Infrastructure and Capital Investment Committee

4th Report, 2014 (Session 4)

Stage 1 Report on the Housing (Scotland) Bill
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# Infrastructure and Capital Investment Committee

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**Annexe A: EXTRACTS FROM THE MINUTES OF THE INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE**

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Infrastructure and Capital Investment Committee

Remit and membership

Remit:

To consider and report on infrastructure, capital investment, transport, housing, and other matters falling within the responsibility of the Cabinet Secretary for Investment and Cities apart from those covered by the remit of the Local Government and Regeneration Committee.

Membership:

Jim Eadie
Mary Fee
Mark Griffin
Adam Ingram (Deputy Convener)
Alex Johnstone
Gordon MacDonald
Maureen Watt (Convener)

Committee Clerking Team:

Clerk to the Committee
Steve Farrell

Senior Assistant Clerk
Ruth McGill

Assistant Clerk
Kelly Forbes

Committee Assistant
Myra Leckie
INTRODUCTION

Parliamentary scrutiny
1. The Housing (Scotland) Bill\(^1\) was introduced to the Scottish Parliament on 21 November 2013 by Nicola Sturgeon, Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities.

2. The Parliamentary Bureau designated the Infrastructure and Capital Investment (ICI) Committee as the lead committee for the Bill. The lead committee is required, under Rule 9.4.1 of the Parliament’s Standing Orders, to report to the Parliament on the general principles of the Bill.

Infrastructure and Capital Investment Committee consideration
3. The ICI Committee agreed its approach to evidence taking at its meeting on 18 December 2013. The Committee issued a call for evidence on 20th December and received 105 responses. Links to all the submissions are available at Annexe C.

4. The Committee took oral evidence at eight meetings. Links to the Official Reports of those meetings are available at Annexe B.

5. The Committee held an external Committee meeting as part of Parliament Day in Dumbarton on 24 February 2014, and took evidence on aspects of the Housing (Scotland) Bill during that session. The Committee also held informal meetings with local tenants’ groups, housing associations and local authority representatives in Dumbarton to discuss those parts of the Bill which deal with social housing.

6. The Committee would like to thank all of those individuals and organisations who provided evidence in writing, at Committee meetings and during informal discussions.

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\(^1\) The Housing (Scotland) Bill, as introduced (SP Bill 41, Session 4 (2014)). Available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/70102.aspx.
Purpose of the Bill

7. The Bill makes a range of provisions related to housing in Scotland, including the abolition of the right to buy social houses, the management of social housing, the operation of the private rented sector, regulation of letting agents, the licensing of sites for mobile homes and private house conditions.

Scottish Government consultation

8. Following the publication of its *Strategy and Action Plan – Homes Fit for the 21st Century*\(^2\), the Scottish Government carried out seven consultations on policy areas where it was considering legislation. After this work was undertaken, the Scottish Government refined its proposals and published a consultation paper, *Affordable Rented Housing: Creating flexibility for landlords and better outcomes for communities*\(^3\). Paragraph 86 of the Policy Memorandum details the work undertaken to engage with a variety of hard to reach groups. Further information on engagement and the outcomes of the consultation exercises is set out in the Policy Memorandum in the relevant narratives covering each part of the Bill.

9. The Committee also noted that the Scottish Government carried out an Equality Impact Assessment, a summary of which was published on the Scottish Government’s website.

10. The Committee asked all of the witnesses who gave oral evidence for their views on the Scottish Government’s consultation. It was generally felt that the consultation was comprehensive and inclusive. Points were raised by Shelter, Chartered Institute for Housing in Scotland (CIH) and Tenants Participation Advisory Services (TPAS) on measures in the Bill that they considered were not consulted on, specifically section 79 on the Scottish Housing Regulator. The Committee has incorporated views on this provision at the relevant part of this report.

PART 1 – RIGHT TO BUY

11. The purpose of Part 1 of the Bill is to abolish the right to buy (RTB) in the social housing sector in Scotland. The Policy Memorandum states that—

“The Scottish Government wants to end all right to buy…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.”\(^4\)


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\(^4\) Housing (Scotland) Bill. Policy Memorandum (SP Bill 41-PM, Session 4 (2014)), para. 34.
and these changes were consolidated under Part III of the Housing (Scotland) Act 1987. RTB was subject to subsequent reforms introduced by the Housing (Scotland) Acts of 2001 and 2010. These reforms were designed to provide some protection for existing social rented stock in light of increased demand for social rented housing and to encourage landlords to build new houses without fear of losing them under the RTB. The Bill repeals the relevant right to buy provisions contained within the 1980, 2001 and 2010 Acts.

