RTB and therefore should always remain available for renting as social housing. This would mean that no current or future tenants of social housing would be entitled to buy their homes.

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8 Unintended Consequences; Local Housing Allowance meets the Right to Buy - Nigel Sprigings* and Duncan H. Smith, University of Glasgow and Renfrewshire Council Abstract [http://extra.shu.ac.uk/ppp-online/wp-content/uploads/2013/06/consequences_local_housing_allowance.pdf](http://extra.shu.ac.uk/ppp-online/wp-content/uploads/2013/06/consequences_local_housing_allowance.pdf)
42. The Scottish Government recognises that many people want to own their homes but does not believe that this should be at the expense of homes in the social rented sector. It is, therefore, committed to supporting home ownership in other ways, including help for people on low to moderate incomes to become home owners where it is affordable for them. As part of this, the Low-cost Initiative for First-time Buyers (“LIFT”) brings together several schemes to help households become homeowners. In addition, the Scottish Government is helping credit-worthy borrowers to access 90 to 95% loan-to-value mortgages for new-build homes through its guarantee support for the private sector led MI New Home scheme. While the new Help to Buy (Scotland) shared equity scheme helps buyers to buy a new build home from a participating home builder without having to fund all of the purchase price.

Notice period

43. To ensure compliance with the European Convention on Human Rights, tenants who have and can currently exercise their RTB will be given a reasonable opportunity to do so before this reform comes into force. The Scottish Government considers that a notice period of three years from the date of Royal Assent for the Bill will afford tenants the opportunity to exercise their current rights if they wish to do so. This gives them time to consider carefully the implications of home ownership, and obtain financial advice before making any decision.

Alternative approaches

44. The Scottish Government considered, and consulted on, the option of moving all tenants with preserved RTB onto modernised RTB. This would have ended the discounts of up to 70% available under preserved RTB, and placed all tenants with the RTB on an equal footing. While this option would still see social rented properties being sold, there would be potential financial benefits for landlords as there is a smaller discount and larger sales receipt which could potentially fund re-investment in new housing.

45. However this option is not without complexity, particularly given the impact of pressured area status legislation and relevant provisions of the Housing (Scotland) Act 2001. More specifically, in areas of high housing need a local authority can suspend the RTB by designating pressured area status, and maintain that suspension for as long as it considers that this is justified by housing need. In addition, there are currently 52 RSLs where modernised RTB is suspended until 2022, for some of their stock. For some tenants, the effect of converting their preserved RTB to a modernised RTB would therefore be almost the same as ending RTB altogether. Ending RTB altogether was considered to be fairer and more transparent, placing all tenants in the same position.

46. Modelling shows that, over a 10-year period, moving tenants from preserved to modernised RTB could keep around 6,000 homes for social rent that would otherwise be sold. By comparison, the option of ending RTB would keep up to 15,500 homes in the sector.

47. Large discounts under preserved RTB cause particular problems for landlords. While ending the large discounts would have offered significant benefits, it would still leave a very complex system making it difficult for tenants and landlords to operate. Retaining RTB also leaves landlords with increased financial risks as there would still be some uncertainty about whether some of their stock would be sold. Ending RTB offers clarity for everyone.
48. The Scottish Government also considered the option to make no further reforms based on the argument that RTB sales have been declining and may continue to do so. However, the rate of sales is affected by the wider economy and could increase if the wider economic situation changes. This option would continue to mean that social rented housing would be lost to the sector and would exacerbate the situation for those in housing need. While the situation for landlords would remain unchanged under this option, they would not gain any benefit. It would also do nothing to address the complexity of the current system.

Consultation

49. The Scottish Government consulted on its proposals from 7 June to 30 August 2012 - *The Future of Right to Buy in Scotland - A Consultation*. This invited written views on the proposals and, during the consultation period, officials also held meetings with key stakeholders (tenant groups, COSLA, the Scottish Federation of Housing Associations (SFHA) and Shelter) in order to hear at first hand their views on the RTB reforms. The views noted at the consultation events largely reflected the responses to the consultation.

50. The Scottish Government asked for views on two main options:
   - Move all tenants with preserved right to buy onto modernised terms. This would end the discounts of up to 70% and give tenants a maximum discount of £15,000.
   - End all right to buy entitlements in Scotland.

Views were also sought on what the notice period should be for any change.

51. There were 169 formal responses to the consultation. Most (87%) of those providing a view considered that there should be further restrictions to RTB legislation. The vast majority (83%) favoured ending right to buy altogether. This included 92% of registered social landlords, 81% of local authorities, 75% of tenant groups and 73% of individuals. Should RTB end, 73% of respondents who commented recommended a notice period of two years or less. Around three-quarters (76%) of those who expressed a view considered that over the longer term the financial effect of the proposed changes on social landlords would be either neutral or beneficial. An analysis report was published on 16 November 2012.

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

Effects on equal opportunities

52. The most significant equal opportunities issue raised in relation to RTB was a concern that ending RTB would further limit home ownership opportunities for younger households. However there are low cost home ownership schemes available now that did not exist when RTB was introduced. Conversely, respondents recognised that restrictions should result in greater availability of housing for social rent which would benefit those in housing need.

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10 *Analysis of Responses to the Future of Right to Buy Consultation in Scotland*, The Scottish Government, November 2012
Effects on human rights

53. The Scottish Government has considered the potential effect of ending RTB on human rights. This potentially raises issues under the European Convention on Human Rights. However, it believes that the benefits to the community in terms of retention of housing stock, the aim of meeting housing need and wider issues of social justice outweigh any loss of individual rights. In addition, tenants who have and can exercise the RTB are being given a fair and reasonable notice period of three years to decide whether or not to do so.

Effects on island communities

54. There would be no differential impact upon island communities. The RTB reforms would help to safeguard island communities’ social housing stock.

Effects on local government

55. Twenty-six local authorities provide social housing in their respective areas. The remaining six local authorities have transferred their housing stock to RSLs that were created to acquire and manage the stock. There will be two principal effects arising from ending RTB.

56. Firstly, local authorities would be better able to fulfil their strategic housing function as more social housing stock will be safeguarded from sale under RTB as a result of the reforms and would therefore be available to house those on social housing waiting lists.

57. Secondly, the RTB reforms would affect the financial position of the twenty-six local authorities with their own housing stock. In response to the consultation, social landlords stated that they should be able to adjust their business plans to accommodate any impact, and that no significant negative impact should arise from the proposed reforms.

58. They also noted that while there is likely to be a reduction in local authorities’ RTB receipts as a result of the RTB reforms, this would be offset by the benefit of continued rental income over the remaining lifetime of the stock not sold as a result of the reforms. The certainty of this continuing income in comparison to unpredictable income, dependent on demand for RTB sales should allow them to plan ahead more accurately.

Effects on sustainable development

59. The Scottish Government considers that ending RTB reforms will promote environmental, social and economic aspects of sustainable development, as described below.

Environmental effects

60. Ending RTB reforms is unlikely to have significant environmental effects because its primary impact will be upon housing tenure of existing or planned future social housing stock.

Social effects

61. The chief disadvantage of RTB in social terms has been to remove properties from the social rented sector and to reduce the number of homes available for social rent. As a result, prospective tenants, many of whom are homeless, must wait longer for properties to become
available. Ending RTB should result in greater availability of social housing. Scottish Government modelling indicates that it would retain up to an additional 15,500 units over ten years in the social rented sector. The Scottish Government expects that tenants and prospective tenants would benefit from this in two main ways. Firstly, more households would benefit from the greater security of tenure and on average lower rents in the sector compared to private renting options. Secondly, prospective tenants would experience shorter waiting times for suitable properties to become available.

Economic effects

62. The Scottish Government believes the RTB reforms would promote greater long term financial sustainability within the social housing sector by increasing social landlords’ stable revenue income from rents. Around three-quarters of those who expressed a view in the consultation considered that over the longer term the financial effect of the proposed changes on social landlords would be either neutral or beneficial, and even the majority of those who did not think this stated that social landlords would be able to adjust their business plans to adapt to the change.

PART 2 – SOCIAL HOUSING

Policy objectives

63. Housing legislation tightly controls the management of social housing in Scotland. This includes housing allocations, tenancies and limited powers for landlords to tackle antisocial behaviour. The provisions in the Bill are intended to provide better outcomes for communities by:

- increasing the flexibility that landlords have when allocating houses,
- allowing landlords to make best use of social housing,
- giving landlords more tools to tackle antisocial behaviour,
- providing further protection for tenants, particularly tenants with short Scottish secure tenancies (“short SSTs”), by strengthening their rights in a number of ways,
- clarifying existing legislation on how short SSTs operate.

Increasing local flexibility

64. Research by the Scottish Government indicated existing priority groups for allocating social housing were outdated and needed to be revised\(^{11}\). The provisions would do this by replacing specified groups with a broader definition of housing need. Under this new definition, social landlords would have to determine which groups they will prioritise. Landlords would also be able to take more factors into account when deciding on an applicant’s priority for housing such as the applicant’s conduct at their previous tenancy. These flexibilities would help landlords respond to the housing needs of people in their local areas and ensure that affordable rented housing goes to people who need it most.

\(^{11}\) Reasonable Preference in Scottish Social Housing Research Report
http://www.scotland.gov.uk/Publications/2011/07/04145632/10
65. If some groups are consistently overlooked by social landlords, Ministers would have a power under the Bill to require all landlords to include these groups in their allocation policies. It would be up to landlords to decide what priority they give to any groups specified in regulations.

Allowing landlords to make best use of available affordable rented housing

66. Discussions about the future of housing policy in Scotland identified some potential ways to make better use of social housing. The Bill includes provisions that would:

- allow social landlords to take into account any property owned by applicants, tenants or members of their household when determining priority for housing and the type of tenancy to be granted,
- address concerns that the law around succession, subletting, joint tenancy requests and assignation effectively allows tenants rather than landlords, to decide who gets their home. These are important rights in the Scottish secure tenancy ("SST"). But to make sure that people who need housing are given priority, the Scottish Government is introducing qualifying periods before tenants can exercise these rights and is strengthening the grounds for landlords to refuse an assignation of a tenancy,
- allow landlords to take action to recover possession of an adapted, or specially constructed property, when there is nobody with special needs currently occupying it, but someone with special needs now requires that property. In such circumstances, landlords would have to make other suitable accommodation available.

Tackling antisocial behaviour

67. The Scottish Government wants to do more to tackle the serious impact that antisocial behaviour has on individuals and communities. During its consultation on the draft Social Housing Charter, landlords and tenants raised concerns with the Scottish Government about the impact of antisocial behaviour. Provisions in the Bill would give landlords more tools to support their continuing efforts to reduce antisocial behaviour.

68. Landlords would be able to impose a requirement that a minimum period of time must elapse before an applicant with a history of antisocial behaviour becomes eligible for an offer of social housing. The Bill sets out the circumstances under which such a requirement could be imposed, including where the applicant or someone who lives with them has been antisocial in the past. This provision is intended to make antisocial tenants and applicants aware of the consequences of their behaviour. It is also intended to help protect communities by anticipating future antisocial behaviour problems and taking steps to prevent this prior to the start of a new tenancy. There would be an opportunity for further consideration of a maximum period preceding the application over which landlords would be able to consider an applicant’s housing history and further consideration of a maximum period that a tenant can be ineligible for the offer of housing, through secondary legislation.

69. Where antisocial behaviour does occur, social landlords would have the power to grant short SSTs. Provisions in the Bill would allow landlords to grant a short SST to a new applicant where there is a history of antisocial behaviour. In the case of an existing tenant with a history of antisocial behaviour, landlords would be able to convert their SST to a short SST. The aim of
doing so would be to encourage the antisocial tenant or member of their household to change their behaviour. The tenancy can then be converted to a SST after 12 months if the antisocial behaviour stops. In cases where the behaviour of the tenant or member of the tenant’s household has not reached the standard required at the end of the 12-month period, the landlord can decide to extend the short SST for a further one-off period of six months.

70. Where tenants do not respond to the help and support they are given, they may face eviction. Provisions in the Bill are intended to make eviction simpler in cases where another court has already convicted the tenant or member of the tenant’s household of illegal activity that affects the community. The landlord seeking possession would only have to demonstrate to the court that the criteria for possession have been met, rather than prove that antisocial behaviour has occurred. This simpler eviction process could include, for example, convictions for the production or supply of drugs.

Providing further protection for tenants, particularly tenants with short Scottish secure tenancies

71. Provisions in the Bill clarify the circumstances in which an applicant may be made ineligible for an offer of housing for a minimum period of time. These circumstances include situations where the applicant or member of the applicant’s household has a history of antisocial behaviour or outstanding rent arrears above a certain level. This will be balanced by a new right of appeal for applicants to challenge, in court, a landlord’s reasons for doing so.

72. The Scottish Government also wants to give tenants with short SSTs greater protection by:

- extending the minimum term of a short SST that is intended to convert to a SST from six months to 12 months. This will provide more time for the tenant or member of the tenant’s household to receive support and change their behaviour,
- making sure that short SST tenants are fully aware of why repossession is being sought, by requiring landlords to give reasons for seeking repossession in all Short SST cases,
- giving tenants with a short SST that is intended to convert to a SST a right to request a review of the landlord’s decision to seek repossession of the property. This will give them the opportunity to discuss the reasons why repossession is being sought with their landlord.

Clarifying existing legislation

73. A recent court judgement *South Lanarkshire Council v McKenna*\(^\text{12}\) identified a number of issues around how a short SST should operate. Provisions in the Bill are intended to clarify the meaning of Sections 34 and 35 of the Housing (Scotland) Act 2001.

74. The Bill also includes provisions to resolve an issue identified in the Scottish Government’s consultation, which may prevent a landlord from taking action to recover possession during the term of a short SST. By addressing this issue, landlords would be able to

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\(^\text{12}\) South Lanarkshire Council v McKenna court judgement 22 April 2010 [http://www.scotcourts.gov.uk/opinions/SD1463_09.html](http://www.scotcourts.gov.uk/opinions/SD1463_09.html)
seek repossession of the tenancy at any time during the short SST if the tenant breaches the tenancy agreement, for example, by acting antisocially. A court order would be required before a landlord can recover possession of a property.

