POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill introduced in the Scottish Parliament on 26 March 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 12–EN.

2. The Bill covers two subjects. The first is the treatment of empty property, under non-domestic rating legislation and council tax legislation. For that, the Bill will provide powers to the Scottish Government by regulations to amend the arrangements for charges in relation to unoccupied commercial properties and homes. Under the second subject, the Bill provisions will abolish the Housing Support Grant.

POLICY OBJECTIVES: OVERVIEW OF THE BILL

3. The Bill will deliver the following changes:

- allow the Scottish Government to bring forward regulations to alter the level of empty property relief from April 2013 for certain empty commercial properties under the non-domestic rates regime. This change aims to help disincentivise owners from leaving properties empty and to raise additional revenue to help counter part of the shortfall in the Scottish Government block grant due to the budget reductions imposed by the UK Government over the forthcoming Spending Review period.

- enable the Scottish Government to bring forward regulations to allow Scottish local authorities to increase council tax charges on certain long-term empty homes from April 2013. This aims to encourage owners to bring their empty homes back into use, as well as enabling local authorities to raise additional revenue to support their local priorities.

- abolish the requirement on the Scottish Government to pay Housing Support Grant to Scottish local authorities from April 2013.
EMPTY PROPERTY RELIEF FOR NON-DOMESTIC RATES

Policy objectives

4. Reform of empty property relief will provide incentives to bring vacant commercial premises back into use and raise additional revenue for the Scottish Government. The Scottish Government’s 2011 Regeneration Strategy\(^1\) highlights the importance of strong and vibrant town centres and business districts as vital to the economic and social fabric of Scotland. Persistently empty properties are an obstacle to the regeneration of town centres. The Government announced, in its 2011 Spending Review\(^2\) document, its intention to introduce incentives to bring vacant premises back into use, reduce the prevalence of empty properties in town centres and support urban regeneration by reforming empty property relief from April 2013.

5. The Bill will allow the Scottish Government, by regulations, to vary the percentage of non-domestic rate relief available for defined classes of unoccupied premises. The proposals are aimed at encouraging owners of non-domestic empty properties to bring them back into use. The Scottish Government intends to do this by using the power provided by the Bill to reduce the relief on the rates payable on such properties from 50% to 10%.

Background to the problem

6. Long term empty business premises are a potentially wasted resource, are often poorly maintained, and can become a blight on Scotland’s town centres and business districts. Incentivising owners to bring these properties back into use could be an important part of regenerating our town centres and allowing them to become more successful.

Current provision

7. The provisions that currently govern non-domestic rate relief (discount) for empty or unoccupied premises are found in sections 24 and 24A of the Local Government (Scotland) Act 1966\(^3\) (the “1966 Act”). Further provision is made by the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994\(^4\) (“the 1994 regulations”), as amended by two Scottish statutory instruments, SSI 2000/55\(^5\) and SSI 2008/83\(^6\).

8. Section 24 of the 1966 Act states that no rates are payable in respect of unoccupied “lands and heritages” (the technical name for the properties that attract liability to pay rates). This enables Scottish Ministers to prescribe classes of lands and heritages by regulations that pay an amount equal to one half of the amount of non-domestic rates which would have been payable had the premises been occupied.

\(^1\) See [http://www.scotland.gov.uk/Publications/2011/12/09110320/0](http://www.scotland.gov.uk/Publications/2011/12/09110320/0)
9. Schedule 1 to the 1994 regulations sets out the land and heritages to which the 50% liability currently applies. They operate according to the use when the premises were last occupied. In general terms, after lands and heritages have been unoccupied for three months, the 50% liability applies (i.e. the tax increases from the zero liability to a 50% liability). However, there are exceptions, such as premises last used for industrial purposes and premises with a rateable value below £1,700, which continue to benefit from the zero liability. A period of occupation of at least 6 weeks is required before a 50% liability can revert to the zero liability rate.

10. In addition, section 24A of the 1966 Act allows a rating authority (i.e. a council) to agree that premises which are partially unoccupied can be temporarily split, allowing the benefit of relief for the unoccupied part. Section 24B provides that plant and machinery can be left on lands and heritages without that being classed as “occupation”. Schedule 3 to the 1966 Act makes special provision for newly erected and altered buildings. The provisions set out in this schedule and in section 24B are unaffected by what is proposed in this Bill.

Proposals for legislation

11. The proposals are aimed at encouraging owners of empty properties that are currently liable to pay business rates to bring them back into use.