13. The SPICe briefing on the Bill indicates that, since 1980, around 455,000 tenants have purchased their homes from their social landlord under RTB. The Scottish Government estimates that, by ending RTB, around 15,500 houses could be kept in the social sector over a ten year period.

14. The Committee notes that the proposal will impact on the estimated 534,000 existing tenants who have RTB. Of these, 207,000 tenants are estimated to have the preserved RTB, which means they retain a RTB that they held prior to 30 September 2002. The remaining 327,000 have the modernised RTB i.e. that which applied after the introduction of the changes contained in the 2001 Act. However, not all of these tenants will be able to exercise their RTB, either now or within the proposed three-year notice period prior to the abolition of RTB, as they are subject to a limitation, such as when their tenancy is in a pressured area where RTB is suspended.

Abolition of right to buy

15. There was broad support expressed by those who provided oral and written evidence to the Committee for the proposed abolition of RTB. The Committee notes that 83% of respondents to the Scottish Government’s consultation on the proposal to remove the RTB agreed with the proposal to end RTB altogether, including 81% of local authorities, 92% of RSLs, 73% of individuals and 75% of tenant groups.

16. Those witnesses representing the interests of local authorities strongly supported the abolition of RTB to allow social housing to be retained within the sector. Councillor Harry McGuigan, of the Convention of Scottish Local Authorities (COSLA), expressed the view that “the abolition of the right to buy is absolutely necessary if we are to be able to meet the requirements and demands for housing in our communities.” Jim Hayton of the Association of Local Authority Chief Housing Officers (ALACHO) advised the Committee that local authorities had reached this view after “weighing up the pros and cons of retention versus abolition of the right to buy” and reaching the conclusion that “having available in perpetuity a supply of affordable rented housing that would otherwise be lost to the...

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6 Policy Memorandum, para. 46.
7 SPICe briefing on the Housing (Scotland) Bill, page 9.
8 Policy Memorandum, para. 51.
sector outweighed the legitimate aspirations of some people...to owner occupation.”

17. The benefits which the abolition of RTB would bring social landlords in terms of strategic and financial planning were highlighted by several witnesses, including the Glasgow and West of Scotland Forum of Housing Associations (GWSF), COSLA, CIH and various tenants' groups. For example, David Bookbinder of CIH stated—

“The key benefit is supply...The certainty that abolishing right to buy will give local authorities, landlord local authorities and housing associations with regard to their strategic and business planning roles—they will know how much rental income they will have and how much stock they can use for allocations and homelessness—will be a huge benefit.”

18. Rosemary Brotchie of Shelter Scotland welcomed the fact that the abolition would also mean that better quality and types of social housing would be retained within the sector.

19. Broad support for the abolition was given by the various tenants' groups who gave evidence to the Committee during its external meeting in Dumbarton. Hugh McClung, of the Central Region Tenants Network, highlighted what he felt this would mean for the sector, stating—

“...tenants up and down the land have been given a significant boost because landlords have protected stock and, with that, landlords will see a better influx and be able to plan ahead for their financial structures and rent accounts. They will be able to look at how best to preserve that stock.”

20. Other stakeholders suggested that further longer-term benefits might be realised, such as the potential for reducing the numbers of lower-quality properties in the private rented sector. Tony Cain of ALACHO asserted that “up to a third of all the properties that have been sold under the right to buy are now in the private rented sector” and that this had been “driving the growth of lower-quality private renting in many already pressured communities, which is problematic.”

21. Andy Young of the Scottish Federation of Housing Associations (SFHA) pointed to a study that had highlighted examples of ex-RTB properties now in the private rented sector with rents almost double the amount that the social rent

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would be and suggested that “…UK-wide, that is costing the public purse up to £2 billion a year in excess housing benefit.”16 He suggested to the Committee that the abolition of RTB might also impact positively by helping to address this situation.

22. The Committee also explored with witnesses the impact the abolition of RTB would have in terms of increasing the overall social housing stock, suggesting that in the short term it was unlikely to create a dramatic increase in vacancies. Alan Benson of GWSF, acknowledged this, but highlighted longer-term benefits, saying that—

“…abolishing the right to buy will not suddenly create 1,000 new vacancies every year because tenants will still be in those houses, but at least there will be no chance of those houses being lost to the sector over time.”17

23. The Committee noted that statistical information produced during its scrutiny of the Bill18 suggested that expressions of interest in the purchase of social houses had increased markedly in the past few years, although the accuracy of this information was questioned by COSLA representatives.19 The Minister for Housing and Welfare (“the Minister”) indicated that the Scottish Government had anticipated that there would be an increase following the announcement of its proposal to end RTB. She explained that, although there had been an increase in RTB sales in the last quarter, she did not expect this to continue.20