**Alternative approaches**

**Do nothing**

75. The Scottish Government considered whether legislation needed to be changed in order to give landlords more flexibility to respond to the needs of their communities and make better use of affordable rented housing (including social rented and intermediate rented housing).

76. Continuing with the current rules would mean that the issues identified by landlords and tenants around housing allocation and housing management would remain. Landlords would also continue to have limited powers to tackle antisocial behaviour. Doing nothing would also prevent social landlords from making better use of their stock and from being more responsive to the needs of their communities. The ambiguities in existing legislation identified by the *South Lanarkshire Council v McKenna* court case would still be in place.

**Other possible changes**

77. The Scottish Government also considered other ways of making the best use of affordable rented housing. The reasons why these approaches were rejected are explained below:

**Making best use of affordable rented housing**

78. **Revising existing list of priority groups**: The Scottish Government considered simply revising the list of priority groups in legislation as an alternative way of making best use of affordable rented housing. This approach was rejected however, as it would not have given greater local flexibility in line with the Christie Commission recommendations on the need for more local accountability.

79. **The creation of an initial or probationary tenancy**: The Scottish Government consulted on the possibility of creating an initial or probationary tenancy to help promote positive behaviour by new tenants around the conditions of their tenancy. Conditions of a tenancy include things like paying rent, care of the property and the standard of behaviour expected. The responses to the Scottish Government’s consultation showed that opinion was divided around this proposal. Tenants were very supportive, but there was less support for such a move amongst landlords. Overall support was 62%. In view of the issues currently affecting social housing tenants, particularly the increased uncertainty that welfare reform is bringing to the sector, the Scottish Government rejected this approach.

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13 Christie Commission Report on the Future of Public Services

[http://www.scotland.gov.uk/Publications/2011/06/27154527/0](http://www.scotland.gov.uk/Publications/2011/06/27154527/0)
Creating local flexibility

80. **Allowing social landlords to grant short Scottish secure tenancies for persistent rent arrears**: The Scottish Government considered giving landlords the flexibility to address persistent rent arrears by allowing a SST to be converted to a short SST. The Scottish Government has however recently introduced greater protection for social tenants facing rent arrears. As evidence shows that rent arrears are now more likely under recent welfare reforms such as the under-occupancy deduction, or “bedroom tax”, the Scottish Government rejected this approach.

81. **Considering an applicant’s income when deciding their priority for housing**: Another option the Scottish Government consulted on was giving landlords the flexibility to consider an applicant’s income when allocating a tenancy. As there was a low level of support for this proposal in the consultation (36%) this option was rejected.

82. **Allowing social landlords to use short SSTs to let intermediate rented housing**: The Scottish Government consulted on giving social landlords the flexibility to develop and manage intermediate rented housing themselves rather than through a subsidiary or partner organisation. As there was a low level of support for this proposal in its consultation (40%) the Scottish Government rejected this option. Social landlords will, however, still be able to work with private sector partners to develop intermediate rented housing as an alternative choice for those seeking housing.

Consultation

83. The provisions in the Bill reflect extensive consultation and discussion with stakeholders. Consultation began in 2010 and took place over a number of phases.

84. The consultation document, *Housing: Fresh Thinking, New Ideas*\(^{14}\) started a public discussion about the future of housing policy in Scotland. It asked how the interests of current and future tenants can be balanced by making better use of existing stock. The Scottish Government had informal discussions in August 2010 with several social landlords and representative bodies to discuss some early proposals coming forward from the housing discussion.

85. *Homes Fit for the 21st Century*\(^{15}\) followed in 2011 and set out a commitment to consult on specific proposals. The Scottish Government consulted in August 2011 with housing professionals in 13 housing associations, nine local authorities and five representative bodies.

86. After this consultation, the Scottish Government was able to refine its proposals further, and in 2012 it published the consultation paper, *Affordable Rented Housing: Creating flexibility for landlords and better outcomes for communities*\(^{16}\) which proposed a number of changes to

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\(^{14}\) *Housing: Fresh Thinking, New Ideas* – The Scottish Government, May 2010


\(^{16}\) *Affordable Rented Housing: Creating flexibility for landlords and better outcomes for communities* – The Scottish Government, February 2012
legislation on social housing allocations, tenancies and housing management. The consultation ran from 6 February 2012 to 30 April 2012. To reach as many people and organisations with an interest as possible, the Scottish Government also:

- distributed posters and flyers advertising the consultation to social landlords and the Citizens Advice network,
- held seven consultation events across Scotland for tenants, applicants, social landlords and anyone with an interest,
- set up a Facebook page to reach a wider audience, particularly amongst groups who may not usually engage in a formal consultation,
- attended Tenants Regional Network meetings to discuss the proposals,
- commissioned Young Scot, the national youth information charity, to facilitate four participative workshops with young people to help reach seldom heard groups,
- commissioned Streetlinks, a youth outreach organisation active in a number of local authority areas in the west of Scotland to run participatory workshops,
- commissioned the production of a DVD highlighting issues behind six of the consultation proposals as a tool for reaching and engaging with target groups for its Facebook page and as part of its events,
- met with a number of equality organisations, including Age UK, Glasgow Centre for Inclusive Living, Housing Options Scotland, Inclusion Scotland, Positive Action in Housing and the Scottish Women’s Convention.

87. In total, 237 consultation responses were received. The Scottish Government commissioned independent analysis of the consultation responses, which showed that over 50% of respondents supported eight of the 10 proposals. To refine the proposals further, the Scottish Government set up the Affordable Rented Housing Advisory Group (ARHAG) inviting key stakeholders to help develop and consider the original proposals and additional suggestions made by those who responded to the consultation.

88. ARHAG met six times between July 2012 and June 2013 to consider all of the proposals, including those arising from responses to the consultation. Membership of the working group was:

- Association of Local Authority Chief Housing Officers (ALACHO),
- Antisocial Behaviour Officers Forum (ASBOF),
- Antisocial Behaviour Lawyers’ Forum (ASBLF),
- Chartered Institute of Housing (CIH),
- Glasgow & West of Scotland Forum of Housing Associations (GWSF),

17 Consultation responses to the Affordable Rented Housing Consultation: Creating Flexibility for Landlords and Better Outcomes for Communities - The Scottish Government, June 2012
18 Consultation on Affordable Rented Housing: Analysis of Consultation Responses – The Scottish Government, August 2012
19 Affordable Rented Housing Advisory Group – Scottish Government, Housing, Housing Management web pages
• Regional Tenant Organisations (RTOs),
• Scottish Court Service,
• Scottish Federation of Housing Associations (SFHA),
• Shelter Scotland.

89. A broader range of stakeholders were involved in regular communication and consultation with group members by correspondence. These included CAB (Citizens Advice Bureau), COSLA (Convention of Scottish Local Authorities), Equality and Human Rights Commission, Scottish Housing Regulator and TC Young solicitors.

90. Feedback was positive for all of the proposals that the Scottish Government has included in the Bill. Overall, more than 50% of responses to the consultation supported the changes now being made. More than 85% of landlords’ responses and more than 73% of responses from tenants groups supported the changes (with the exception of the qualifying period for succession which was supported by 59% of tenants groups). The greatest support was for proposals to tackle antisocial behaviour.

91. The feedback from consultation respondents on what they saw as the benefits and problems with proposed changes was considered by ARHAG. The issues varied, but common themes were the need for clarity, difficulty investigating issues, such as previous antisocial behaviour and home ownership and the need to make sure that a consistent and fair approach is maintained despite granting greater flexibility for landlords. These issues will be addressed in guidance that will be issued by the Scottish Government. Social landlords would have to have regard to this guidance when setting their allocations policies.

92. Further suggestions for changes that would make better use of social housing were also considered by ARHAG. These discussions led to the development and inclusion of the proposals on assignation, subletting and joint tenancy requests; the use of short SSTs for some homeowners (for example where an owned property has been rented out and the lease will come to an end in six months or where time is needed to make adaptations to the property to make it safe for the homeowner); and the proposals to give greater protections for tenants as well as the proposals to clarify existing legislation.

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

Equal opportunities

93. The impact of these provisions on equality groups will depend on whether, and how social landlords use the additional flexibilities. Safeguards are, however, in place. These require social landlords to take account of the impact and needs of equality groups in any change to their policies or procedures. These include requirements under the Housing (Scotland) Act 2001, the Equality Act 2010 and the Scottish Social Housing Charter. As the provisions in the Bill focus on enabling social landlords to better meet housing need, it is anticipated that these would be likely to impact positively upon some equality groups. For example, the broader definition of priority for housing may be of particular benefit to disabled or older people who are more likely
to need to move because they are in unsuitable housing. The provisions also provide social landlords with additional tools to tackle antisocial behaviour which may positively impact on those who have been victims of hate crime, a particular issue for some equality groups. The Scottish Government does not consider that there would be a negative impact on any equality group.

**Human rights**

**Increasing local flexibility and ensuring best use of affordable rented housing**

94. The Scottish Government has considered the potential effect of these policies on human rights. It considers that there are no significant European Convention on Human Rights implications resulting from these provisions. If a person does not have a right to occupy a property, Article 1 of Protocol 1 will not be engaged. Article 8, the right to respect for private and family life, could be argued to be relevant, and public authorities (which for these purposes are likely to be taken to include registered social landlords (RSLs)) would have to develop local policies which respected any such right, and any related right under article 14 (the prohibition of discrimination in the enjoyment of ECHR rights). Giving social landlords increased flexibility is not in itself incompatible with the ECHR.

**Tackling antisocial behaviour**

95. It might be argued that to have a short SST extended for a period longer than originally envisaged, rather than to grant the more permanent tenancy of a SST, impacts on a person’s right under Article 8. However, the Scottish Government considers that the social justification for tackling antisocial behaviour would make any such interference proportionate.

**Providing further protection for tenants, particularly tenants with short Scottish secure tenancies**

96. The decision of the Court of Session last year in a devolution reference (McKenna v South Lanarkshire Council) held that amendments to improve tenant protection enhance tenants’ ECHR rights. They would include provision for landlords to provide reasons why repossession is sought and an opportunity for review of such a decision.

**Non-discrimination**

97. Article 14 of the ECHR prohibits discrimination. It is not intended that any of the changes would discriminate against persons in the enjoyment of their Convention rights. The provisions would have to be operated by public authorities in a manner, which respected such rights.

**Island communities**

98. The provisions at this part of the Bill raise no issues for island communities.

**Local government**

99. All of the provisions in the Bill around social housing relate to social landlords (local authorities and RSLs). The provisions will be of direct relevance to local authorities in their role as landlords. The provisions will give all social landlords greater freedom around the allocation and management of their housing, and more tools to tackle the difficulties that communities are
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

facing from antisocial behaviour. Local authorities and COSLA are very supportive of this greater local flexibility.

Effects on sustainable development

100. The effect of the provisions in Part 2 of the Bill on the environmental, social and economic aspects of sustainable development, are described below.

Environmental effects

101. The changes to how social housing is allocated and managed are unlikely to have significant environmental effects because its primary impact will be upon the best use of existing social housing stock.

Social effects

102. The ability of landlords to tackle antisocial behaviour by social housing applicants and tenants through a requirement for applications to have been placed for a minimum period of time before an applicant with a history of antisocial behaviour is eligible for an offer of social housing; by the ability to grant, or convert existing SSTs to, a short SST; and the simplification of evictions for serious behaviour is expected to have beneficial social effects on communities. Reducing such antisocial behaviour not only brings benefits to individuals, landlords, the police and other agencies but also reduces the incidence of neighbour disputes and potential movement of social housing tenants.

Economic effects

103. The changes to how social housing is allocated and managed are unlikely to have significant environmental effects because its primary impact will be upon the best use of existing social housing stock.

PART 3 - PRIVATE RENTED HOUSING

TRANSFER OF JURISDICTION FROM THE SHERIFF COURT TO THE FIRST-TIER TRIBUNAL

Policy objectives

104. The Scottish Government’s policy objective for a private rented sector (“PRS”) tribunal is to provide more efficient, accessible and specialist access to justice for both landlords and tenants in that sector.

Background

Private rented sector tenancies

105. The number of households in the PRS has increased over recent years, partly as a result of the economic downturn. The sector now accounts for 11% of homes and is characterised by a large number of individual landlords, most of whom own one or two properties.
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

106. There are some basic rights which affect all PRS tenancies. In general, the rights and responsibilities of tenants and landlords depend on the type of tenancy and the terms of the individual tenancy agreement.

107. Most PRS tenancies are regulated under the Housing (Scotland) Act 1988 (“the 1988 Act”). This provides for assured and short assured tenancies although, in practice, most tenancies created are short assured tenancies. These are usually for an initial term of six months and can come to an end without a need for court action after that term has ended.

108. Assured tenancies confer greater security of tenure but they are rarely created deliberately. They can arise by accident if a landlord fails to serve the necessary notice on the tenant stating that the tenancy will be a short assured tenancy. There is a continuing debate about whether greater security of tenure is needed in the PRS and if so, how this can be delivered. The Scottish Government is reviewing the PRS tenancy regime.

109. Older private sector tenancies, known as “regulated tenancies” are regulated under the Rent (Scotland) Act 1984 (the 1984 Act). Regulated tenancies provide security of tenure and control over rent levels and must be registered with Rent Service Scotland (“RSS”). There are about 6,000 of these in existence. No new regulated tenancies have been created since the assured tenancy provisions in the 1988 Act came into force in 1989 but RSS handles a few new registrations each year. These are registrations of existing tenancies - usually in the context of a dispute between the tenant and landlord.

110. As well as rights and duties between landlords and tenants, there is a range of criminal offences and civil remedies to prevent undesirable behaviour by landlords in the PRS. These can also give rise to civil disputes. For example, unlawful eviction is a criminal offence and tenants who are unlawfully evicted can be awarded damages by the civil courts.