12. As noted above, the proposals within the Bill will allow the Scottish Government, by regulations, to vary the percentage of non-domestic rate relief available for defined classes of unoccupied premises. Currently the amount of liability can only be set at 0% (which is applied as the default percentage for the first three months) and 50% (which is applied for prescribed classes of lands and heritages for an indefinite period thereafter). Under the proposals, the legislation would allow the Scottish Government increased flexibility to respond to changing property markets, by regulations, to set out a higher or lower percentage of rate relief applicable on unoccupied properties. The Scottish Government proposes that, for the classes currently subject to the 50% relief, the rate payable is prescribed in regulations as 90%, in other words giving a rate of relief of 10%. This rate would apply following the initial 3 month zero-rated period, for an indefinite period.

13. The Bill will not remove relief altogether or vary the conditions for full relief. No changes are proposed for other classes of unoccupied property, such as industrial premises as set out in the 1994 regulations, or for listed premises.

14. The cost to the Scottish Government of non-domestic rates income forgone in 2012-13, based on existing provisions for empty property relief, is estimated to be in the region of £152 million. The proposed reform will reduce this cost by an estimated £18 million per year.

Alternative approaches

15. The proposals to reform empty property relief are aimed at encouraging owners of empty properties that are currently liable for business rates to bring them back into use. As set out in the Scottish Government’s 2011 Regeneration Strategy, these proposals are part of a package of measures aimed at providing more support for our town centres. In considering the overall costs of business rate relief as part of the Draft Budget process, maintaining the status quo for empty
property relief was unaffordable within budget constraints – the relief currently costs in excess of £150 million per year.

16. Reform of empty property relief to bring it into line with the 2008 reform in England and Wales was a further option, but this was rejected in order to ensure Scottish businesses retained a competitive edge. After reform, the relief for empty commercial properties in Scotland, particularly for industrial and listed categories, will remain significantly more generous. In England and Wales empty property relief was reformed in 2008 and currently offers 100% commercial relief for 3 months, then 0%. For listed/industrial property 100% relief is currently offered for 6 months, then 0% thereafter. The current and proposed levels of relief in Scotland are set out in table 2 of the Financial Memorandum to this Bill.

Consultation

17. The broad policy proposals have been consulted on as part of the consultation on the Scottish Budget. A small number of responses were received to the Draft Budget which mentioned reform of empty property relief, both in support e.g. to welcome measures to encourage vacant town centre business properties to be filled and in opposition e.g. about the potential impact on future developments. In addition, engagement with key stakeholders has taken place throughout the process in the course of regular and ad hoc meetings with business groups and business events.

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

18. The Scottish Government does not have any data on the characteristics of owners of empty shops, pubs and business premises to provide any analysis of the impact on equalities groups. As the policy has the intention of encouraging empty premises back into use, it does support sustainable development. However, there has been no objection raised to the proposals from any group on the basis of an inequitable burden being placed on equalities groups, island communities or local government, or any suggestion that the provisions are contrary to human rights legislation or incompatible with sustainable development.

COUNCIL TAX INCREASE ON LONG-TERM EMPTY HOMES

Policy objectives

19. Proposals for increased council tax charges for long-term empty homes were originally set out in the 2010 discussion document Housing: Fresh Thinking, New Ideas. As the outline plans were broadly welcomed, in February 2011 the Scottish Government’s strategy and action plan for housing in the next decade, Homes Fit for the 21st century confirmed that the Scottish Government proposed to take forward primary legislation to permit additional council tax charges on certain long-term empty homes to encourage better use of existing housing stock and to raise additional revenue for local authorities to spend on their local priorities.

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8 See http://www.scotland.gov.uk/Publications/2011/02/03132933/0
20. The proposal to allow local authorities to impose an increase in council tax on certain empty homes is about encouraging owners of properties which are considered as long-term empty (LTE) (those that have been empty for six months or more and are liable for council tax⁹) to bring them back into use.

21. Existing provision in section 33 of the Local Government in Scotland Act 2003 (the 2003 Act) (council tax: discount for unoccupied dwellings) gives the Scottish Ministers the power, by regulations, to provide for or give local authorities discretion in relation to providing a council tax discount in respect of unoccupied dwellings. It also allows for regulations:

- to vary those discounts depending on the type of unoccupied home (such as LTE or second homes);
- to require different levels of discount to be applied to homes in different circumstances or locations;
- to allow local authorities to vary the level of discount applied in different parts of their area and in different circumstances.

22. The Bill’s provisions will amend section 33 of the 2003 Act to allow for increased council tax charges for certain classes of LTE homes. It will enable the Scottish Ministers to make regulations to require or allow for variations in council tax charges on unoccupied homes. However, the Scottish Government intends to use these regulations to give local authorities wider discretionary powers to vary these council tax charges, rather than to place requirements on local authorities to increase their charges, given that local circumstances and markets differ significantly across Scotland. The proposed regulations would allow them in future to reduce the discount to 0% and also to increase charges (by a maximum of 100%). The regulations made as a result of the provisions in this Bill will set out in detail the terms of and exemptions from local authorities’ powers to increase council tax. The regulations will make provision using the full range of existing powers under section 33 in order to set out how any council tax increase is intended to operate.