24. Witnesses were questioned on whether, if the abolition provisions are agreed, there could be a sharp increase in the number of social houses sold as tenants sought to exercise their right to buy whilst the opportunity still remained. In response, Tony Cain of ALACHO said—

“It is possible…that there may be a rise in right-to-buy sales in the next 18 months to two years or however long the sunset clause is for the right to buy. However, it is preferable as a way of extracting ourselves from a policy position that has definitely had its day…to take the risk and go through that process to get to a place where it is possible for us to plan the provision of housing over the long term.”21

25. The Minister informed the Committee that a mortgage market review was currently taking place which was likely to result in “more stringent mortgage regulations...to ensure that, when people are borrowing to buy a house, they can

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afford the house‖. She explained that the Scottish Government will be providing tenants with guidance “so that they realise that buying a house under the right to buy has disadvantages as well as advantages.”

26. The majority of the Committee\(^{23}\) shares the views of those who provided evidence that the abolition of RTB will bring significant benefits to the social housing sector. The retention of social housing stock moving forward will assist social landlords in their strategic and financial planning and contribute to the maintenance of sustainable social housing supply levels. The majority of the Committee\(^{24}\) therefore welcomes and supports the provisions in the Bill which will end the right to buy in Scotland.

Three-year notice period

27. The Scottish Government’s policy intention is that RTB will not be abolished until the end of a three-year period from the date on which the Bill receives Royal Assent, and this is provided for by section 85(4) (commencement section) of the Bill. When questioned on the rationale for opting for this timescale, Linda Leslie of the Scottish Government Bill team explained that—

“Ministers had to consider the effect on human rights of ending the right to buy. Our view was that there were potential issues under the European convention on human rights, so the decision that the notice period will be three years was made on the basis that that is a fair and reasonable timescale for tenants who have and can exercise their right to buy to exercise it.”\(^{25}\)

28. There was strong support expressed in evidence for reducing the three-year period, with a range of suggestions for alternative notice periods being made. For example, Rosemary Brotchie of Shelter Scotland was of the view that a period of six months to a year might be sufficient on the basis that awareness levels of the abolition would be high as the Bill continued its parliamentary passage and that “people will be considering from now on whether purchasing is the right thing for them.”\(^{26}\) David Bookbinder of CIH advocated a reduction to a period of two years and said—

“We believe that a period of two years would enable tenants to consider whether they want to buy and to progress the purchase if they so wish, while still allowing the Government to be seen to act reasonably in terms of human rights implications. A period of two years rather than three would also give landlords more stability and certainty about future finances, and it would


\(^{23}\) Alex Johnstone dissented.

\(^{24}\) Alex Johnstone dissented.


perhaps also limit the period in which there might be some peaking of sales."\textsuperscript{27}

29. Councillor Harry McGuigan of COSLA also expressed the view that the notice period should be shortened, whilst ensuring that there was an appropriate balance between “the rights of an individual and our need to retain and grow an affordable housing stock”. He was of the view that this could be achieved if managed sensibly and with sensitivity.\textsuperscript{28}

30. From a tenants’ group perspective, Kevin Paterson of Glasgow and Eilean Siar Tenants Network said that “we are missing an opportunity to keep houses that we will lose during the next three years. Those losses could be stopped if we stopped the right to buy straight away”. Lesley Baird of TPAS highlighted the strength of feeling on this issue amongst tenants groups she had met. She said—

“...the majority of tenants at the sessions we held were absolutely behind stopping it now and not in three years...There are certainly very strong feelings about the issue.”\textsuperscript{29}

31. The Committee was also made aware of a practice whereby third parties from the private sector might seek to persuade tenants to purchase a property, provide a mortgage facility to enable them to do so, and subsequently let it back to them. Rosemary Brotchie was of the view that a longer notice period might provide “potential for such companies to build up more of an inroad into tenants who may not be considering their options quite as carefully as we would like.”\textsuperscript{30}

32. Andy Young of SFHA questioned why the Scottish Government appeared to be concerned about the possibility of legal challenge related to the period of notice when there are other housing policies which he considered would be more susceptible to such challenge, such as the removal of RTB from those who live in pressured areas.\textsuperscript{31}

33. When appearing before the Committee, the Minister acknowledged that whilst there was broad opposition to the three year notice period proposed in the Bill, there was no consensus amongst stakeholders on the most appropriate length of an alternative, shorter notice period. She indicated that she would reflect on alternative proposals following the publication of the Committee’s Stage 1 report. The Minister made clear, however, that the Scottish Government’s objective was

“…to balance the need to protect the housing stock against the tenant’s right to buy”.