Landlord/tenant disputes

111. Most people who live in the PRS will do so without being involved in disputes which require escalation to a court. But where problems arise between landlords and tenants these can be escalated for formal dispute resolution by a court or tribunal. The majority of PRS disputes between landlords and tenants are currently handled by the sheriff court. These cases fall into two categories: repossession cases where the landlord seeks to evict the tenant and non-eviction cases, many of which can be raised by tenants.

112. Repossession cases (also referred to as eviction cases) are raised as summary cause actions in the sheriff court. It is estimated that the sheriff courts currently handle an average of around 500 of these cases each year from the PRS.

113. Non-eviction cases include applications to sheriffs under a range of housing-specific provisions. These include, for example, applications to permit contracting out of the repairing standard and applications for sheriffs to write tenancy agreements where landlords fail to provide

20 See section 32(1)(b) and (2) in the 1988 Act.
21 The criminal offence is under section 22 of the Rent (Scotland) Act 1984 and the right to damages is under section 36 of the Housing (Scotland) Act 1988.
them. These cases tend to be raised as summary applications in the sheriff court. It is not clear exactly how many of these cases are raised each year but it is estimated, based on general court statistics regarding housing-related cases, that the numbers are low.

114. Non-eviction cases also include disputes which relate to compliance with the terms of individual tenancy agreements. These will be actions to enforce compliance with contractual obligations or to seek damages for breach of contract. Examples include:

- Actions by tenants to recover tenancy deposits, particularly those which have not been paid into tenancy deposit schemes.
- Actions by tenants to enforce obligations of landlords to provide services and insure buildings.
- Actions by landlords to recover costs (e.g. for cleaning the property or destroyed/damaged furniture) from tenants without seeking to evict them.

115. A further category of PRS cases is handled by the private rented housing panel (“PRHP”). The PRHP considers whether private rented houses comply with the repairing standard and also reviews decisions on rent levels (primarily in relation to regulated tenancies). It handles about 250 cases a year. As part of reforms being taken forward separately in the Tribunals (Scotland) Bill, the PRHP will become part of the First-tier Tribunal (“FTT”). Further information about tribunal reform is set out in paragraph 126 below.

Landlord registration

116. Private landlords must be registered with local authorities under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”). Registration is subject to the local authority being satisfied that the landlord (and the letting agent, if the landlord uses one) meets a “fit and proper person” test.

117. Local authority decisions to refuse initial registration applications or to remove landlords from the register can be challenged by summary application to the sheriff. Very few of these appeals have proceeded to court so far.

118. Local authorities can also serve notices to suspend the payment of rent to unregistered landlords, as an incentive to them to apply for registration. These notices can be revoked without court action but can also be challenged by application to the sheriff.

Licensing of houses in multiple occupation

119. Houses in multiple occupation (“HMOs”) must be licensed under Part 5 of the Housing (Scotland) Act 2006 (“the 2006 Act”). Licences are granted by local authorities.

120. A local authority must refuse an application for a licence if the applicant or the applicant’s agent is not a “fit and proper person”. The criteria for that test are the same as for landlord registration.
121. Licences may be revoked by local authorities in certain circumstances, including breach of licence conditions. The local authority also has a range of other enforcement powers and may issue:

- an order for suspension of rent payments to the landlord, if an HMO is not licensed or if licence conditions are breached,
- a notice requiring rectification of any licence breaches, and
- an HMO amenity notice, requiring the owner to carry out work on the property to make it fit for occupation.

122. Decisions by local authorities to grant or refuse licences or to use the enforcement powers outlined above can be challenged by appealing to the sheriff court.

Problems with the current dispute resolution system

123. There is a widespread view that the current dispute resolution system is not working effectively for parties involved in housing disputes. Some of the main issues that have been raised are:

- Cases can take a long time to reach court and can then be subject to frequent delays.
- In the PRS, tenants move or are moved on before their case reaches court. Some private sector tenants may feel intimidated by court procedures, fearing reprisals from their landlord.
- Some stakeholders feel that, when housing cases get to court, they are accorded a low priority within the court system.
- Many people involved in housing disputes do not have legal representation in court. This can place them at a disadvantage in adversarial court proceedings.
- Some sheriffs have more experience of housing disputes than others and court decisions can be inconsistent and unpredictable.
- Where private landlords seek to evict tenants before the tenancy comes to a natural end they can find it difficult to do so, even if they have a strong case to justify eviction.
- A small number of landlords make life difficult for their tenants. Such landlords contribute to a range of problems, including provision of low quality housing and failure to repair defects or to respect the rights of vulnerable tenants.

124. The Scottish Government is aware of the difficulty PRS stakeholders have in accessing justice through the current court system. A recurrent theme in the 2012 Consultation on a Strategy for the Private Rented Sector\(^{22}\) was the need for better access to justice. Tenants rarely assert their statutory rights in court (although this may be partly due to the lack of security of tenure offered by the short assured tenancy). The Scottish Government is aware that some PRS tenants are reluctant to take action through the courts for fear of repercussions from their landlords. As the Chartered Institute of Housing Scotland (“CIH”) confirms:

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“Landlords in the private sector, particularly those smaller portfolio or ‘accidental’ landlords, may be reluctant to take proper action when they have a dispute with their tenant, with the potential for harassment and illegal eviction by less scrupulous landlords.”

125. Finally, there are difficulties with enforcement of existing legal requirements. There is a range of criminal offences in relation to the PRS (including illegal eviction, charging premiums and acting as an unregistered landlord) but prosecutions are rare.

Recent debate

126. The debate about the potential for a specialised housing court or tribunal has continued for many years. A report by the CIH in 2004 argued for the transfer of housing cases from the courts to a tribunal.

127. The Scottish Civil Court Review, chaired by Lord Gill and published in 2009, made numerous recommendations for court reform and also referred specifically to housing cases. It concluded that housing cases are of such a serious nature that they should remain within the jurisdiction of the courts. Proposals for court reform include some objectives similar to that of a tribunal such as increasing specialism and introducing less formal procedures.

128. The Civil Justice Advisory Group, chaired by Lord Coulsfield, directly disagreed with the Civil Court Review in its 2011 report restating the case for a specialist housing tribunal and citing examples of existing tribunals which already handle serious issues outwith the courts. The Scottish Committee of the Administrative Justice and Tribunals Council also recommended consideration of the transfer of housing cases to a tribunal in reports in 2011 and 2012.

Scottish tribunals reform

129. The Tribunals (Scotland) Bill, introduced to the Scottish Parliament on 8 May 2013, will create a coherent structure of tribunals under the leadership of the Lord President with the FTT for hearing cases and a general route of appeal to the Upper Tribunal (“UT”). Initially, the structure will transfer the functions of existing devolved tribunals and, as part of this transfer, the PRHP and homeowner housing panel (“HOHP”) will become part of the FTT. The FTT will also be flexible enough to accommodate new jurisdictions and this provides an opportunity to utilise existing expertise and experience as a foundation on which to construct a PRS tribunal jurisdiction.

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23 Chartered Institute of Housing Briefing Paper, Housing Dispute Resolution – Improving access and Quality (2012)
26 Civil Justice Advisory Group Report Ensuring Effective Access to Appropriate and Affordable Dispute Resolution (2011)
The case for a private rented sector tribunal

130. The Scottish Government believes that a PRS tribunal would provide more efficient, accessible and specialist access to justice for both landlords and tenants. The PRHP has already shown that effective specialist decision making even across its relatively narrow jurisdiction can act as a deterrent to bad practice.

Potential for future development

131. The Scottish Government is mindful of the serious nature of the cases which are currently brought to court, including matters for eviction, across both the private and social rented sectors. These can involve some of the most vulnerable members of society. A PRS tribunal would tackle the well-documented difficulty for parties in the sector accessing justice but could also serve as an example for any future consideration of the status of social sector cases. Proposals for court reform (which are also due to be taken forward in separate legislation) and increased use of mediation will provide the opportunity to improve outcomes for social sector cases while they remain with the courts. A specialist PRS tribunal which can competently handle eviction cases and efficiently manage other cases could provide important data, and perhaps a platform, for other types of cases to be transferred to a tribunal should it be required.

Overview of the Bill

132. Provisions in the Bill would transfer jurisdiction for civil PRS cases from the Scottish courts to the FTT. This would take advantage of the broader functions and powers of the FTT such as provisions for the appointment of members and rule-making powers for specific practice and procedures.

133. The grounds which allow someone to raise an action and the issues to be taken into account in deciding a case would remain the same but the decision-maker would change from a sheriff to a tribunal committee. The procedural rules would also change so that cases are handled in a less formal setting.

Which private rented sector cases will the First-tier Tribunal handle?

134. Part 3 of the Bill would transfer jurisdiction for PRS disputes between landlords and tenants which are currently handled by the sheriff court to the FTT. These include private sector repossession cases where the landlord seeks to evict the tenant as well as the non-eviction cases. This part of the Bill would also transfer civil cases in relation to regulation of private landlords. These are generally appeals by landlords against registration decisions by local authorities. The case types to be transferred are set out in more detail below.

135. The Bill will transfer repossession cases including:

- Actions to evict tenants who have regulated tenancies covered by the 1984 Act. The grounds for eviction for such tenancies are set out in section 11 of and schedule 2 to the 1984 Act and cover matters such as non-payment of rent.
- Actions to evict tenants who have assured tenancies (including short assured tenancies) under the 1988 Act. The grounds for eviction for such tenancies are set out...
in section 18 of and schedule 5 to the 1988 Act and, again, include non-payment of rent and antisocial behaviour.

136. In all cases, the grounds for eviction would remain the same when cases are transferred to the FTT but in future, decisions will be made by the tribunal rather than a sheriff.

137. The Bill also includes provision to transfer non-repossession cases under the 1984 and 1988 Acts. These include:

- certain cases about rent under the 1984 Act,
- applications for compensation where landlords seek repossession on false pretences,
- applications for a sheriff to draw up a tenancy agreement if the landlord fails to provide one,
- applications for damages for unlawful eviction,
- applications to contract out of the repairing standard, and
- challenges to refusals by landlords to allow adaptation for disabled tenants or for the purposes of energy efficiency.

138. Cases relating to other landlord/tenant disputes about compliance with individual tenancy agreements, rather than under provisions of the 1984 or 1988 Acts, would also be transferred by the Bill. These cases would be actions for breach of contract and could include actions by tenants to recover tenancy deposits, to enforce obligations of landlords to provide services, carry out repairs or insure buildings. They could also include actions by landlords to recover cleaning costs or the costs of destroyed or damaged furniture or contents.

139. As with the repossession cases, the basis for raising an action and the matters to be taken into account in reaching a decision will remain the same, but in future decisions would be made by the specialist members of a tribunal rather than a sheriff.

140. The Bill contains provisions to transfer civil cases in relation to landlord registration under the 2004 Act. These include:

- challenges to refusals and revocations of registration, and
- challenges to notices suspending payment of rent.

141. The Bill also contains a power which would allow Scottish Ministers to transfer civil cases in relation to the licensing of HMOs from the sheriff courts to the FTT. These cases include:

- Appeals against decisions by local authorities to grant or refuse licences, and
- Appeals against orders issued by local authorities to suspend payment of rent or require landlords to carry out works on HMO properties.
How were these cases selected for transfer?

142. The Scottish Government has identified these case types for transfer to ensure that the majority of civil cases which can currently be raised in the sheriff court in relation to the PRS are transferred to the FTT. In future, the jurisdiction for handling PRS cases would rest with the FTT, rather than being split between the PRHP and the sheriff courts as at present.

143. The Bill provides an enabling power to transfer HMO cases at a later date (rather than transferring them in the Bill) because further consultation is considered desirable before deciding whether to transfer these cases. The Scottish Government consulted on general proposals for improving dispute resolution in housing but did not specifically mention HMO licensing cases in that consultation. The procedure for granting an HMO licence is slightly more complex than an individual landlord registration application. In addition, the HMO licensing regime applies to a wider range of properties than just those in the private rented sector. These factors will be relevant in considering whether it is appropriate to transfer jurisdiction for some or all HMO licensing cases to the FTT.

Operating principles

Internal organisation

144. Within the FTT, jurisdictions will be organised into chambers of relevant subject matter. It may be desirable for the PRS tribunal to be organised into a chamber alongside existing housing related jurisdictions for the PRHP and HOHP. However, this would be decided by affirmative order of the Scottish Parliament after consultation with the Lord President under powers in the Tribunals (Scotland) Bill. Whatever the case, the jurisdiction would have enough flexibility to allow for its own distinct identity and practices while taking advantage of existing infrastructure where that is appropriate. The Bill does not include specific provision for this but would take advantage of the broader powers included in the Tribunals (Scotland) Bill. This allows the flexibility for the PRS jurisdiction to be organised appropriately within the structure of the Scottish Tribunals.

Tribunal members

145. The PRS tribunal would be able to utilise legal members and ordinary members when hearing cases. Legal members would be legally qualified and would have experience of relevant areas of housing law. Ordinary members would complement this with an appropriate qualification or experience in a relevant area. The intention is for the tribunal to have ordinary members with a range of relevant experience at its disposal. The Scottish Government considers that the addition of a housing specialist in the decision-making process is important in improving both the consistency and effectiveness of decisions and the judicial leadership would be able to deploy members with the most appropriate skills and experience to hear the most appropriate cases. The independence of tribunal members is guaranteed in statute. The Tribunals (Scotland) Bill also provides that all tribunal members when sitting in tribunals will have the same status and capacity as the judiciary. Tribunal members will be appointed by Scottish Ministers after recommendation by the Judicial Appointments Board for Scotland following its independent appointment processes. This Bill does not contain any specific provision for the appointment of tribunal members as the PRS tribunal would take advantage of general provisions in the Tribunals (Scotland) Bill.
Specialist practice and procedure

146. The PRS tribunal would enable proactive handling of cases by both the administrative staff and tribunal members which would improve the efficiency of case management. Tribunal practices and procedures will be set by secondary legislation under the Tribunals (Scotland) Bill and will be specifically tailored to suit the new jurisdiction. In the first instance these will be made by Scottish Ministers by order, subject to negative procedure, but the longer term responsibility for procedural rules would pass to the Scottish Civil Justice Council and the Court of Session along with arrangements for rule-making for the rest of the Scottish Tribunals.