23. It is proposed that the tax increase would only apply to LTE homes. It is the Scottish Government’s intention that homes which are not a household’s sole or main residence, but which are sometimes occupied as a second home, would not be charged any increased council tax. It is intended that the regulations will also amend the existing definition of both a LTE and a second home (although the Scottish Government already has powers under section 33 of the 2003 Act to bring forward regulations in relation to these definitions). This is required because a home will no longer be required to be unfurnished in order to be classed as LTE (in order to prevent owners from easily avoiding being liable for an increase by furnishing their home).

24. Provisions in the Bill also aim to facilitate the administration of any tax increase by local authorities by allowing them (once regulations have so provided) to require owners to provide information in relation to whether or not a home is occupied, requiring owners proactively to inform their local authority in certain circumstances that their home is empty, or of a change in

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⁹ A home normally becomes classed as LTE after it has been empty for six months, although in some cases homes may only become LTE after they have been empty for a longer period where they have been eligible for an exemption from council tax for more than six months under Schedule 1 of the Council Tax (Exempt Dwellings) (Scotland) Order 1997
the home’s status, and allowing local authorities to charge a penalty in cases where the owner either does not provide information in line with the requirements or is found to have provided false information.

**Background to the problem**

25. Homes are defined as LTE where they have been empty for six months or longer and are liable for council tax (except in cases where the home is eligible for another longer term council tax exemption. Such homes are a wasted resource. They are often an eyesore and can attract vandalism and fly-tipping. If homes are neglected, the value of surrounding properties tends to be reduced as a result of the neighbourhood not being perceived as a good place to live.

26. Bringing empty homes back into use could play an important part in providing homes for people who need them. This could be either affordable homes, such as social rented housing, or market housing, such as homes for private rent or sale. Bringing long-term empty homes back into use should also reduce the number of new homes which need to be built. While more new houses will still be required, in most cases it costs significantly less and is a more efficient use of environmental resources to make an empty home available to live in than to build a new one.

**Current position**

27. In 2005, local authorities in Scotland were given the discretionary power to reduce council tax discounts on LTE and second homes from 50% to a minimum of 10% through the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005\(^\text{10}\). For unoccupied and unfurnished properties which are liable for council tax, the reduced discount is currently only applied after the property has been empty for twelve months so the owner benefits from a six month exemption from council tax followed by six months charged at a 50% discount.

28. There are a number of other types of unoccupied property whose owners are exempt from paying council tax altogether under Schedule 1 to the Council Tax (Exempt Dwellings) (Scotland) Order 1997\(^\text{11}\). These include for example:

- unoccupied new build properties which are unoccupied are exempt for up to six months after they are entered on the valuation list by the Assessors;
- homes which cannot be lived in because they are being structurally repaired, improved or reconstructed are exempt for up to twelve months;
- homes which are unoccupied and were last lived in by a person who has died and where either no grant of confirmation to that person’s estate has been made or for up to six months after a grant of confirmation was made;
- social rented homes owned by a local authority or a Registered Social Landlord which are unoccupied because they are due to be demolished;
- homes which have been repossessed by a lender and are unoccupied; and


unoccupied homes which were last occupied by a person who is currently in hospital, providing or receiving care or in prison.

29. In addition, the following types of homes are eligible for a 50% council tax discount, regardless of how long they have been empty:

- purpose built holiday homes which either are not allowed to be occupied throughout the whole year due to licence or planning permission constraints or which are not suitable for living in all year due to their construction or the facilities which are available; and
- dwellings which are unoccupied because the owner or tenant needs to live in another home as their main residence to carry out their job properly, or dwellings which a person is entitled to occupy as part of their employment, but which they do not occupy because they own or tenant other property, in both cases subject to certain conditions.

30. Therefore there are a range of cases where owners or tenants receive either time-limited or permanent exemptions from council tax or receive a 50% discount. The great majority of local authorities have now reduced the level of discount available for long-term empty homes which do not qualify for any of the existing exemptions or other discounts to 10%. The aim of the reduced discount was to provide an incentive for owners to bring their homes back into use. All additional income raised is retained locally.

Proposals for legislation – the council tax increase

31. Reduced discounts on their own have proven to be insufficient as an incentive for most owners who did not otherwise plan to make their home available; in fact, council tax data suggest that the number of LTE homes in Scotland has increased in recent years.