34. Colin Brown, the Scottish Government’s legal adviser on the Bill, explained that there was a need to ensure that the setting of a notice period on the abolition of the RTB took account of the rights of those tenants who currently have a right to buy. He said—

“People who currently have the right to buy have something that would be recognised as a right in ECHR terms, so any interference with that has to be proportionate. There has to be a balance, as the Minister said, between the justification for interference with the right and giving people an appropriate period to consider whether they want to exercise rights that they currently have before they lose them. That is not a purely ECHR point. There are wider issues to do with people having an opportunity to consider what is appropriate for their circumstances and to take proper advice on that.”

35. Mr Brown also made clear that the three-year notice period was selected “not because it was believed to be a minimum period to ensure ECHR compliance but because it was believed to be the right period”.

36. The Committee understands and accepts the reasoning behind the Scottish Government’s proposal to ensure that there is a reasonable notice period to allow those with an existing RTB to consider whether they wish to exercise their entitlement. However, the majority of the Committee shares the view expressed by the majority of stakeholders that the three-year notice period is excessive.

37. The majority of the Committee therefore recommends that this should be reduced to a period of one year from the date on which the Bill receives Royal Assent and calls on the Scottish Government to bring forward an amendment at Stage 2 to achieve this.

38. The majority of the Committee considers that this period would provide an appropriate balance between the realisation of the benefits which the abolition of RTB will bring to social landlords and the provision of adequate notice for those who have a RTB entitlement to take advice, consider the implications of exercising their right and make an application.

39. There was a call from both the Tenants Information Service and TPAS for clear guidance to be provided to both tenants and landlords on the implications of the legislative change and the process leading up to the agreed date of the

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35 Alex Johnstone dissented.
36 Alex Johnstone dissented.
37 Alex Johnstone dissented.
abolition, detailing the rights of tenants to exercise their RTB within the notice period.\textsuperscript{38}

40. The Committee agrees that this is essential to avoid any confusion arising amongst tenants in relation to this significant legislative change and calls on the Scottish Government to produce appropriate guidance material, facilitate its distribution via social landlords and make it available online.

\textit{Pressed areas}

41. Local authorities have the power to make, amend and revoke pressured area designations, and it would be within their gift to decide to revoke or apply for a new pressured area designation prior to the abolition of the RTB. Local authorities could also make new pressured area designations within the three year period, as the Bill does not prevent this. Linda Leslie explained the background to the Scottish Government’s consideration of the treatment of pressured areas as the Bill was being developed—

“Local authorities are the strategic bodies that have the power to make, amend and revoke pressured area designations. Ministers considered whether there should be a measure to suspend those designations during the notice period, but on balance they felt that that would take away the flexibility of local authorities to respond to housing needs in their areas.”\textsuperscript{39}

42. When asked for a view on the likelihood that tenants in pressured areas might bring forward legal challenges if they felt they had been unable to exercise their right to buy, the Committee was advised by Colin Brown, Scottish Government legal adviser, that whilst there was potential for such challenges, these would not be expected to succeed.\textsuperscript{40}

\textbf{PART 2 – SOCIAL HOUSING}

43. Part 2 of the Bill proposes a range of provisions which will impact on the management of social housing in Scotland. The Bill’s Policy Memorandum\textsuperscript{41} indicates that these provisions are intended to provide “better outcomes for communities” by—

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

\textsuperscript{41} Policy Memorandum, para. 63.
Allocation of social housing

Reasonable preference in the allocation of social housing

44. Section 3 of the Bill proposes to change the reasonable preference provisions as set out in section 20(1) of the Housing (Scotland) Act 1987 (“the 1987 Act”) which governs to whom social landlords must give “reasonable preference” in the allocation of houses.

45. Background information on the legislation and practice in relation to allocations in the social housing sector and the reasonable preference provisions contained within the 1987 Act is provided in the SPICe briefing on the Bill.42

46. Section 3 would replace the existing provisions with the following criteria—

- those who are homeless or threatened with homelessness and have unmet housing needs;
- those who are living under unsatisfactory housing conditions and have unmet housing needs; and
- tenants of houses held by the social landlord which the social landlord considers to be under-occupied.

47. Under the 1987 Act, those applicants falling into the existing reasonable preference groups must be given reasonable preference for housing, with no other qualification or criteria required to be met. The Bill proposes to change the existing position through the addition of a new criterion – applicants must also have unmet housing needs, which it defines as “needs that are not capable of being met by other housing options which are available”.