147. Tribunal procedures are designed to be accessible and understandable and do not generally require legal representation. This will also be the case in the PRS tribunal. Parties would be able to be represented if they wish but it is anticipated that this would not be the norm and the tribunal members would have the ability and expertise to ask questions and seek further information in particular cases to help parties make the best of their case. Procedures would be less formal than is currently the case in the courts. The Tribunals (Scotland) Bill contains provisions to enable procedural rules to be set by secondary legislation and these would be utilised for the PRS tribunal.

Powers

148. The PRS tribunal would be able to make the same orders with regard to individual cases as the sheriff courts. For example, sheriffs can currently make orders to evict tenants under the 1984 Act and the 1988 Act. The FTT would be able to do the same, once jurisdiction for those case types is transferred to it under the Bill. Provision in the Tribunals (Scotland) Bill ensures that these orders would have the same authority as orders made by the court. For example, in certain instances non-compliance with a tribunal order would be a criminal offence in the same way that non-compliance with an order made by the courts may be a criminal offence.

Appeals

149. As part of the FTT, the PRS tribunal would have the ability to review its own decisions either on its own initiative or on application by one of the parties. This would be for matters such as administrative or procedural errors.

150. There would also be a route of appeal to the UT in cases where an appeal is currently available from decisions of the sheriff court. Potentially the onward route of appeal would also be from the UT to the Court of Session, where an onward route of appeal is currently available, and on to the Supreme Court on a point of law. The Tribunals (Scotland) Bill allows for courts judiciary to be deployed in the UT, including sheriffs, sheriffs principal and judges of the Court of Session. It would be for the judicial leadership of the Scottish Tribunals to deploy the most appropriate judiciary for appeals cases. The Bill does not include specific provision for this but would take advantage of the broader powers included in the Tribunals (Scotland) Bill.

Fees

151. There would be scope to charge a fee for parties to bring a case before the FTT, in the same way that parties bringing a case to the courts have to pay a fee to cover some of the costs of the service. The decision whether to charge fees would involve balancing the requirement to recover a percentage of operating costs against the need to ensure access to justice and avoid
deterring parties from raising actions. If fees are to be charged, the tribunal would require an exemptions policy for those who could not afford to pay. There is no provision in this Bill as the Scottish Tribunals will have a broader power to set fees by order, subject to negative procedure, under the Tribunals (Scotland) Bill.

Alternative approaches

152. The Scottish Government considered a number of options to improve housing dispute resolution. These options included:

- further legislation to promote early dispute resolution (for example by requiring parties to make attempts to resolve disputes before raising court or tribunal actions),
- a pre-court panel which took a problem-solving approach and could make binding interim orders (e.g. for repayment of rent arrears) before a case reached court,
- measures to increase the use of mediation in rented housing disputes,
- a tribunal which replaces the courts as decision-maker in rented housing disputes.

153. These options were not intended to be mutually exclusive and were the subject of public consultation, Better Dispute Resolution in Housing: Consultation on Introduction of a New Housing Panel for Scotland. Alongside work to set up a PRS tribunal, the Scottish Government is also taking forward work to increase the use of mediation for rented housing disputes across all tenures. Legislation is not needed to take this work forward.

154. Although the Scottish Government consulted on dispute resolution for all rented housing disputes, the key factors in selecting PRS cases for transfer to a tribunal were:

- The mixed response regarding a tribunal in the Better Dispute Resolution in Housing consultation (detailed at paragraph 153).
- In the PRS, tenants can be reluctant to bring a case to court, fearing reprisals from landlords and, where private landlords seek to evict tenants before the tenancy comes to a natural end, tenants can find it difficult to do so, even if they have a strong case to justify eviction. This can lead to unscrupulous practice and is slightly different to the social sector which is already strongly regulated. A PRS tribunal would provide a more accessible decision-maker for these cases.
- The significant case numbers and resource implications of transferring all rented housing cases from the courts.
- A PRS tribunal would allow an opportunity to measure the impact of recent reforms for social sector cases in the courts, such as pre-action requirements.
- A PRS tribunal would also allow an opportunity to measure the impact of upcoming court reform for social rented sector cases.
- One of the benefits of this approach is that a PRS tribunal would also establish a clear model for a broader housing tribunal. It would give the Scottish Government a

better understanding of handling issues (including eviction cases), caseload trends and costings data.

155. These proposals would help to deal with the issues specific to the PRS and are intended to enable stakeholders who may perhaps be reluctant to use the courts system to access justice. It also means that PRS cases would all be handled by the FTT and no longer split between the sheriff court and PRHP.

Consultation

156. The Better Dispute Resolution in Housing consultation ran from 16 January to 9 April 2013. Of the 116 responses, 101 were submitted by groups or organisations and 15 by individual members of public. Broadly, the majority of responses did not want further legislation to promote early dispute resolution or a pre-court panel. The majority of responses supported more use of mediation in housing disputes. The balance of responses with regards to a tribunal were less clear, 58 responses (half of all the respondents) were supportive of a tribunal, 35 were not, 12 did not know or were mixed and 11 did not answer the specific question. The main issues cited by those who did not support a tribunal were; cost implications of setting up a new jurisdiction; the view that matters involving eviction should remain within the jurisdiction of the courts; and the view that proposals for court reform should be allowed to be completed before cases are transferred to tribunal.

157. The Scottish Government Consultation on a private rented sector strategy for Scotland to
took place between 17 April and 10 July 2012 and received 82 responses. This consultation asked a number of questions relating to the private rented sector, including what could be done to improve access to justice for tenants, landlords and local authorities pursuing housing related cases. A clear theme across a majority of responses was the desire to establish some form of specialised housing court or tribunal. A key benefit of this approach was cited as quicker, simplified access to justice. The Scottish Government’s Private Rented Sector Strategy, A Place to Stay, A Place to call Home published in May 2013, included a key action to consider improving redress mechanisms for consumers.

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

Equal opportunities

158. The Bill’s provisions do not discriminate on the basis of age, gender, race, disability, marital status, religion or sexual orientation.

159. The Scottish Government’s aim is that a PRS tribunal would deliver greater access to justice for all parties across the sector by offering a more accessible forum for dispute resolution, in which specialist decision-makers would take an inquisitorial approach and decide cases in a less formal environment than the current civil courts. This is likely to be particularly positive for those with protected characteristics, especially for those with disabilities or for whom English is

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not their first language as they may have difficulty participating effectively in traditional, adversarial, court proceedings.

160. The intention is that legal representation will not become the norm in proceedings before the Tribunal. However, it is recognised that some parties with protected characteristics may need support to participate effectively in proceedings. The Scottish Government is working with the Scottish Legal Aid Board to assess how best to provide this support. It may be delivered in the form of assistance by way of representation similar to some other tribunals.

161. An Equality Impact Assessment has been published for the Bill.\(^{32}\)

**Human rights**

162. A PRS tribunal would have human rights implications as it would make decisions which determine the civil rights and obligations of tenants and landlords, in the same way as decisions by sheriffs under the current law. It is, therefore, necessary to ensure that the tribunal operates in compliance with Article 6 of the European Convention on Human Rights (ECHR), which covers the right to have rights and obligations determined by an independent and impartial body.

163. The Scottish Government’s view is that individuals’ Article 6 rights will be protected by the creation of a tribunal for PRS cases, particularly as it takes advantage of features of the reformed Scottish Tribunals system under the independent leadership of the Lord President of the Court of Session. The Tribunals (Scotland) Bill includes provisions designed to protect the independence of tribunal members.

164. The procedures specific to the practices of the PRS tribunal will be set by subordinate legislation and these will also be compatible with Article 6.

165. The decisions of a PRS tribunal also has implications on Article 1, Protocol 1, which protects the right to peaceful enjoyment of property and Article 8, which protects the right to respect for private and family life, home and correspondence. These are particularly relevant to cases which could lead to eviction. The Scottish Government is confident that a PRS tribunal can comply with the ECHR when handling such cases.

**Island communities**

166. A PRS tribunal would be the forum for relevant disputes for island communities as for the rest of Scotland but would not have a detrimental effect. Hearings would take place across Scotland and the intention is that the PRS tribunal would use local venues when hearing cases.

**Local government**

167. A PRS tribunal would have no detrimental impact for local authorities. 23 of the 32 Scottish local authorities responded to the consultation regarding housing dispute resolution. 14 were in favour of a tribunal, five were not in favour, three did not know or had mixed views and one did not answer the specific question.

\(^{32}\) The Scottish Government, *Equality Impact Assessment Record – PRS and Housing Tribunal*
Sustainable development

168. The Scottish Government considers that a PRS tribunal would have implications for environmental, social and economic aspects of sustainable development, as described below.

169. It is considered that the Bill would be likely to have no effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005. A pre-screening report has been completed. This confirmed that the Bill would have no impact on the environment and consequently that a full Strategic Environmental Assessment did not need to be undertaken. The pre-screening report is published on the Scottish Government website under case number PRE\00518.33

Social effects

170. The main social impact from proposals for a PRS tribunal would be improved access to justice for both tenants and landlords in the sector. One of the key benefits would be effective and efficient access to routes of legal redress for tribunal users.

Economic effects

171. Proposals for a PRS tribunal are also likely to contribute to a well-functioning private rented sector in Scotland. Effective enforcement of legal rights by a private rented sector housing tribunal could deliver benefits across the wider sector to both tenants and landlords although it is not possible to quantify potential savings at this time.

Business and Regulatory Impact Assessment

172. A Business and Regulatory Impact Assessment (BRIA) has been prepared for provisions relating to a PRS tribunal.34

LANDLORD REGISTRATION

Policy objectives

173. The Bill contains a provision to bring applications for landlord registration into line with other authorisation schemes, such as the scheme for HMO licensing, which have a specified time period in which a local authority must decide an application.

174. 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. Unless exempt, owners of privately rented property are required to register with the local authority in the area where property is let.

175. Local authorities are responsible for the operation of landlord registration. In order to be registered, a landlord must submit an application to the relevant local authority. The application

33 The Scottish Government, Strategic Environmental Assessment Database.
34 The Scottish Government, Business and Regulatory Impact Assessment – PRS Tribunal
must include specified information and be accompanied by the appropriate fee in order for it to be a valid application.

176. Once a valid application is received, the local authority must scrutinise it to assess whether the person is fit and proper to carry out residential letting. This may include a check of any information within an authority on cases of antisocial behaviour, breaches of landlord-tenant law and complaints from tenants or neighbours. Any discrepancy between information on the application and information held by an authority may result in an authority seeking a basic disclosure from Disclosure Scotland. This enables the authority to check the applicant’s declaration about convictions, if there is reason to doubt its accuracy.

177. There is currently no statutory timescale within which local authorities must make a determination on a valid application to be registered. This is not in line with other authorisation schemes, such as HMO licensing, which has a specified time period in which local authorities must decide an application. Whilst there is a presumption that applications will be dealt with in a timely manner, landlords could be subject to undue delay in some cases.

178. This provision in the Bill would insert a minor technical amendment to the landlord registration system for the tacit approval of valid landlord registration applications after a period of 12 months from the date of receipt. The provision would only apply to any new applications received after it comes into force. This means that in the event of failure to process the application within the period set, authorisation would be deemed to have been granted automatically by the relevant authority.

179. Some cases are more complex and require detailed investigation. Local authorities would have the power to apply to a sheriff for an extension to the 12-month period, where the circumstances of the request could be justified.

180. This provision would ensure that applications are not subject to unnecessary delay and would provide consistency with licensing regimes such as HMO licensing. The introduction of a specified period for approval of applications is also consistent with the principles contained in the EU Services Directive, as implemented in the UK by the Provision of Services Regulations 2009. The provision will not affect local authorities’ powers to review or revoke registration at any time after registration is granted.

Alternative approaches

181. No effective alternative methods of dealing with this issue have been identified. The Scottish Government rejected the option of doing nothing because that could leave landlords subject to undue delay in local authorities reaching a decision about their applications with no way of addressing this issue.

Consultation

182. The Scottish Government invited all 32 local authorities to give their views on the tacit approval of landlord registration applications. Of the eight licensing authorities that responded, six requested that the landlord registration scheme and HMO licensing regimes be aligned so that
both have a 12-month time limit for determining applications. One authority said that it would still aim to work to a six-month timeline as a matter of good practice. Two local authorities favoured a shorter time limit, given that no property inspections, alterations or licence conditions apply to landlord registration.

183. The Scottish Government met with COSLA to discuss private rented sector provisions for the Bill. A key concern was that the provisions should not lead to additional duties for local authorities. The Scottish Government also consulted with members of the Private Rented Sector Strategy Group on the proposed items for inclusion in the Bill. This group included landlord representative bodies. There was no concern raised by the group regarding this item.

**Effects on equal opportunities, human rights, island communities, local government and sustainable development**

184. The Scottish Government considers that the provisions relating to the landlord registration system are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The provisions promote equality by ensuring that all applications are subject to the same process for determination. The Scottish Government has considered the impact of these amendments on human rights and has concluded that they would encourage a consistent approach to the determination of all applications by local authorities. They have no specific implications for island communities. Feedback received from local authorities is that these provisions would not have a significant impact on them, with only a very small number of applications potentially requiring an extension to the 12-month period.

**Sustainable development**

185. The Scottish Government considers that the tacit approval of landlord registration applications would have implications for environmental, social and economic aspects of sustainable development, as described below.

**Environmental effects**

186. The provisions are unlikely to have significant environmental effects. The primary impact would be on standards of service delivery by local authorities in determining landlord registration applications.

**Social effects**

187. The main social impact from provisions for tacit approval of landlords’ registration applications would be to ensure that landlords can expect to have their applications determined within a specified period, and without undue delay.