32. The Bill and subsequent regulations will give local authorities the flexibility to increase the amount of council tax charged on LTE homes. It is recognised that a council tax increase cannot be the only answer to tackling empty homes. On its own, it will only work in certain circumstances. The proposed flexibility in this Bill will provide an additional tool for local authorities to help them to tackle empty homes, particularly in areas with high levels of need for affordable or market housing. It is expected to encourage home owners to bring their properties back into use – either for rent or sale.

33. The Scottish Government does not, however, intend to use the power to give local authorities complete discretion. As with the current regulations, it intends there to be limits on the variation that can be set. The Scottish Government intends to bring forward regulations conferring on local authorities a discretionary power to be able to charge up to a maximum council tax increase of 100% of the standard council tax rate for a home i.e. the home owner would pay up to double the applicable standard rate for the property had it been occupied.

12 The circumstances under which a home can be classed as a job-related dwelling are set out in the Schedule to the Council Tax (Discount for Unoccupied Dwellings)(Scotland) Regulations 2005 – see http://www.legislation.gov.uk/ssi/2005/51/contents/made

13 Based on council tax data, the number of homes classed as long-term empty increased by 3% from 24,598 in September 2010 to 25,356 as at September 2011.
This document relates to the Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill (SP Bill 12) as introduced in the Scottish Parliament on 26 March 2012

current default position, of a 50% reduction in liability, is intended to continue to be the maximum discount which local authorities could offer in relation to LTE homes.

34. It will be for each local authority to determine whether or not they wish to increase their existing charge rates for long-term empty homes owners, and, if so, to what extent. This may be based on the evidence available to them on numbers and locations of empty homes in their areas and levels of need and demand for homes shown by their Housing Need and Demand Assessments and Local Housing Strategies, as well as considerations around the need or benefits to the local authority of raising additional revenue.

35. The Scottish Government proposes that owners should however continue to benefit from an exemption from council tax for the first six months their home is empty, providing it is unfurnished. In addition, all other existing exemptions under the Council Tax (Exempt Dwellings) (Scotland) Order 2007 would continue to apply. Following feedback in response to the consultation, the regulations are also expected to propose that all owners should be eligible for a council tax discount for homes that continue to be unoccupied for the following six months after any of the existing exemptions expires (i.e. for the first six months during which a home is classified as LTE). It would be at each local authority’s discretion to set the level of discount between 10% and 50% during that time. Any increase would only apply after that. The regulations will include revised definitions of an empty (but furnished), long-term empty and second home in order to ensure greater clarity regarding which category each home should fall into.

36. Therefore no owner should be required to pay the council tax increase unless their home has been empty for at least twelve months and, even where a local authority uses the power to vary, in some cases homes would not be liable for the tax increase until they have been empty for longer. As well as ensuring owners are given reasonable time to bring their homes back into use before they have to pay the tax increase, this should help to ensure that owners have an incentive to declare their home as empty, which should help local authorities to identify those owners who should pay the tax increase if their home remains empty.

37. The Scottish Government also proposes to include in the regulations powers for local authorities to decide to impose a longer minimum period a home must be empty before imposing a tax increase if they wish to do so and to increase the level of charge the longer a home has been empty if they feel that is appropriate in their area (up to a maximum 100% increase). It is also proposed that there be powers for local authorities to decide only to apply the tax increase in certain parts of their area if they feel this is appropriate, for example, where a local authority has evidence of strong demand for additional housing in certain parts of its area, it may feel that a tax increase is justified in those places, but not in other lower demand locations.

Exemptions from tax increase

38. There are a range of reasons why homes are empty and, in some cases, it would be unfair to penalise owners who may be attempting to bring their home back into use, but are unable to or where there may be legitimate reasons homes need to be left empty. The Scottish Government therefore proposes to include in regulations provisions to enable some owners to claim a time-limited exemption from the tax increase (so they would continue to pay council tax at a discounted rate of between 10% and 50%) in certain circumstances.
39. It is proposed that these exemptions would apply in addition to any existing time-limited exemptions the owner is eligible for (e.g. where the home has been empty and unfurnished, uninhabitable for a period due to renovations or exempt for six months as a new build property which has never been occupied). They would also apply after the six month period during which all homes classed as LTE would be eligible for a council tax discount of between 10% and 50% so it is intended that any exemption applied would continue this discount period for up to twelve extra months.