48. The Bill also proposes that landlords must give their own existing tenants (but not tenants of other social landlords) reasonable preference if they want to transfer and are living in housing which the landlord considers to be under-occupied. The Bill does not require existing tenants who are seeking a transfer to demonstrate that they have unmet housing need.43

49. The Committee sought views on the likely impact of the removal of some of the existing categories and whether this would provide social landlords with flexibility when they are allocating housing

50. Councillor Harry McGuigan of COSLA welcomed the proposed provisions and stressed the importance of social landlords being able to manage their housing stock in a way that best meets their particular local circumstances. He said it would be unreasonable if this was prevented because “an allocation policy is riveted in a certain fashion.”44 David Bookbinder of CIH also indicated support for the proposals, stating that the “amendment to the reasonable preference

42 SPICe briefing on the Housing (Scotland) Bill, page 11.
43 SPICe briefing on the Housing (Scotland) Bill, pages 12-13.
criteria is modest and very sensible. It is not a radical change, but I do not think...that there was a need for radical change."\(^{45}\)

51. Rosemary Brotchie also supported the changes, indicating that “Shelter Scotland has long argued that the reasonable preference groups in the current legislation are outdated and out of sync with current social housing allocation practice.”\(^{46}\) However, she suggested that the application of the provisions should be monitored in order to “keep an eye on how the reasonable preference categories are being identified locally, to ensure that housing need is being met on an on-going basis.”\(^{47}\)

52. The Committee heard from both Shelter and the GWSF\(^{48}\), and from Homeless Action Scotland in written evidence\(^{49}\), that the term “unmet housing needs” in section 3 could benefit from some clarification. However, when this issue was raised with the Minister, she indicated that “It will be for landlords to assess housing needs in line with their framework, as amended by the Bill, and with any guidance that we publish. The assessment of any housing needs or ‘reasonable preference’ is for the landlord”\(^{50}\)

53. The Committee accepts that it will be a matter for landlords to assess housing needs in the manner suggested by the Minister. However, it agrees with the suggestion made by some stakeholders that further clarification on the types of “unmet housing needs” the Scottish Government envisages being covered by section 3 would be beneficial. The Committee therefore calls on the Scottish Government to provide further information on its policy intentions in this area and to indicate how it will reflect these in associated guidance.

54. The Committee is content with what are regarded by stakeholders as modest but beneficial changes to the “reasonable preference” criteria which will provide social landlords with greater flexibility when allocating houses.

55. However, the Committee calls on the Scottish Government to provide information on the range of circumstances it expects to be addressed by this provision and to indicate whether it intends to provide guidance to support its implementation.

56. The Committee notes that, in its written submission, Inclusion Scotland welcomed the Scottish Government’s assurance in the Policy Memorandum that “the broader definition of priority for housing will be of particular benefit to disabled or older people who are more likely to need to move because they are in


\(^{49}\) Homeless Action Scotland. Written submission, page 2.

unsuitable housing”. However, Inclusion Scotland also called for information on how the Scottish Government intends to monitor whether this potential benefit is realised, and that disabled people and their representative organisations are included in the groups to be consulted by social landlords when considering their rules on priority allocations.

57. **The Committee requests that the Scottish Government provides detail in its formal response to this report on how it intends to address these specific issues.**

*Age as a factor in housing allocation*

58. As detailed in the SPICe briefing on the Bill, social landlords are currently prevented, under section 20(2)(a)(vi) of the 1987 Act, from taking account of an applicant’s age unless properties are specifically designed or adapted for a particular age group. Section 5 of the Bill would repeal this provision, therefore allowing social landlords to take age into account when allocating housing. Section 5(b) (inserting new section 2B into section 20 of the 1987 Act) provides that, where a social landlord takes age into account in allocating housing, they must treat the applicant as protected against age discrimination in terms of Part 2 of the Equality Act 2010.⁵¹

59. Several organisations strongly opposed this provision, with their principal concern being that taking age into account as a factor in allocations could be used to discriminate against particular age groups. For example, Rosemary Brotchie of Shelter argued that—

“The fundamental principle of social housing allocation should be that it is based on a framework of need and the circumstances that households are in, not on the characteristics of households. The homelessness legislation and the 2012 commitment made that change in principle, and we would not want to see the characteristics of households being used as a reason for preferring one group over another in housing allocation.”⁵²

60. In its written submission, Homeless Action Scotland highlighted its concern that the measure would be discriminatory against young people, stating that its “only experience of age being taken into account, or of landlords seeking to take age into account, is in order to exclude young people from allocations”.⁵³

61. The Scottish Commissioner for Children and Young People (SCCYP) expressed the view in a written submission that there are risks in allowing age to be taken into account, stating that “it is very likely that in prioritising one age group, then another group of tenants will be disadvantaged”. The SCCYP also made the point that it was unclear how an individual young person could seek to challenge any perceived unfairness on the part of the social landlord. He also sought “reassurance that this policy would not inadvertently lead to some younger...