**Economic effects**

188. The main economic effects of tacit approval of landlord registration applications would be encouraging local authorities to determine applications in a consistent and efficient manner. Unless other arrangements have been made, no applications would be take longer than 12 months to determine.
ENFORCEMENT OF REPAIRING STANDARD

Policy objectives

189. The provisions to allow third party reporting to the private rented housing panel (the PRHP) will enable local authorities to make a direct application to the PRHP where there is evidence that a landlord is not meeting the repairing standard, the property condition standard for private rented housing.

190. The PRHP helps tenants and landlords to resolve disputes relating to the repairing standard contained in Part 1, Chapter 4 of the Housing (Scotland) Act 2006. This covers the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard. It also applies to some tenancies of social landlords, for example, tied houses (housing provided by an employer).

191. Currently tenants are responsible for making an application to the PRHP for a determination on the repairing standard. However, there is anecdotal evidence that some tenants are unwilling to take action to enforce the repairing standard, due to concerns that this may have a negative impact on the tenant/landlord relationship and could put the tenancy at risk.

192. The provisions in the Bill would not affect the PRHP’s role in considering appeals against rent determinations. Local authorities would be able to make a direct application to the PRHP, at their discretion. They would also be able to make an application based on evidence from others with an interest in ensuring that minimum standards of property condition are maintained (for example neighbours, owners of property in communal buildings, or fire and rescue services).

193. A third party application may be made to the PRHP without the need for the tenant to be involved, unless the tenant chooses to participate in the process. By enabling enforcement action to be taken independently of the tenant, the Scottish Government aims to minimise the risk of the landlord taking action to remove the tenant by giving notice to quit or threatening eviction.

194. The Scottish Government envisages that the process for local authorities would be similar to the process currently followed by tenants. Local authorities would notify landlords about the work needed to be done to meet the repairing standard before they make an application to the PRHP. Where a landlord appeals against a decision of the PRHP by summary application to a sheriff, and the application has been made by a local authority, it is envisaged that the local authority would be required to defend the case in court.

195. This provision does not place any new mandatory duties on local authorities. The discretionary power means that decisions on whether to make an application, or defend any subsequent appeal against a decision of a private rented housing committee, can take into account existing budgets and local priorities.

196. As part of reforms being taken forward separately in the Tribunals (Scotland) Bill, the PRHP will become part of the First-tier Tribunal (FTT).
Alternative approaches

197. Consideration was given to allow other relevant parties to make an application to the PRHP. This option was rejected due to concerns this could leave landlords vulnerable to frivolous or vexatious applications from some parties. The provision does allow for other third parties to raise valid concerns via the appropriate local authority. The option of doing nothing was rejected on the basis that it would not drive forward greater compliance with the repairing standard.

Consultation

198. The 2012 consultation on the development of a strategy for the private rented sector asked whether better regulation of the sector was required to improve standards of management and access to redress for consumers. Support for third party reporting to the PRHP comes mainly from Glasgow City Council. It sees this as a means of ensuring compliance with the repairing standard. Other local authorities also support the principle.

199. Scottish Government officials have had discussions with key stakeholders on these proposals. These include members of the Private Rented Sector Strategy Group, local authorities, the president of the PRHP, the Scottish Tribunals Service and COSLA. There is broad support in principle for third party reporting to the PRHP which is recognised as an effective way of addressing poor property condition for vulnerable tenants. COSLA was generally supportive of discretionary powers that did not impose any additional mandatory duties on local authorities.

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

200. The Scottish Government considers that the provisions in the Bill relating to third party reporting to the PRHP would not have any specific implications for equal opportunities, human rights, or island communities. The provisions will give local government discretionary powers which will supplement existing powers. This wider range of powers aims to further enable local authorities to tackle poor quality in the private rented sector. These additional powers, because they are discretionary, should not increase pressures on local authority resources.

Sustainable development

201. The Scottish Government considers that the tacit approval of landlord registration applications would have implications for environmental, social and economic aspects of sustainable development, as described below.

Environmental effects

202. The provisions for third party reporting rights to the PRHP are unlikely to have significant environmental effects. The primary impact would be to enable local authorities to take action to improve local property condition through enforcement of the repairing standard.
Social effects

203. The main social impact from provisions for third party reporting rights to the PRHP would be the expansion of access to the PRHP. Local authorities would have the power to take action to enforce the minimum standards of property required by the repairing standard, thereby improving the quality of accommodation for tenants.

Economic effects

204. Proposals for third party reporting rights to the PRHP are likely to contribute to a well-functioning wider private rented sector in Scotland. Effective enforcement of minimum property standards could deliver benefits to both tenants and landlords by promoting a professional private rented sector as an attractive housing option. The proposals to give discretionary powers to local authorities would ensure that they can consider applying to the PRHP to enforce the repairing standard, in the light of local priorities and available resources.

ENHANCED ENFORCEMENT AREAS

Policy objectives

205. The Scottish Government intends to bring forward provisions at Stage 2 to further enhance local authorities’ discretionary powers to tackle poor standards in the private rented sector. This is to allow time for further consultation with stakeholders on the detail of this policy proposal. These provisions would enable local authorities to apply to Scottish Ministers for enhanced enforcement powers by seeking approval for a geographic area to be designated as an enhanced enforcement area (EEA). This would allow local authorities to target enforcement action where poor standards of housing and landlord practice are concentrated.

206. A local authority would be required to provide evidence to support the need for enhanced enforcement area status in its application, setting out why the additional enhanced enforcement powers are needed. The Scottish Government envisages that an enhanced enforcement area would be set for a specified time, for example, for a period not exceeding five years.

207. The proposed enhanced powers for local authorities would include mandatory criminal record disclosure checks for private landlords at registration, and powers of entry to, and inspection of, private rented properties for the purposes of checking that statutory housing standards are being met. The Scottish Government envisages that these enhanced powers would be used by local authorities as part of their strategic approach to targeting enforcement action on areas that are shown to have poor standards of housing and landlord practice.

PART 4 – LETTING AGENTS

Policy objectives

208. Part 4 of the Bill provides for a new registration system for letting agents in Scotland. The policy objectives are to promote industry-expected and consistent standards of service and levels of professionalism among all letting agents across the country, whilst providing landlords
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

and tenants with easy access to a redress mechanism that will help to resolve disputes with letting agents, where these arise.

209. The scale of the letting agents industry in Scotland has grown in recent years, with an estimated 750 providers offering a range of property management services to landlords. They manage around 150,000 lettings a year, which equates to 50% of all annual lettings in the private rented sector. The sector is a varied one, with letting agency services provided by solicitors, estate agents or accommodation agencies.

210. The private rented sector is characterised by a large number of small-scale landlords, many of whom prefer not to be involved in the day-to-day management of the tenancy process. The letting agent industry, therefore, plays an important role in providing a wide range of services, helping to deliver high quality services to landlords, tenants and prospective tenants. These services help to ensure that landlords meet their regulatory responsibilities, as well as enabling effective management and maintenance of privately-rented properties.

211. Many letting agents in Scotland operate in a professional manner, complying with voluntary codes of practice and ensuring high quality levels of service for the landlords and tenants they assist. Professional organisations such as the Association of Residential Letting Agents (ARLA) and the Royal Institution of Chartered Surveyors (RICS), provide members with a code of practice and rules of conduct to adhere to, encourage responsible business practice and offer a route of redress for landlords and tenants, should any dispute arise. Such good practice is not shared by all however, and evidence gathered from stakeholders, as well as correspondence with the Scottish Government, suggests that some landlords and tenants receive poor services and, in some cases, are subject to illegal practices by letting agents. Among the main risks arising from bad letting agent practice are: agents going out of business and losing all monies held on behalf of landlords and tenants; the use of poorly drafted and legally inaccurate tenancy agreements; and tenants being charged illegal premiums for accessing privately rented accommodation.

212. Recent action taken by the Scottish Government to clarify the law on the charging of illegal premiums and the introduction of tenancy deposit schemes has gone some way to addressing such poor practice. However, stakeholders continued to raise concerns about lack of regulation within the letting agent sector and calls were made for the Scottish Government to examine potential legislative solutions to address such concerns.

213. The provisions in the Bill would establish a mandatory register of letting agents in Scotland, with those applying to be on the register required to meet a “fit and proper person test”. The Bill also creates a statutory code of practice, which would be developed in partnership with key industry stakeholders and provides a mechanism for resolving disputes for customers of letting agents.

214. Together, these provisions would help to ensure high standards of service and levels of professionalism that are consistent across the country, whilst also providing an easily-accessible mechanism for landlords and tenants to resolve disputes where these arise.
215. The Scottish Government would administer and manage the letting agent registration system, following an approach that is similar to the one used in managing the property factors registration system.

**Alternative approaches**

216. Two alternative approaches to the regulation of letting agents were explored during the 2012 consultation on the development of a strategy for the private rented sector and in follow up discussions with stakeholders. These were to:

- expand the existing landlord registration system to include all letting agents, and
- introduce a legal obligation that all agents must be a member of a recognised professional or trade body.

**Expansion of landlord registration**

217. The proposal to expand the landlord registration system was rejected on the basis that it would result in significant additional financial and resource constraints being placed on local authorities at a time when they are being asked by a range of stakeholders to take tougher, more targeted enforcement action on the worst landlords within the sector by using local evidence and knowledge to focus resources on tackling such poor practice.

218. Furthermore, analysis of responses to the Scottish Government’s consultation on the development of a strategy for the PRS identified concerns that expanding landlord registration to include mandatory regulation of letting agents could place additional administrative burdens on local authorities.

**Legal obligation to join a professional or trade body**

219. Introducing a legal obligation that all agents must be a member of a recognised professional or trade body was rejected because it would amount to self-regulation by the industry, with approved trade bodies controlling letting agents’ entry to and exit from the market. This could potentially lead to smaller letting agencies being forced out of the market, as they may struggle to resource the new demands being placed upon them resulting from trade body membership requirements.

220. This approach would also be likely to place the most significant financial burden on the industry. All letting agent businesses would be required to undertake mandatory accreditation and training, before being considered for membership of a professional or trade body.

**Consultation**

221. The Scottish Government carried out a full public consultation on the development of a strategy for the private rented sector\(^\text{35}\) during 2012 (the PRS Strategy). As part of this consultation, stakeholders were asked to respond to the following key questions:

\(^{35}\) [Consultation on a Strategy for the Private Rented Sector](http://www.gov.scot) – The Scottish Government, April 2012
In addition to action on tenancy deposits and illegal premiums – what more can be done to address the problems identified from poor letting agent practice?

Is further regulation of letting agents in Scotland required? If you think it is, please provide reasons for your answer, explaining what the best format might be for regulation. For example:

- expansion of landlord registration to include all agents,
- a separate system for agents similar to that proposed for property factors, and/or
- a legal obligation that all agents must be a member of a recognised professional body.

222. A total of 82 responses were received, 66 from organisations and 16 from individuals. A range of stakeholders responded. They included local authorities, registered social landlords (housing associations), voluntary and third sector organisations, consumer representative and advocacy bodies and professional and trade body organisations. The majority of respondents answered the questions on further regulation of the letting agent industry.

223. In addition to the responses received during the PRS Strategy consultation, the Scottish Government undertook a number of stakeholder meetings to discuss each of the three potential options for further regulation of the letting agent industry. At each meeting, views were sought on the most appropriate format for further regulation, including discussions in relation to financial impacts on the industry itself and any administrative body. Views were sought from the following stakeholders:

- the Scottish Private Rented Sector Strategy Group,
- COSLA,
- Let Scotland,
- The Council of Letting Agents,
- The Association of Residential Letting Agents,
- The Scottish Association of Landlords,
- The Royal Institution of Chartered Surveyors,
- The Office of Fair Trading,
- Chartered Institute of Housing,
- Police Scotland, and
- TC Young, Solicitors.

224. Feedback from local authority representatives highlighted concerns about further administrative burdens being placed on local authorities in addition to those associated with their landlord registration responsibilities. COSLA, in particular, highlighted the financial and resource constraints already faced by local authorities and argued that placing the responsibility for regulation of letting agents on them would only compound this issue.
225. There was general consensus during all of the stakeholder discussions that further regulation of the letting agent industry, through membership of professional trade bodies, would be beneficial. However, it was felt by a number of stakeholders, including from representatives within the letting agent industry itself, that this would impact negatively on small letting agencies who are currently providing a good service but simply could not afford membership and accreditation training costs. There was a strong sense that such a system could prove to be unworkable. The consensus view was that adopting an approach similar to the Property Factors (Scotland) Act 2011 would be the most appropriate and workable regulatory approach.

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

226. The provisions relating to further regulation of the letting agent industry are not discriminatory on the basis of gender, race, age, disability sexual orientation, marital status or religion. The Scottish Government has considered the potential effect of these provisions on human rights. It is satisfied that they are compatible with ECHR. They are expected to have no detrimental impact on local government and also do not raise any human rights issues and have no specific implications for island communities or sustainable development.

Effects on sustainable development

227. The Scottish Government considers that regulating the letting agent industry will promote environmental, social and economic aspects of sustainable development, as described below.

Environmental effects

228. Regulating the letting agent industry is unlikely to have significant environmental effects because its primary impact will be on standards of service and levels of professionalism among all letting agents across the country.

Social effects

229. The main social effects of regulating letting agents will be to improve tenants’ living conditions. As well as giving tenants and landlords confidence in the standard of service they should expect, this will also improve the framework for dealing with disputes where these arise, and provide consistent high levels of customer service.