40. However, scope for additional exemptions needs to be balanced with avoiding potentially making the system overly complex for local authorities to administer and creating scope for some owners to exploit this by claiming exemptions they may not genuinely be eligible for. Therefore, in some cases, the Scottish Government intends that it should be up to the local authority to decide whether or not they wish to offer an exemption, depending on whether or not they feel owners have strong grounds for being unable to bring their home back into use. Even when an exemption is proposed in the regulations to be available in all local authority areas where the tax increase is applied, it will be at the local authority’s discretion to determine whether or not they are satisfied that an owner meets the requirements of the exemption (this is already the case in relation to determining whether or not an owner is eligible for any of the existing exemptions under Schedule 1 to the Council Tax (Exempt Dwellings) (Scotland) Order 1997).

41. Based on significant support from local authorities and other respondents to the consultation, the Scottish Government currently proposes to include a mandatory exemption from the tax increase for up to twelve months for owners who are proactively trying to sell their home at a reasonable price. However, each local authority would be able to decide what sort of evidence it would be willing to accept from owners as sufficient in order to grant an exemption, such as evidence that the property is on the market and that it is not being marketed for more than its Home Report valuation.

42. Two other exemptions are currently proposed, but in both cases they are only likely to be necessary in certain areas so the Scottish Government proposes it should be up to local authorities to decide whether or not they wish to offer the exemption in their area. The first discretionary exemption is proposed in circumstances where the local authority is satisfied the owner is actively trying to let their empty home. The second discretionary exemption is proposed in circumstances where a Registered Social Landlord has homes which are needed for use as temporary accommodation, but are sometimes left empty for long periods because their use is linked to a demolition and new build programme.

43. The length of time a home needs to be empty before the tax increase could be applied would therefore vary depending on each home’s circumstances. If for example it was unfurnished and actively being marketed for sale, the home’s owner could be exempt from council tax altogether for the first six months and then able to pay council tax at a discount rate for up to 18 months as long as the local authority is satisfied that the owner was actively trying to market the property for sale. Once the home had been empty for two years, the owner would become liable for the increase if the relevant local authority decided to impose an increase in its area.
Requirements on owners to provide information

44. The Bill and subsequent regulations will also impose a specific requirement on owners to advise local authorities if their home is unoccupied and, by not telling the local authority, the owner is not paying the full amount which would be due if the local authority was aware the home was unoccupied. The regulations will enable local authorities to require owners or their agents to provide information on request regarding whether their home is unoccupied, how long it has been occupied or unoccupied for and, where a property is declared as a second home, how often it is occupied. This will be accompanied by a power for local authorities to impose a penalty charge for failure to provide the required information or for providing false information of up to £200 (currently local authorities can only charge a penalty of £50 for similar types of failure to provide information requested by the local authority, other than for repeated failure).

45. These proposals aim to help local authorities to identify those homes which should be classed as LTE and to provide a deterrent to owners from withholding information or providing false information. This is due to concerns that many owners may deliberately fail to advise their local authority their home is empty or provide false declarations in order to avoid the council tax increase. The penalty also aims to improve the viability of imposing a penalty for local authorities, as feedback suggests it is not currently worth a local authority’s time to impose a penalty as the administrative costs of securing payment can exceed the existing £50 penalty charge.

Use of any additional revenue from the council tax increase

46. After taking account of feedback from the consultation, the Scottish Government does not propose to ringfence this additional funding. It will be at local authorities’ discretion to determine how they spend any additional revenue raised through the council tax increase or through any reduction in discount to below the current 10% minimum, based on their own local priorities. However, the Scottish Government proposes to keep existing arrangements for revenue raised from existing reduced discounts on long-term empty and second homes, which should continue to be used by local authorities to fund a range of affordable housing and empty homes projects in their area. It is worth noting that, as is current practice, these arrangements will not be set out in legislation and will be agreed with the Convention of Scottish Local Authorities (COSLA).

Alternative approaches

47. The Scottish Government has considered three main options to tackle the problem of LTE homes in Scotland. These are in addition to other broader options which local authorities can already pursue in order to support or encourage empty home owners to bring their homes back into use (Shelter Scotland, in its role as co-ordinator of the Scottish Empty Homes Partnership, has provided a range of good practice guides and seminars for local authorities and other bodies to spread best practice in using a range of tools14).

48. Option 1 – keep council tax discount arrangements unchanged for LTE homes. This would mean continuing to allow local authorities to offer a council tax discount to owners of LTE properties of between 50% and 10% (the great majority have reduced or are currently

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14 http://scotland.shelter.org.uk/housing_issues/more_homes/empty_homes
planning to reduce their discount to 10%). This option would not have any legislative or additional cost implications for local authorities or council tax payers, however local authorities’ work to bring empty homes back into use by providing advice and encouragement to owners would be likely only to have a fairly limited impact (except in cases where the owner had planned to bring their home back into use anyway).