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⁵¹ SPICe briefing on the Housing (Scotland) Bill, page 14.
⁵³ Homeless Action Scotland. Written submission, page 2.
tenants, including young care leavers, being placed in less desirable areas at the expense of other age groups”.\textsuperscript{54}

62. However, a range of other stakeholders, such as CIH, the GWSF and the SFHA strongly supported the proposed measure. Alan Benson of GWSF said that it would “help social landlords to make greater use of sensitive lettings and promote greater tenant sustainability”\textsuperscript{.55}

63. The Committee was advised that local authorities would particularly welcome being able to take age into account when considering allocations, coupled with appropriate safeguards to protect people’s rights. Jim Hayton of ALACHO said —

“Councils would absolutely accept that the principle should be based on need, but that should not involve following a set of rules blindly without regard to the make-up of a community and what is likely to lead to sustainability and peaceful coexistence rather than the creation of friction. It is not social engineering; it is about allowing landlords to make sensible decisions in the interests of a sustainable community life.”\textsuperscript{56}

64. David Bookbinder of CIH expressed the view that the measure would not be discriminatory—

“We…think that the measure is genuinely sensible, especially taken alongside the bill’s strong reminder that all landlords have to comply with equalities legislation, which means that they cannot discriminate against any group, whether that is younger people or other groups. We are pleased with the measure.”\textsuperscript{57}

65. Tony Cain of ALACHO explained to the Committee that there would be safeguards against discrimination, given that local authorities would be accountable for their actions in allocating houses. He said—

“My observation is that, in preparing and approving allocation policies, local authorities are also required to prepare equalities impact assessments. To the extent that we are accountable for the EIAs through the statements and the challenges that can be made around them, then the risk of discrimination is minimised.”\textsuperscript{58}

\textsuperscript{54} Scottish Commissioner for Children and Young People. Written submission, page 2.
66. Although he was supportive of the proposal to allow age to be used as a factor in allocations, Andy Young of SFHA suggested that there was potential that it could be open to legal challenge.\(^{59}\)

67. Witnesses representing tenants’ groups were broadly supportive of the proposal that age should be taken into consideration. However, several of these groups also highlighted the importance of ensuring that young people are not discriminated against as a consequence. Lesley Baird of TPAS said—

“There is a worry about young people continuing to be excluded from housing because they are seen as a problem, rather than as part of the solution. Whatever we do, we need to ensure that young people are not excluded from allocations... We must be aware of sensitivities around lettings. The more flexibility, without excluding people, the better.”\(^{60}\)

68. Kevin Paterson, of the Glasgow and Eilean Siar Tenants Network highlighted the strong tenancy sustainability rate amongst the 16-25 age group in Glasgow and the work done by support groups to help young people to obtain test tenancies which can often then lead to a full tenancy and positive engagement as part of a community. He said—

“Sometimes, young people are demonised, because we hear about the small number who do not keep their tenancies and who are involved in antisocial behaviour. However, we do not hear about the vast number of people who come through organisations such as Aspire and Ypeople and who go on to lead good and fulfilling lives.”\(^{61}\)

69. In responding to the concerns expressed by some stakeholders on the potential for this provision to discriminate, the Minister explained that the intention was to allow social landlords to be more flexible and make better use of allocations. However, she emphasised that “there is no intention whatsoever to discriminate against young people or any other age group”. She made clear that “need is the absolute priority” and that “age should never take precedence over need”. The Minister explained that—

“…age could be involved in particular situations of housing need. For example, one of the downstairs flats in a block of four tenanted by young people could become empty and have to be reallocated; if the choice was between an older person or a younger person on the housing list, the council or the landlord could determine that it would be more appropriate to put the young person into the flat than put an older person into a building with young people. Of course, that could work conversely.”\(^{62}\)

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70. The Committee notes the concerns of many stakeholders that this measure has potential to be discriminatory towards certain age groups, particularly young people. In this regard, it is reassured that councils must be seen to be accountable and justify objectively the decisions they take in relation to allocations. They will also be required to carry out equality impact assessments when developing their allocations policies.