Economic effects

230. Letting agents play an important role in providing a wide range of services, helping to deliver high quality services to landlords and tenants. These services help to ensure that landlords meet their regulatory responsibilities, as well as enabling effective management and maintenance of privately-rented properties. By regulating the letting agent industry, this will promote industry-expected and consistent standards of service and levels of professionalism among all letting agents and help to promote a professional private rented sector that will be attractive to potential investors.
PART 5 - MOBILE HOME SITES WITH PERMANENT RESIDENTS

Policy objectives

231. The Scottish Government wishes to improve and strengthen the licensing regime that applies to mobile park home sites on which people live permanently. The Bill will establish a mobile home site licensing system that:

- focusses on the licence applicant (whether applying for a first site licence or to renew an existing one), and the applicant’s fitness to have a site licence,
- gives local authorities a range of powers, and appropriate discretion in deciding how to use them, in relation to the granting, management, and revocation of licences,
- ensures standards on sites are maintained and, enables action to be taken by local authorities to address significant problems with sites,
- provides an effective process for site owners and site licence applicants to appeal against decisions by the local authority.

Background

232. While legally defined as caravans, many modern mobile homes resemble small bungalows rather than caravans. The larger ones are sometimes referred to as “park homes”, and can consist of two parts which are bolted together on site. An increasing number of people live permanently in mobile homes. Many of these residents are elderly, as these homes are commonly marketed as desirable and affordable retirement properties.

233. Research by Consumer Focus \(^{36}\) identified 92 mobile home sites in Scotland, with around 3,314 mobile homes. The research found that the majority of sites have fewer than 50 residential homes, and 22 out of 32 local authorities confirmed they have at least one mobile home site in their area. Sites are concentrated in six local authority areas: Perth and Kinross, Dumfries and Galloway, Fife, Angus, Argyll and Bute, and Aberdeen.\(^{37}\)

234. A mobile home owner generally owns the mobile home but not the land (the “pitch”) on which the home sits. The pitch will be rented from the site owner in exchange for a pitch fee. The rights and obligations of the site owner and the mobile home owner will be determined by the terms of a written agreement between them, and the applicable legislation.

235. While many sites are well run, there is evidence that there are unscrupulous site owners who exploit vulnerable residents and fail to comply with their statutory obligations\(^ {38} \). The provisions in the Bill will, therefore, give local authorities a range of tools to use in such situations. The Bill’s provisions are part of a wider set of measures that are intended to significantly strengthen the protections enjoyed by permanent mobile home residents.

\(^{36}\) As part of UK-wide government reforms, Consumer Focus was abolished in May 2013, and replaced with Consumer Futures, a new body representing consumers in the regulated markets of energy, post, and (in Scotland) water.

\(^{37}\) Consumer Focus Scotland, *Stories To Be Told, 2013*.

\(^{38}\) See Consumer Focus Scotland, *Stories To Be Told*, 2013.
The role of legislation

236. The current law relating to mobile home site licensing is set out in the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”). The 1960 Act requires an occupier of land to obtain a site licence before the land can be used as a caravan site. Local authorities can ask for information as part of the application process but, where the information is provided and the applicant has not previously had a site licence revoked, they do not have the discretion to refuse a site licence where planning permission has already been granted. Licences are effectively granted in perpetuity, and authorities cannot charge fees for issuing site licences. Local authorities may attach conditions to site licences and can alter those conditions from time to time.

237. As the number of people living permanently in mobile homes has grown, and with evidence that unscrupulous site owners are exploiting weaknesses in the current licensing system, it is appropriate to update the existing licensing system. This is part of a wider package of measures to improve the rights and protections of mobile home residents. Earlier this year the Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013 (SSI 2013/219) was introduced, and approved by the Scottish Parliament. It came into force on 1 September 2013. It gives mobile home owners a number of new rights, including:

- the right to undisturbed possession of their mobile home,
- the right to give their mobile home to a member of their family,
- the right to sell their mobile home without the need for a site owner to approve the prospective purchaser.

238. In addition to the changes above, the Scottish Government will be issuing new model standards for permanent mobile home sites. Under section 5(6) of the 1960 Act, model standards may be specified by Ministers with regard to the layout, provision and facilities on site. Local authorities must have regard to these model standards when setting licence conditions. The current model standards are set out in circular no. 17/1990. These will be replaced by new model standards, developed with local authorities, that reflect up to date practices in areas such as fire safety.

239. While SSI 2013/219 gave mobile home residents stronger rights and protections, it could not amend and improve the licensing system itself. Similarly, while the new model standards aim to improve the standard and quality of mobile home sites, they cannot give local authorities the stronger powers they need to enforce such standards. The provisions in the Bill, therefore, address the site licensing system itself. The intention of doing so is to create a robust licensing system that reflects modern practice and gives local authorities the tools needed to ensure mobile home sites meet acceptable standards, and that licences can be managed and revoked as required.

Statutory minimum information to be provided with a site licence application

240. The Bill provides for the Scottish Ministers to have the power to set in regulations minimum application information that must be provided when someone applies for a site licence.

39 A copy of the circular can be obtained from the Housing Services and Regeneration Division, Scottish Government.
To provide a suitable level of flexibility, and allow the information required to be adjusted as necessary, details of that information is not set out in the Bill itself. However, it is expected that the sort of information required will be:

- the address of the land in respect of which the application is being made,
- the applicant’s name, address, and date of birth, and other names by which the applicant has been known,
- the correspondence address for the applicant,
- previous addresses where the applicant has been resident in the last five years,
- the name and address of any other joint owner or occupier of the land,
- if the site is to be managed by another individual or managing agent, the individual’s or agent’s details in line with the requirements above,
- the contact address in connection with the day to day management of the site,
- if the application is from a company, the company name and registration number,
- if the application is from a charity, the charity name and registration number.

241. Local authorities would continue to have the discretion to request “other information as they may reasonably require”, which they currently have under section 3(2) of the Caravan Sites and Control of Development Act 1960.

242. The provisions in the Bill would allow for a suitable level of standardisation across the country in the type, and level, of information local authorities require from site owners. It would also lead to a greater level of information being provided, and, therefore, ensure local authorities have the information they need to effectively carry out other measures in the Bill, such as the “fit and proper person” test. Lastly it means that it is clear to site owners what information would be asked of them, and that this is consistent across the country.

A “fit and proper person” test

243. Provisions in the Bill would require those applying for, or looking to renew, a site licence to satisfy a test that they are a “fit and proper person” to hold a site licence. A local authority would decide whether or not someone passes the test, and in doing so would have to take into account:

- any unspent convictions for certain types of offence (e.g. fraud or dishonesty, violence, drugs, sexual offences, discriminatory activity, antisocial behaviour, firearms),
- whether a person has practised unlawful discrimination,
- contravention of any law that relates to mobile homes including if the courts have found the applicant(s), or proposed or actual site manager(s), to be in breach of their duties under the Mobile Homes Act 1983,
- contravention of any law relating to housing or landlord related activity,
- any previous breaches of site licensing conditions,
any complaints that have come to the local authority’s attention in respect of the land or site,

any complaints or reports of antisocial behaviour on the site that have come to the local authority’s attention,

any other relevant information about the site that has come to the local authority’s attention from carrying out other regulatory activity, for example environmental health.

244. Applicants for a site licence would have to provide the information above. If they fail to do so, the local authority would be able to take that into account when deciding whether to grant a site licence. The Bill would also give local authorities a power to require a Disclosure Scotland check to be carried out, if they deem it necessary. The fit and proper person test would be applied to the person carrying out the day-to-day running of the site. This could be the site owner, or it could be someone the owner has appointed to run the site, such as a site manager.

245. The current site licensing regime does not include any assessment of the person who will run the site. Given the continuing relationship that residents have with that individual, (such as the provision of services and payment of pitch fees), the Scottish Government considers that this is a significant failing of the existing legislation. The introduction of a fit and proper person test would address this. For the first time the licence system would take into account whether the person who will be running the site is an appropriate person to do so.

Set site licence terms

246. The Bill provides that site licences will be valid for a period of three years. The Bill will also give Ministers the power to vary that period through regulations, subject to the affirmative procedure. At the moment site licences have no expiry date.

247. The Scottish Government’s intention is that once the provisions in the Bill are implemented, all those applying for a site licence for the first time would have to meet all the requirements in the Bill and associated regulations, e.g. the minimum application criteria. Current site licence holders would have two years after the provisions are implemented to apply for a new site licence, and meet the new conditions.

248. Having set licence terms will bring site licensing into line with other licensing regimes, such as that applied to houses in multiple occupation. It means there would be a regular assessment of site standards and of whether the person running the site remains fit and proper to do so. Such an approach also means that changes in requirements for sites (such as in site standards) can be reflected in site conditions on a regular and timely basis.

Process and timescales for issuing site licences

249. The Scottish Government intends to consult on the timescales that should be in place for issuing of site licences. The aim would be to strike a balance between giving site owners a clear indication of when their licence may be issued with the time needed by local authorities to carry out the preparatory work and reach an informed decision.
250. Having set, but realistic, timescales would give everyone involved in the site licensing process clear and shared expectations. Combined with an appropriate degree of flexibility it would allow site owners to make plans based on the timescales for local authorities to reach a decision on whether or not to issue a site licence.

**Power to charge a fee for a licence**

251. Provisions in the Bill would allow local authorities to charge fees for granting site licences and to set the level of those fees. The Bill also gives Scottish Ministers the power to;

- set a maximum fee level in regulations, and
- specify matters which a local authority must take into account in setting fees.

252. At the moment local authorities cannot charge a fee for a site licence. The Scottish Government considers that local authorities should be able to charge a fee that would reflect the cost of the work involved in issuing a licence and carrying out routine site inspections. By providing for a fee to be charged, the intention is that implementation of this more robust licensing system would be cost-neutral to local authorities.

253. The Scottish Government believes that there are good reasons for allowing flexibility to provide for fees to be set at a local level while retaining scope for Scottish Ministers to make regulations to manage fee levels. For example, some smaller sites operate with small profit margins, so it will be important to have fees set at a level which would not undermine their profitability. The Government also recognises that it is important that the level of fees reflects local conditions (including the work involved in issuing a site licence in specific local authority areas), which is why the Bill allows local authorities the flexibility to set fees. Provisions in the Bill would allow local authorities to set lower fees for smaller sites.

**Enforcement powers**

254. The provisions in this part of the Bill implement six specific policy proposals:

- Increasing the maximum criminal penalty for the offences of non-compliance with licence conditions to a maximum of £10,000. The fine for operating without a site licence will be a maximum of £50,000.
- Giving local authorities the power to serve an improvement notice on a site owner, to require them to carry out work to comply with a licence condition.
- Allowing local authorities to impose a penalty notice which would suspend pitch fee payments, and the commission a resident pays to the site owner on the sale of their mobile home, if the site owner failed to comply with an improvement notice.
- Allowing local authorities the power to revoke a site licence in certain circumstances.
- Make provision for an interim manager to take over the running of the site in specific circumstances, such as when a site licence is revoked, or a local authority has refused to renew a licence.
- Allowing local authorities to recover the costs of enforcement activity.
255. The Scottish Government considers that giving local authorities a range of robust and proportionate enforcement tools is crucial to ensuring that mobile home sites are managed well. The changes in the Bill would give local authorities a variety of options that they can use to tackle poor practice. Having well-run and well-managed sites is in the interest of residents and local authorities. It is also in the interests of the many legitimate site owners as it penalises those that behave in a way that reflects badly on the industry.

256. Allowing local authorities to recover the costs of enforcement work follows a “polluter pays” principle. Site owners who run their sites well would not be penalised for the cost of measures taken against those that fail to do so, and councils would have the funds they need to carry out such work without diverting funding from other services.

Alternative approaches

257. An alternative approach would have been to give local authorities the flexibility to determine the information they needed, rather than specifying a core set of data that all local authorities should collect. This could have led to inconsistent information being held across the country. Under the approach the Scottish government is taking, local authorities will retain the power to ask for additional information, but there will be consistency in the standard information that is required.

258. To address the problem of unscrupulous site owners, a test focussed on a person’s suitability to run a site, backed up by sanctions set out in the law, is considered by the Scottish Government to be the best approach. An alternative approach would have been to introduce some form of self-regulation by the industry. This would have been unlikely to be effective, as unscrupulous site owners could have avoided engaging with the industry’s bodies. Any system of self-regulation would also have lacked sanctions backed up the law, ensuring compliance with the system.

259. There is no alternative process that could be introduced that would be effective in ensuring that all site licences were formally reviewed on a regular basis. While site owners could (and would) be required to inform a local authority of a change in their circumstances, this would not be a substitute for the legal requirement on a local authority to formally review and approve or refuse a licence.

260. The existing timescales are linked to the current licensing regime, which requires local authorities to issue a licence only when set criteria are met. The current arrangements could have been left in place. However, the Scottish Government considers that the substantial changes proposed for the site licensing system provides an opportunity to review the process. It considers that the timescales required should reflect the time and work that local authorities would need to undertake before granting a licence. Using existing timescales in this new context would, therefore, not be a sensible approach.

261. There are two possible alternative approaches to site licensing fees: continue with no provision for fees; or allow the Scottish Government to set one fee that would apply across the country. Without the income from fees, local authorities would have difficulty operating the enhanced licensing regime. If fees were set centrally, it is unlikely these would be able to reflect
the cost of issuing a licence in every authority. This is because the cost of issuing a licence is likely to vary from authority to authority, for reasons such as geographical differences as well as the number of permanent mobile home sites in an authority’s area. Setting one national fee could mean that it might exceed the costs for some authorities while it did not meet the costs of others.

262. The Scottish Government considers that, in order to tackle unscrupulous site owners who exploit the system, the only effective way of addressing this behaviour is through strong legal measures. Self-regulation by the industry would be unlikely to succeed, as the worst site owners would be unlikely to yield to pressure from their peers to improve their ways. In addition, many site residents are elderly, and so would be unlikely to have the financial resources to take legal action against the site owners.

Consultation

263. The Scottish Government consulted on its proposals for site licensing from 21 May to 13 August 2012. 
129 responses were received. 53 of these were from groups or organisations, and 76 were from individual members of the public. Of the 53 group responses 13 were from local authorities, nine from mobile home resident groups, four by bodies connected with or representing various aspects of the mobile home or holiday park industries, and 21 from owners and operators of mobile home and/or holiday sites. 55 of the 76 responses from individuals drew on one of three versions of a set of answers, and were collated and submitted by residents of two mobile homes.