49. Option 2 – make changes to existing council tax regulations to allow local authorities not to offer any discount to LTE property owners. This option would only require a change to regulations so could be achieved without primary legislation. It would allow local authorities to apply a discount to LTE home owners of between 0% and 50%, rather than their current discretion between 10% and 50% only. Feedback from local authorities suggests that it would be fairly straightforward to remove the council tax discount on their IT systems. The extra cost to owners would be limited (as most local authorities currently only offer a 10% discount) and the change would be likely to have a fairly limited impact on owners’ decisions as to whether or not to rent or sell their empty home(s). This option would therefore be unlikely to help bring additional empty homes back into use and would not provide significant additional revenue for local authorities, but would mean owners would be less likely to declare their homes as empty as there would be less incentive to do so (unless the property was unfurnished and eligible for a full exemption for the first six months) so might make it more difficult for local authorities to make contact with owners.

50. Option 3 – take forward primary legislation to allow local authorities to remove the discount and also charge an increase for LTE homes. This option offers the maximum flexibility to local authorities to take measures based on the extent of the problems in their area due to empty homes and the level of housing demand. As proposed to be implemented, this option would allow them both to remove the current council tax discount for LTE homes (between 10% and 50%, depending on each local authority’s policy) and also, if they wish, to charge a tax increase of up to 100% of the standard rate of council tax for the relevant band of property.

51. While it is not possible to indicate what proportion of owners would bring their homes back into use as a result of a tax increase, this option would be likely to have the greatest impact in encouraging owners not to leave their homes empty long-term as, depending on the level of tax increase charged by a local authority, it would be likely to impose significant ongoing costs on owners for doing so. It would also allow local authorities to raise additional revenue. While it may involve additional upfront costs for local authorities to implement this option and there would be additional costs involved in enforcing the tax increase as more owners could be expected to seek to evade payment if charges were increased, it would be at local authorities’ discretion to decide whether the benefits of the tax increase would outweigh any additional costs.

52. On balance, the Scottish Government proposes to adopt option 3. Option 3 avoids a one size fits all approach and recognises that local authorities are best placed to decide what is appropriate for their area, based on local evidence. While this could lead to different levels of charges for owners in different areas and some owners may feel that this is unfair, it would be extremely difficult to set detailed proposals at national level which give some local authorities the enforcement tools they needed whilst also not unfairly penalising owners in other areas who were having difficulties bringing their homes back into use due to varying demand levels and housing market circumstances. Option 3 would also permit those local authorities who either
wish to adopt option 1 (no change) or just wish to adopt option 2 (removing the existing council tax discount) the flexibility to do so.

Consultation

53. The Scottish Government consulted on its proposals for a Council Tax Levy and Housing Support Grant Bill between 19 October 2011 and 10 January 2012. The consultation paper was available on the Scottish Government website\(^{15}\) and two consultation events were run, along with a further discussion session at the Scottish Empty Homes Conference, organised by Shelter, in November 2011. This followed on from three meetings with local authorities before the consultation was launched, which were used to help shape the proposals. During development of the Bill, discussions were undertaken with local authorities, rural land and estate owners and Registered Social Landlords. Phone discussions were also held with representatives of the house building industry. Responses to the consultation and other stakeholder engagements were analysed and the report produced is available on the Scottish Government website\(^{16}\).

54. Fifty seven responses to the consultation were received. Most respondents (about two thirds and the great majority of organisations who responded) were broadly supportive of the proposal to increase council tax on long-term empty homes. In addition, 197 e-mails were received as part of an empty homes campaign following the end of the consultation; these e-mails were also supportive of the proposals for a council tax increase. Housing lobby groups, such as Shelter, were supportive of the legislation, although they want to see local authorities only using the powers where they are also offering advice and support to help empty home owners rent or sell their home.

55. Most local authorities were generally supportive as the levy would be discretionary. Whilst a number of local authorities and COSLA raised concerns about extra costs and staff time requirements to enforce a levy as they are concerned many owners would try to evade paying the levy, they accept there are ways to enforce it if the local authority is willing to invest in extra staff resources.

56. A number of individuals are opposed to the levy, either because they feel they would be unfairly penalised by the levy or they feel that governments should not interfere in people’s rights to leave their home empty if they wish. However, our proposals should allow local authorities sufficient discretion to offer exemptions from the council tax increase in certain specified circumstances. Together with existing provisions for exemptions, this should allay many owners’ concerns.

57. Feedback received as a result of the consultation and discussions with interested parties has been taken on board, resulting in some adjustment in the proposals for regulations from our original proposals, including in relation to the time period a home must be empty before a council tax increase could be imposed.