71. However, the Committee considers it to be essential that the application of the provision is fully monitored to ensure that the provisions are applied appropriately and that there is no consequential discrimination against any age group. It therefore calls on the Scottish Government to consider how such monitoring might be carried out in an effective and consistent manner across the social housing sector and to provide details in its response to this report.

Ownership of property as a factor in allocation

72. Under section 20(2) of the 1987 Act, landlords are also prevented from taking into account property ownership, or the value of property owned (or jointly owned) by an applicant, or any of the applicant’s family. Section 6 of the Bill would allow a social landlord, should it choose to do so, to take property ownership into account except in specified circumstances. For example, in the case of a property which has been let, the owner cannot secure entry to that property. The specific circumstances aim to reflect the fact that, while an individual may own a property, they may not be able to secure access to it, or their health would be endangered, or they would be at risk of abuse if they did occupy it. 63

73. Tony Cain of ALACHO expressed the view that the current situation whereby Registered Social Landlords (RSLs) are unable to take property ownership into account has a negative impact on the management of housing stock—

“...the practice results in an inefficient use of the overall stock and resources. We make landlords of tenants. In Stirling, about five or six owners a year, principally older ones, will be allocated a council house and will be left with their own property as well. It might not be a large number, but it is obvious and visible in the communities and it impacts on the credibility of the way in which we manage our stock.”64

74. General support for this provision was provided in several written submissions. For example, South Lanarkshire Council, whilst making clear that it would not wish to prevent property owners from applying for social housing, felt it was important that their financial circumstances be taken into account. The Council said—

“We believe this provision will enhance the ability of social landlords to appropriately target available housing to those in most need.”65

63 SPICE briefing on the Housing (Scotland) Bill, page 15.
65 South Lanarkshire Council. Written submission, page 5.
75. The Almond Housing Association was of the view that it was important to understand both the nature of the applicant’s housing need and how this related to their property ownership. It said—

“In order to be considered for housing there would have to be an established housing need which could not be met in the current property. There are safeguards in place for applicants who cannot occupy the property. If the applicant was unwilling to sell their house it could lead to questions being asked as to their needs.”

76. Homeless Action Scotland said in its submission that it would like to see the inclusion of a further circumstance to take account of situations where it would be unreasonable for the person to continue to occupy the property. This related to situations whereby the property has a large negative equity but the circumstances of the applicants have changed so that they can no longer afford the mortgage. It was suggested that in such circumstances it would not be sensible for them to sell the property or to continue to live in it since either of these options could lead to homelessness and substantial debt.

77. The Committee notes that the North Ayrshire Council submission suggested that the provision could have a “potential unintended consequence of excluding owners who have an accessible housing need due to illness or disability but whose current accommodation does ‘not endanger their health’.” The Council also expressed the view that the implementation of this provision could create certain complexities. By way of example, it said—

“In North Ayrshire the proportion of owners housed each year is negligible and where this does occur they tend to be older people who have previously exercised their right to buy. The majority of owners who have registered for housing in North Ayrshire are aged over 60. If this flexibility is used it could result in a disproportionate negative impact on older people.”

78. The Committee notes and agrees with the broad support for this additional tool to assist social landlords in increasing flexibility in allocations.

79. However, it notes the suggestion by Homeless Action Scotland that a further circumstance should be added at section 6(2) to cover issues around negative equity. The Committee also notes the examples provided by North Ayrshire Council on the potential for there to be unintended consequences of the application of this provision, either in terms of excluding those who may have an accessible housing need or in having a disproportionately negative impact on older people. It calls on the Scottish Government to comment on these issues in its response to this report.

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66 Almond Housing Association. Written submission, page 2.
67 Homeless Action Scotland. Written submission, page 3.
Determination of minimum period for application to remain in force

80. Part 2 of the Bill also contains provisions that are aimed at giving social landlords more tools to tackle antisocial behaviour. Section 7 allows landlords to suspend an applicant from receiving an offer of housing for a period of time in certain circumstances, such as where there has been previous evidence of antisocial behaviour or a history of rent arrears. Scottish Government officials advised the Committee that the intention behind this provision is to encourage tenants to reflect on their previous behaviour and how it affects their ability to receive an offer of a house\textsuperscript{69}.

81. It is understood that this provision effectively legislates for existing practice amongst many social landlords. For example, in its written submission, North Ayrshire Council welcomed this provision, but indicated it would have little impact in that council area as it already operates a suspension policy\textsuperscript{70}.