264. The analysis of the consultation responses found that:

- Those respondents who approached the proposals from the perspective of mobile home residents were generally supportive of the proposed changes, and often expressed clear support for an enhanced licensing and inspection regime.

- Respondents who approached the proposals from the perspective of the mobile home industry disagreed with some of the suggested changes. They often suggested that the proposed regime would impose additional administrative and financial burdens on reputable site owners, but would be unlikely to tackle the problems created by a small number of less scrupulous owners.

- Respondents from the industry (industry bodies, site owners, and individuals who appeared to be site owners) often focused their comments on how the proposals would affect that part of the industry with which they were most closely connected. This applied particularly to respondents who were concerned about the regime being applied to holiday sites.

- Local authority respondents were supportive of the need for change and of the requirement for an enhanced licensing regime. Local authority respondents were also generally in agreement with most or all of the proposals as put forward. However,
some did express reservations about certain aspects of the proposals, and were looking for them to be strengthened.

265. In response to the consultation, the Scottish Government decided that the new licensing regime should only cover mobile home sites which are for permanent residents. This reflected views expressed in the consultation about the effect the proposals would have on holiday sites as well as the fact that it is permanent residents of mobile home sites that have experienced the most significant problems, such as sale blocking and intimidation from site owners. Scottish Ministers considered that it would not be appropriate for mobile homes on holiday parks, which are only occupied for some of the year, to be covered by this new legislation.

**Effects on equal opportunities, human rights, island communities, local government and sustainable development**

*Equal opportunities*

266. An Equality Impact Assessment (EQIA) has been carried out and a summary of it will be published on the Scottish Government website. Through the EQIA process the Scottish Government has considered the potential impacts, both positive and negative, across the protected characteristics covered in an EQIA. The EQIA process has provided reassurance that the proposals in the Bill are not discriminatory against any particular equalities group. In fact they may bring benefits to some groups, such as residents who are disabled, and those living on privately run Gypsy/Traveller sites. The process also identified that the Scottish Government will have to take into account the needs of migrant workers in preparing for the detailed implementation of the policy (including consideration of the most effective ways to provide information to this group).

*Human rights*

267. The Scottish Government considered the potential effect of these provisions on human rights. The new licensing regime would have an impact on the rights of site owners under Article 1 Protocol 1 (which protects the right to peaceful enjoyment of property). The current licensing regime under the 1960 Act already affects rights under Article 1 Protocol 1, in the sense that it requires land owners to obtain a licence if they wish to operate a caravan site. The Scottish Government considers that the strengthened licensing regime could increase the potential interference with Article 1 Protocol 1 but that this interference is justified in the public interest and that the Bill contains sufficient safeguards to ensure that local authorities would exercise their powers in compliance with human rights.

268. The Bill would require applicants to provide additional information when applying for, or renewing, a mobile home site licence so the Scottish Government has considered the privacy implications that could arise from the mobile home provisions in the Bill. The Government has considered whether a Privacy Impact Assessment is required and has concluded one will not be necessary as the information collected will not be intrusive, the policy will not require the use of new technology, and multiple organisations are not involved in handling the information.
Island communities

269. The provisions in the Bill would apply to all mobile home sites in Scotland where people are permanently resident, including those on island communities. These would apply to mobile home sites on islands in the same way as those on mainland Scotland. The Scottish Government has established that there are no permanent mobile home sites in the island local authorities of Shetland, the Orkney Islands, or Comhairle Nan Eilean Siar. Comhairle Nan Eilean Siar responded to the consultation and was broadly supportive of the proposals.

Local government

270. Thirteen local authorities submitted formal responses to the consultation on the Scottish Government’s site licensing proposals. Those who responded covered urban and rural areas (such as Comhairle Nan Eilean Siar and Aberdeen City), and different parts of Scotland (such as Highland and Dumfries and Galloway). Local authority responses were generally supportive of the need for change, and in broad agreement with most or all of the proposals put forward. Some authorities wanted the proposals to go further, and suggested that the licensing system should be further strengthened. Following the consultation, the Scottish Government has been in discussion with COSLA and local authority officials dealing with mobile home site licensing. COSLA has not taken a formal position on the proposals, but through discussions the Scottish Government is aware that it favours proposals that allow for maximum local flexibility and be cost neutral for local authorities. The Scottish Government considers that its proposals reflect this.

Sustainable development and environmental issues

Environmental effects

271. The Scottish Government considers that the Bill is likely to have minimal effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005. A pre-screening report has been completed. This confirmed that the mobile home provisions in the Bill will have minimal or no impact on the environment, and consequently that a full strategic environmental assessment did not need to be undertaken. The pre-screening report will shortly be published on the Scottish Government website under case number PRE/00526.

Social effects

272. The provisions in the Bill will strengthen the mobile home site licensing system, and will strengthen the protections enjoyed by permanent mobile home residents. A survey by Consumer Focus in 2012 found that many mobile home residents are over 55, and older people are generally recognised as a potentially more vulnerable group. The changes will benefit residents, increase confidence in the sector, and ensure that poor sites and unscrupulous site owners are tackled. The Scottish Government believes that this will bring social benefits to those living on sites, and the families of those living on sites.

Economic effects

273. The provisions on mobile home site licences will affect residents, site owners, and local authorities. Local authorities will be able to charge a fee to cover administration costs of providing a site licence, and based on Scottish Government research, it is estimated that this fee would be approximately £600. This fee will be a very small percentage of the turnover of a
mobile home site (less than 0.5% for a site with 40 or more mobile homes). The Scottish Government believes that the improved standards of safety, facilities and management that are an intended outcome of the proposals will help ensure that site owners who provide a good service are not undercut by those who are not doing so. This will help to promote fairer competition in the sector. Residents will benefit from a more robust licensing regime that gives local authorities the tools need to ensure sites are of an acceptable standard, and to tackle unscrupulous site owners, therefore increasing confidence in the sector. Overall the Scottish Government believes that improving the licensing regime will have a neutral or beneficial economic effect.

PART 6 – PRIVATE HOUSING CONDITIONS

Policy objectives

274. The policy objective is to ensure that local authorities have a range of powers to tackle poor conditions in the private sector. The intention is that these new discretionary powers in relation to private housing will give local authorities a broader range of tools that they can use as part of a strategic approach to tackling poor standard housing in their areas.

275. The provisions on house condition enforcement powers are intended to:

- Clarify the existing power to pay missing shares on behalf of owners who are unwilling or unable to pay their share, to ensure that local authorities are able to use that power to support majority decisions by owners under the tenement management scheme for repair works.
- Allow local authorities to issue maintenance orders where they have issued a work notice or a previous maintenance order. (Currently there is scope to do so only if the local authority is satisfied that the house has not been or will not be maintained to a reasonable standard).
- Reduce the administrative burden of maintenance orders.
- Enable local authorities to include incidental work to address safety and security work notices.
- Provide local authorities with effective means to recover the costs of work to address disrepair from owners of commercial property in housing blocks.

Alternative approaches

276. The Scottish Government sought views on more wide-ranging house condition enforcement powers, including powers to require owners to carry out energy efficiency improvements. Feedback from stakeholders was against this approach because:

- There were concerns about the capacity of local authorities to apply new enforcement powers and a view that this would require additional funding.
- Local authorities already struggle to address disrepair and some respondents considered that resources should not be diverted to improvements, especially in view of the Scottish Government’s position that disrepair is an obstacle to energy efficiency work.
277. The Scottish Government also considered doing nothing. However, there was strong support for a limited number of changes to make the existing powers more effective.

Consultation

278. The Scottish Government conducted a public consultation on a sustainable housing strategy (Homes That Don’t Cost the Earth, 2012). Chapter 2 of that consultation sought views on proposals

- to improve the operation of existing local authority enforcement powers,
- in relation to work notices (for houses which are in disrepair),
- in relation to maintenance orders (to maintain a property to a reasonable standard) and
- recovery of expenses (where notices have been enforced).

279. The majority of respondents were in favour of changes that would make local authority enforcement powers more effective. Some local authorities noted that they are unable to carry out work to meet the Scottish Housing Quality Standard (SHQS) in social rented properties because private owners in mixed tenure blocks either do not agree to the work or block it altogether.

280. The Scottish Government met with a group of local authority private sector housing and environmental health managers to discuss the consultation responses, clarify the concerns of local authorities and consider possible legislative options. Local authorities reiterated their concerns about new kinds of enforcement powers raised in responses to the consultation. However, overall it was felt by local authorities that the amendments proposed in the Bill would be useful, provided that the use of enforcement powers was discretionary and would not add to local authority costs.

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

Effects on equal opportunities

281. The Scottish Government considers that the provisions in the Bill relating to house condition enforcement powers would not adversely impact equal opportunities. The enforcement powers are intended to improve house condition and support other Scottish Government policies to enable older people to remain in their own homes and to enable adaptations to housing for disabled people.

Effects on human rights

282. The Scottish Government has considered the potential impact of these provisions on human rights. The Bill amends existing local authority powers to require private home owners to carry out work on their homes. Article 1 of Protocol 1 of the Convention guarantees peaceful enjoyment of possessions. The amendments in the Bill have a legitimate aim of the provision of

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43 Scotland’s Sustainable Housing Strategy, The Scottish Government, June 2013
reasonable standard of housing for the population of Scotland. Any of the controls of use are justified in pursuing this legitimate aim. The provisions strike a balance between the interests of the community in having a reasonable standard of housing and individuals’ rights to the peaceful enjoyment of their property. There are various safeguards and protections for the occupiers. There is a reasonable relationship of proportionality between the means employed by the state and the aim pursued.

Effects on island communities

283. There would be no differential impact upon island communities.

Effects on local government

284. The provisions would give local authorities discretionary powers to supplement their existing powers to tackle poor conditions. This wider range of powers aims to further enable local authorities to tackle poor quality in the private owner occupied and rented sectors. These additional powers, because they are discretionary, should not increase pressures on local authority resources.

Effects on sustainable development

285. The Scottish Government considers that amendments to local authority house condition enforcement powers will promote environmental, social and economic aspects of sustainable development, as described below.

Environmental effects

286. The Scottish Government considers that disrepair in private sector housing is a barrier to some energy efficiency improvements. The amendments to local authority house condition enforcement powers were developed as part of the Sustainable Housing Strategy to support targets for reducing fuel poverty and tackling climate change.

Social effects

287. The Scottish Government considers that for people to live in warm, high quality, affordable, low carbon homes action is needed to improve both the physical condition and the energy efficiency of housing, including the use of regulation and enforcement powers. The house condition enforcement powers in the Bill contribute to that aim.

Economic effects

288. The Scottish Government considers that proactive maintenance is more cost effective than reactive repair of houses, but home owners do not always appreciate the value and necessity of the work need to protect and preserve their property. Amendments to local authority house condition enforcement powers will help local authorities to intervene where work is needed to address disrepair in Scotland’s housing stock.
PART 7 – MISCELLANEOUS AMENDMENTS

RIGHT TO REDEEM A SECURITY AFTER 20 YEARS – POWER TO EXEMPT

Policy objectives

289. The 20 year security rule provisions provide powers for the Scottish Ministers to designate schemes, such as shared equity loan and equity release schemes, which would be exempt from the “20-year security rule” in the Land Tenure Reform (Scotland) Act 1974 (“the 1974 Act”). The policy objective of the provisions is to ensure Scottish Ministers are not exposed to the financial risks associated with the 20-year security rule which allows borrowers to redeem their equity loan at its original value after the security has been in force for 20 years.

290. Section 11 of the 1974 Act gives a borrower the right to redeem a security over a private dwelling house after it has been in force for 20 years. However, the provisions about what the borrower has to pay do not fit securities arising from shared equity arrangements. In the early 1970s, the differing types of financing arrangements that now exist were not imagined and the legislation is centred around the idea that in home loan arrangements the borrower pays interest regularly and either gradually reduces the debt or slowly acquires more of the property.

291. Without amendment, this legislation means it could become unviable for the Scottish Government and other bodies to operate shared equity loan and equity release schemes, particularly as a result of the increased scrutiny which mortgage lenders must exercise for shared equity lending as a result of the Financial Conduct Authority Mortgage Market Review (MMR) guidance, that comes into force in April 2014.

Alternative approaches

292. The Low-cost Initiative for First-time Buyers (“LIFT”) shared equity schemes currently avoid the difficulty of the 20-year security rule by having a break clause at year 19 of the agreement. This has operated satisfactorily to date; if agreements reach year 19 a new agreement and security can be considered. This ensures that the Scottish Government is not exposed to the financial risks of the 20-year security rule i.e. that borrowers would be able to redeem their loan come year 20 at its original value by reference to pounds and pence, rather than by reference to property value.

293. Ministers had originally intended using the same arrangements for the Help to Buy (Scotland) scheme. However, changes to Financial Conduct Authority MMR 2014 guidance (related to affordability tests and mortgage duration) made the Council of Mortgage Lenders and some of its members unwilling to participate in the Help to Buy (Scotland) scheme on the basis of a break clause at year 19. Without lender participation that scheme would not be viable. The change in guidance is also likely to affect continued lender participation in the LIFT schemes.

294. To allow Help to Buy (Scotland) to be launched at the end of September 2013 with lender participation, the Scottish Government removed the payment event at year 19 from the draft shared equity agreement for the scheme. All potential participants will be advised of the intention to exempt the scheme from the 20-year security rule, and it is intended that the change effected by the Bill will apply to any agreements concluded under the scheme at the time the
Bill’s provisions come into force, as well as any later agreements. As no right to redeem under the 20-year security rule could be exercised until after 20 years have elapsed, the Scottish Government considers that the notice of the proposed change will permit the change to be applied to existing agreements without any participant having grounds for complaint.