\(^{15}\) See consultation paper at http://www.scotland.gov.uk/Publications/2011/10/17105007/0

\(^{16}\) See consultation analysis at http://www.scotland.gov.uk/Publications/2012/03/3821
Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

58. The Scottish Government does not have any data on the characteristics of owners of LTE homes so it is not possible to tell how many of them are likely to be from an equalities group and the Scottish Government does not have access to council tax records. However, based on feedback from local authorities, there is no reason to believe that a council tax increase would disproportionately affect people from any equalities group.

59. The Scottish Government consulted equalities groups as part of the consultation on the increase, but none of them provided any specific comments in relation to the proposals or the information provided in the draft Equalities Impact Assessment. In addition, in responses there were no objections raised to the proposals on the basis of an inequitable burden being placed on equalities groups or island communities. The increase will support sustainable development as it encourages existing properties to be returned to use, which helps communities to become more sustainable places where people want to live and which can generally be done with a much lower carbon footprint cost than new build.

60. Whilst some individuals questioned the right of central or local governments to penalise owners for leaving their homes empty, the Scottish Government does not believe that the council tax increase proposals would have a negative impact on owners’ human rights in relation to their right to property. Owners are still being given the option of leaving their home empty, but where a local authority chooses to impose a tax increase because the authority feels it is in the wider public interest to do so, the owner would be expected to pay more council tax in recognition that they are having a negative impact on the availability of housing in their area (and potentially also on their neighbourhood environment if the home is left to fall into disrepair). The effects of the Bill on local government have already been discussed in the Policy Objectives section.

HOUSING SUPPORT GRANT

Policy objectives

61. Increasing the supply of housing in Scotland is embedded in Housing: Fresh Thinking, New Ideas and Homes Fit for the 21st century. Housing Support Grant is a largely historic revenue subsidy system dating from the late 1970s based on the notion that local authorities who build up excessive levels of Housing Revenue Account (HRA) debt should receive central government subsidy for as long as that debt remains disproportionate in relation to the level of rental income coming into the HRA. The subsidy is not geared to the provision of new supply housing. The Scottish Government, however, is committed to the supply of 30,000 additional affordable houses over the next 5 years, with 20,000 being in the social rented sector. Therefore the Scottish Government would prefer to use its limited resources to support these additional affordable homes and therefore the Bill proposes the abolition of Housing Support Grant by 1 April 2013.

62. The Scottish Government does not believe it is wise to continue to preserve legislation that offers an open-ended revenue subsidy to Scottish council housing when it already provides capital subsidy to support new build social housing. Furthermore, under a local authority borrowing regime where HRA debt levels are required to be prudent and sustainable, HRAs should not require, by definition, to be serviced by central government subsidy.

63. The continuing availability of Housing Support Grant leaves open the possibility, and indeed creates a theoretical incentive, for local authorities to increase their Housing Revenue Account debt levels to unsustainable levels and receive ongoing Scottish Government subsidy for doing so. The need for a local authority housing revenue subsidy system has been substantially altered by:

- the introduction of the Prudential Borrowing Regime (April 2004), in which local authorities self-regulate their borrowing levels;
- the availability of local authority capital subsidy for new build housing from Scottish Government (from 2009); and
- the removal of the Right to Buy for new council housing (2010) making the possibility of new build council housing a more viable prospect (with capital subsidy from Scottish Government) for local authorities.

64. The Scottish Government would prefer to increase the supply of housing through the provision of capital grant for social housing rather than using scarce resources to service historic debt on an ongoing basis.

65. The grant has been available in its present form since the late 1970s as a result of the Housing (Financial Provisions) (Scotland) Act 1978. It was modified in the Housing (Scotland) Act 1987 and, over time, the grant methodology, the number of recipients and the overall level of grant provision at national and local level have changed markedly leaving the grant with virtually no national (although some local) significance. The local significance is outlined in brief below in paragraph 74 and more widely in the Financial Memorandum.

66. The Bill will abolish, from 1 April 2013, Housing Support Grant by repealing the legislation which provides for it. This will require all 26 local authorities in Scotland with a Housing Revenue Account to operate their HRA without assistance from the Scottish Government in the form of Housing Support Grant.\(^{18}\) There have been many changes to the methodology for calculating Housing Support Grant over the years which COSLA have been consulted on both historically and most recently with Shetland Islands Council following changes in November 2010.