295. The arrangements currently utilised by the LIFT schemes (as explained above) can also be used for the Help to Adapt scheme, as the scheme does not involve private lenders and is not affected by changes to Financial Conduct Authority MMR 2014 guidance. However, this approach is far from ideal. A key tenet of the Help to Adapt scheme is certainty that the equity loan need only be repaid when the homeowner sells the property or dies, guaranteeing that there are no affordability issues. Having to trigger a repayment event at year 19 confuses this, will undermine confidence in the scheme, and is expected to present a barrier to take-up.

Consultation

296. The effect of the MMR 2014 guidance only became clear shortly before the Help to Buy (Scotland) scheme was due to launch in late September 2013. This meant there was not time for wide-ranging or formal consultation on the proposed changes to the 20-year security rule. However, officials have undertaken informal consultation with the Council for Mortgage Lenders and it has indicated that it and its members, who lend as part of equity schemes in Scotland, would be keen to see such provisions introduced. Officials have also undertaken informal consultation with Housing Options Scotland (HOS) on proposed changes to the 20-year rule, in relation to the Help to Adapt scheme. HOS believe the existing rule will undermine confidence in the scheme and strongly support the introduction of the provision to exempt the scheme. They have also been aware of the impact of the 20-year rule on their clients in shared equity schemes and strongly welcomed the introduction of a provision to address this.

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

297. The provisions relating to the existing 20-year security rule are not in themselves discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion (though certain religious groups would be unlikely to create securities of the type that they envisage). The proposed change may assist the development of types of mortgage product that are Sharia compliant, something the Scottish Government intends to explore further with lenders who offer such products. They have no specific implications for island communities or for local government.

Effects on human rights

298. The Scottish Government has considered the impact of these provisions on human rights. It considers that they would raise a potential human rights issue for individual home buyers who participate in the Help to Buy (Scotland) scheme prior to commencement of the Bill’s provisions and associated secondary legislation. The right to redeem after 20 years have elapsed could be viewed as a possession for the purposes of Article 1 of the First Protocol to the European Convention on Human Rights (“ECHR”). The Bill will remove that right. To ensure compliance with the ECHR, the Scottish Government is ensuring that all potential participants in the scheme
are aware, before entering into an agreement, that the Bill intends to remove the right to redeem. There can, therefore, be no issue, in ECHR terms, with the removal of the right.

Effects on sustainable development

299. The Scottish Government considers that changes to the 20-year security rule are not likely to have any environmental effects or social effects although it believes there are wider economic benefits.

Environmental effects

300. Amending the 20-year security rule is unlikely to have any environmental effects.

Social effects

301. As the change to the 20-year security rule is to give Scottish Ministers a power to specify the circumstances for when the 20-year security rule will not apply, there are unlikely to be any social effects.

Economic effects

302. The Scottish Government believes there are wider economic benefits to amending the 20-year security rule. Use of the power can remove barriers to lender participation in the recently introduced Help to Buy (Scotland) scheme which aims to stimulate the construction industry in Scotland. It could also allow lenders to participate more easily in equity release schemes which will generate activity in the Scottish housing market. It is currently common practice to limit agreements to 19 years for securities of certain types, such as for shared equity. Without use of these provisions, in cases where securities are redeemed after 20 years or more have elapsed, the Scottish Ministers would risk receiving the original value of the equity loan rather than the market value of its equity share at the date of redemption. In a situation where the Scottish Government does not require a year 19 repayment, and the 20-year security rule continues to operate, the foregone receipts could be considerable. There could be significant potential losses for the Help to Buy (Scotland) scheme of between £100 million and £250 million based on Office for Budget Responsibility house-price forecasts and between £20 million and £55 million for the LIFT shared equity schemes.

DELEGATION OF CERTAIN FUNCTIONS

Policy objectives

303. The Scottish Government recognises that the expansion of jurisdiction of the private rented housing panel (“PRHP”) to deal with third party applications will lead to an increased workload for the president and that this is also likely to have an impact on the workload of the president in relation to the homeowners housing panel.

304. The provisions in the Bill would allow the president to delegate duties to the vice president or any other panel member as they see fit. This power of delegation is in addition to the existing powers of delegation which can be exercised during times of absence or incapacity, and is intended to increase flexibility to manage workloads effectively.
Alternative approaches

305. The Scottish Government anticipates that the PRHP’s workload will increase once third party reporting rights have been introduced. As a result it considers that the status quo would mean that undue pressure would be placed on the president so it is desirable to provide some degree of flexibility. No other approaches were considered.

Consultation

306. The Scottish Government consulted with the Scottish Tribunal Service and the president of the PRHP before reaching its decision to bring forward provisions to allow for the delegation of certain functions.

SCOTTISH HOUSING REGULATOR: TRANSFER OF ASSETS FOLLOWING INQUIRIES

Policy objectives

307. The policy objective is to equip the Scottish Housing Regulator (SHR) to meet its statutory objective, to safeguard and promote the interests of tenants of social landlords, in an increasingly difficult and challenging financial climate, particularly in cases where there is an imminent threat of a RSL becoming insolvent. The provisions would achieve the objective by making two amendments to the SHR’s powers, under section 67 of the Housing (Scotland) Act 2010 (“the 2010 Act”), to direct a RSL to transfer some or all of its assets to other RSLs.

308. The first amendment, at paragraph (a) of section 79 of the Bill, creates a narrow exception to the general duty at section 67(4) of the 2010 Act, which requires the SHR always to consult tenants and lenders before it directs a transfer of assets. The exception would apply only where all four of the following conditions were met:

- a RSL was in financial jeopardy,
- the nature of the jeopardy was such that a person – either a creditor of the RSL, or the RSL itself – would have grounds for taking steps under section 73 of the 2010 Act towards making the RSL insolvent,
- a direction by the SHR to transfer the RSL’s assets would substantially reduce the likelihood of someone taking such a step, and
- There would not be time before making the direction to undertake the consultation normally required by section 67 of the 2010 Act.

309. In all other cases where the SHR might contemplate making a direction under section 67 – if there had been misconduct or mismanagement, or where there was financial jeopardy that was not so grave as to give anyone grounds for taking steps under section 73, or where there was time to consult – it would remain bound to consult. The narrowness of the exception reflects the Government’s intention to maintain the rights of tenants and lenders to be consulted by the SHR in all normal circumstances.
310. This amendment is intended to address cases where the SHR could remove the threat of a
RSL becoming insolvent by a direction to transfer all or some of the RSL’s assets to other RSLs
and where the need to make the direction is so urgent that there is no time to consult tenants and
landlords.

311. The second amendment, at paragraph (b) of section 79 of the Bill, repeals the duty at
section 67(6) of the 2010 Act on the SHR always to obtain, and direct a transfer based on, a
valuation. It recognises that there could be a range of circumstances where it would not make
sense for the SHR to obtain, and direct a transfer of assets, at a price that reflects an independent
valuation. For example, pressure of time might, again, make this impractical, or there might be
agreement among all the parties to a transfer on the value of the assets to be transferred, or it
might be necessary to direct a transfer at a price that reflected other factors than a valuation.
Repealing the duty would still allow the SHR to use its general powers under the 2010 Act, to
obtain and act upon a valuation where it considered that one might help to pave the way for a
direction, but would avoid it being required to do so as a matter of course and regardless of
whether in practice it would help to facilitate a successful transfer.

Alternative approaches

312. The alternative would be to do nothing and leave the SHR under all of its current duties at
section 67. The Scottish Government considers that that would constrain the SHR unnecessarily
and limit its ability to act on behalf of tenants. In the case of the duty to consult, under section
67(4), it would mean that the SHR might be unable to act to avoid a RSL becoming insolvent
solely because pressure of time made it impossible for it to comply with the duty to consult
tenants and lenders before directing a transfer of assets. That would not be in the interests of
tenants, or indeed of lenders. In the case of the duty to obtain a valuation under section 67(6), it
would mean requiring the SHR to spend time and money obtaining valuations regardless of
whether such valuations actually helped the SHR to safeguard and promote the interests of
tenants.

Consultation

313. The Scottish Government decided to amend section 67 of the 2010 Act in light of the
increasingly difficult and challenging financial climate facing RSLs and of several recent cases
of RSLs having been in serious financial jeopardy and needing urgently to be rescued. It
consulted the SHR about the case for amending the SHR’s functions under section 67. It also
discussed what it proposed to do with representatives of tenants, lenders, RSLs and other
stakeholders.

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

314. The Scottish Government has considered the impact of the provisions in Part 7 which
relate to the transfer of assets by the SHR following an inquiry into an RSL and has concluded
that they do not raise any issues for equal opportunities, human rights, island communities and
sustainable development. There is no potential impact on local government.
REPEAL OF DEFECTIVE DESIGNATION PROVISIONS

Policy objectives

315. By repealing the defective designation provisions in Part 14 of the Housing (Scotland) Act 1987 (“the 1987 Act”), the Scottish Government’s intention is to remove an obsolete provision.

Background

316. In the early 1980s research identified a risk of deterioration of the steel frames of some non-traditional housing due to carbonation of concrete. Twelve types of Scottish precast reinforced concrete (PRC) house design were designated as defective under the Housing Defects Act 1984. The Scottish provisions of this Act were repealed and re-enacted as Part 14 of the 1987 Act.

317. The twelve types of construction which are designated as defective in Scotland are:

- Ayrshire County Council (Lindsay),
- Blackburn Orlit,
- Boot,
- Dorrnan,
- Myton-Clyde,
- Orlit,
- Tarran,
- Tarran-Clyde,
- Tee Beam,
- Unitroy,
- Whitson-Fairhurst,
- Winget.

318. The Scottish Government estimates that there are approximately 15,000 PRC houses designated as defective in Scotland, of which 3,000 are in the private sector.

319. The purpose of the designation was to specify entitlement to the scheme of assistance, but it remained in force when the scheme expired. The scheme is set out in Part 14 of the 1987 Act and provided grants to carry out repairs or, where this was impossible, to buy back the home at pre-designation value. The time limit for seeking assistance was specified in the housing Defects (Prefabricated Reinforced Concrete Dwellings) (Scotland) Designations 1984. The legislation and the grant arrangements were a recognition that public housing had been built in this way and then tenants had been encouraged to buy under the right to buy introduced in 1981. The arrangements were time-limited because the problem had been widely publicised, and it was felt that subsequent buyers ought to take it into account.
320. The Scottish Government commissioned research by the Buildings Research Establishment (BRE) to provide information on the current condition of affected properties:

- to assess the extent to which deterioration has actually occurred due to the identified risk of corrosion,
- to assess the extent to which remedial work has addressed the risk, and
- to identify the scope for intervention to address owners’ concerns and allow more effective use of housing stock.

321. The research included a survey of data held by local authorities and RSLs, a physical survey of a small sample of affected properties and discussions with the Council of Mortgage Lenders (“CML”) and the National House-Building Council. The research recommended the repeal of Part 14 of the 1987 Act.\(^44\)

322. The Scottish Government accepts that the removal of the designation will not remove the potential problems or change the confidence of mortgage lenders in these properties immediately. It does consider that this will open up the possibility of reverting to a structural assessment that is meaningful for each property.

323. Repeal of the designation could lead to progress in this area in the future, because:

- it may encourage structural surveys of properties by lenders (an unintended consequence of designation is that surveys are currently discouraged),
- when recovery in the housing market occurs, there may be a greater willingness of lenders to provide mortgages for non-traditional properties,
- it may influence similar changes in England and Wales which will have more impact on the UK-wide mortgage industry.

324. However, the principle justification for repeal is that the legislation is obsolete with the expiry of the assistance provided under the 1987 Act and currently provides no benefit to home owners.

**Alternative approaches**

325. The Scottish Government considered doing nothing. This could be justified on the grounds that repeal may have limited impact in the short term towards improving the ability to secure a mortgage on these house types. However, this would do nothing to address the concerns of home owners and would perpetuate legislation which no longer serves a useful purpose.

326. It would also be possible to amend the designation, by removing some or all of the classes of buildings. However, the Scottish Government considers that it is preferable to include the repeal in primary legislation because this would be a clearer statement of the need to move

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beyond the existing designation towards treatment of individual properties on their actual physical condition.

Consultation

327. Scottish Government officials wrote to stakeholders on 19 October 2012 to seek their views on a repeal of Part 14 of the 1987 Act.

328. Local authorities hold a large number of the affected house types and are mostly in favour of repeal. Generally, they report that their experience of upgrading work on these properties confirms that they are structurally sound, and that the designation is perceived as unfair by owners in their area. They consider that repeal of the designation would not have an immediate impact on caution among lenders.

329. Generally local authorities felt that the repeal would have no, or only minimal, immediate impact on them. Some felt that it might lead to an increase in right to buy applications for affected properties. Some felt that it might, in the long term, lead to an improvement in the ability to secure a mortgage on these homes.

330. Home owners were strongly in favour of the repeal of the designation, which is seen as unfair and inappropriate. They were hopeful that the repeal would improve the ability to secure a mortgage on their homes.

331. The CML sought the views of its members on the proposal. It pointed out that lenders may also have other concerns in respect of individual properties which could affect lending decisions. It does not believe that repeal will improve the availability of mortgages. It also points out that there is potential confusion should the designation be repealed in Scotland while similar provisions remain in force in England and Wales.

332. Prior to bringing the repeal of Part 14 of the 1987 Act into force, the Scottish Government proposes to engage further with CML and mortgage lenders to agree ways to develop alternative approaches to assessing the risk of deterioration in PRC homes.

333. Responses to the consultation also suggested that it would be helpful to keep a continuing duty for local authorities to advise anyone who acquires one of these homes under right to buy of the designation.

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

334. The Scottish Government considers that the proposals in Part 7 which would repeal existing defective designation provisions do not raise any issues for equal opportunities, human rights, island communities, or have any significant environmental or social effects. The potential impact on local government is noted above in their responses to consultation. It is possible that in the longer term the repeal of the defective designation may improve the ability of owners to secure a mortgage and this may encourage investment in the designated types of housing.
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

HOUSING (SCOTLAND) BILL

POLICY MEMORANDUM

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland.

ISBN 978-1-78392-192-8