67. Local authorities in England receive no equivalent HRA subsidy from the UK Government that is like Housing Support Grant in Scotland, although some have, for more than 20 years, been recipients of HRA subsidy from councils who generate HRA surpluses. This HRA subsidy system is about to end due to the reform of the HRA subsidy system in England. From 28 March 2012, the subsidy system will be abolished and replaced with a system of self-

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\(^{18}\) Six local authority areas in Scotland no longer perform a social landlord role as their stock has been transferred to Registered Social Landlords.
financing HRAs in England, similar to that which is in place in Scotland. Once the new system is implemented, this effectively means that all councils in England that continue to own Council housing will have to ensure that their housing services can be fully funded without recourse to a revenue subsidy from Central Government. This means that debt interest and all other costs such as management and maintenance of the stock must be met from local government (primarily rental income) rather than central government resources.

**Alternative approaches**

68. The following options have been considered, some of them in the context of other, previous policy initiatives rather than a specific exercise aimed at longer term financial support for local authority housing.

69. Option 1 – devise a new revenue subsidy system for local authority housing: this option is inconsistent with the capital subsidy system currently in place and which forms an important part of the Scottish Government’s affordable housing supply policy. Such a revenue subsidy system would be inconsistent with the principles of a prudential borrowing regime and could provide perverse incentives for local authorities not to borrow prudently. Twenty five out of 26 local authorities with an HRA have operated without such a system in place for several years, suggesting that this type of subsidy system is unnecessary and not an efficient way to help increase the supply of housing.

70. Option 2 – retain Housing Support Grant using the current (November 2010) methodology. This option would result in further reductions in Housing Support Grant over time (assuming no new claimants) and the eventual disappearance of the grant by the end of 2015-16 at a total cost to the Scottish Government of around £0.84 million over 3 years. It was rejected because there is a strong case for earlier, rather than later, abolition where Housing Support Grant would be becoming progressively more obsolete with each year that passed.

71. Option 3 – abolish Housing Support Grant at some future date beyond April 2013. Given Housing Support Grant would, on current methodology, dwindle to zero by the end of 2015-16, abolishing it in April 2014, April 2015 or April 2016 would be an approach which converges towards option 2 in any case – which the Scottish Government regards as an unsatisfactory option in itself.

72. Option 4 – abolish Housing Support Grant commencing April 2013: this is the proposed legislative option principally because options 1, 2 and 3 simply augment or prolong an obsolete approach to council housing finance in Scotland and conflict with capital funding schemes currently in place as well as the general framework for local authority capital borrowing.

**Consultation**

73. In response to our consultation which asked very simply for consultees’ agreement or disagreement on the abolition of Housing Support Grant, 26 of the written responses provided views. All of them (except Shetland Islands Council, the only council that currently receives Housing Support Grant) agreed to the idea of abolition, although eight qualified this by saying
that the Shetland Islands Council should be subject to some kind of transitional arrangement.\(^{19}\) In addition to these eight responses, Shetland Islands Council went further to say that they would only be agreeable to abolition of Housing Support Grant if appropriate transitional funding arrangements were put in place. There were no views expressed at the three consultation events about Housing Support Grant. Thus, the consensus was for abolition, with a minority (roughly a third of respondents) in favour of some form of transitional arrangement.

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

74. Housing Support Grant is still paid in a relatively small amount for the benefit of (the approximate) 1,800 tenants in one island community – the Shetland Islands. However, it has, since its introduction in 1978 been available to local authorities across Scotland irrespective of their geography if their circumstances warranted it. In practice, very few authorities have required it at any point in the last decade though the grant has never been targeted at particular areas of Scotland. The Scottish Government is therefore not proposing to abolish the Housing Support Grant in any one geographic area but across the entirety of Scotland – irrespective of whether it is being claimed or not. As Shetland Islands Council is the last remaining authority to claim, there will therefore be no impact on local government apart from that on Shetland Islands Council. The estimated financial effect on the Council is £0.840 million over the three year period 2013-14 to 2015-16 inclusive. Should the Council aim to recover all of this reduced revenue from council tenants this would lead to estimated rental increase of £3.04 per week on average over the three year period which represents an average annual rental increase of 4.7% above inflation. The effect on tenants’ rents can be reduced should Shetlands Islands Council decide to implement various efficiency measures regarding its Housing Revenue Account; review the Housing Revenue Account loan arrangements; or review the position on the use of wider council reserves. The potential measures that could be taken are outlined in the Financial Memorandum.

75. There has been no objection raised to the proposal on the basis of an inequitable burden on a particular equality group, nor on the grounds that the provisions are contrary to human rights or incompatible with sustainable development. The Scottish Government believes that the proposals for Housing Support Grant do not have any disproportionate effects of this nature.

\(^{19}\) See consultation analysis at [http://www.scotland.gov.uk/Publications/2012/03/3821](http://www.scotland.gov.uk/Publications/2012/03/3821)
LOCAL GOVERNMENT FINANCE (UNOCCUPIED PROPERTIES ETC.) (SCOTLAND) BILL

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