82. In its written evidence, the SHFA, whilst welcoming the proposals on suspensions in principle, said that “the implementation detail will be critical” and called for clear guidance to be produced which would detail “the level of evidence required in relation to previous antisocial behaviour, how long a suspension can last for, and also how far back in time it is reasonable for a landlord to go when considering historical antisocial behaviour”.\textsuperscript{71} The GWSF also called for clarity on such issues, indicating that this would be helpful for social landlords. The Legal Services Agency (LSA) discussed the detail of the provisions in its submission which highlighted to the Committee the potential complexities involved in their application\textsuperscript{72}.

83. The SFHA also highlighted a concern that the suspension provisions might be “rendered impotent by applicants who may have otherwise been subject to a suspension simply being referred for an allocation via the homelessness route”. It acknowledged that the Scottish Government had made it clear during the consultation process that such an outcome would “go against the spirit of the Bill’s intentions”. The SFHA suggested, therefore, that the Bill should be suitably amended to ensure that this is not allowed to happen in practice\textsuperscript{73}.

84. The Bill allows people whose application has been suspended to appeal the decision. In oral evidence, Paul Brown of the LSA said that in practice it would be difficult to appeal either through having difficulty in accessing legal aid or due to a chaotic lifestyle, mental health issues or other factors.\textsuperscript{74} However, the SFHA commented favourably on the appeal provision, saying that it is “fair and balanced, and will mean that landlords will need to be very clear on their reasons for suspension.”\textsuperscript{75}

\textsuperscript{70} North Ayrshire Council. Written submission, page 3.
\textsuperscript{71} Scottish Federation of Housing Associations. Written submission, page 5.
\textsuperscript{72} Legal Services Agency. Written submission, page 2.
\textsuperscript{73} Scottish Federation of Housing Associations. Written submission, page 5.
\textsuperscript{75} Scottish Federation of Housing Associations. Written submission, page 5.
85. The Committee is content with the provisions at section 7. However, it agrees with the comments made by some stakeholders that clear guidance is necessary on the detail of how these should be implemented and the range of factors that social landlords will require to take into account when considering suspensions. It therefore calls on the Scottish Government to provide details of its intended approach in producing guidance on these matters.

86. The Committee also calls on the Scottish Government to explain in its response to this report how it intends to ensure that those whose applications are suspended will be provided with access to information on the appeal process, including details of where they can obtain appropriate advice and support in making an appeal should this be required.

Short Scottish secure tenancy

87. The Bill would also widen the circumstances in which landlords can convert a secure tenancy to a short Scottish secure tenancy (short SST) where there is a history of antisocial behaviour. The period of a short SST will also be extended to 12 months. Landlords would be required to provide appropriate support services to tenants to help them change their behaviour during the 12-month period of the short SST. If, after this period, tenants can show that they have altered and improved their behaviour, their tenancy can be converted back to a secure tenancy.

88. There was broad support for these proposals. Shelter Scotland particularly welcomed the extension of period of a short SST which “enables them to have the support that is required to progress to a full, secure tenancy.” Andy Young of SFHA felt that the requirement for a landlord to have to provide a tenant with a reason for ending a short tenancy was a positive step.

89. Tenants’ groups also supported the proposals. For example, Hugh McClung, of the Central Region Tenants Network, said—

“With regard to clear, defined antisocial behaviour, the bill takes us a long way from what the provisions used to be for identifying people. We welcome the proposal by which the landlord can suspend a Scottish secure tenancy by converting it to an SSST.”

90. However, Rosemary Brotchie of Shelter Scotland raised concerns about the way in which section 8 is drafted and expressed the view there was a lack of available information on what constitutes antisocial behaviour, as it is currently

defined in the Bill. Andy Young of the SFHA shared this view and also called for more information on “what the evidence test is for going through the process”.  

91. CIH also suggested that advisory good practice guidance should be produced to cover this element of the Bill which “gives examples of behaviour that it might be appropriate and might not be appropriate to take into account. Legislating for every single circumstance in the bill or in regulations would be very risky.”

92. In response to the consultation on the proposals, some social landlords expressed concerns about the type of evidence they would need to make use of this proposed power, and CIH mentions this is in its written submission. Rosemary Brotchie also felt that insufficient information was available on the nature of the evidence that would be required for antisocial behaviour to result in a tenant losing their secure tenancy or security of tenure. She said—

“We want to ensure that, to be effective, that section of the bill ensures that there are sufficient checks and balances so that the provisions cannot be used inappropriately and would not unfairly penalise vulnerable tenants.”

93. David Bookbinder of CIH was of the view that the measures do not in any way solve all of the issues associated with long-standing and recurring antisocial behaviour, but that they would provide landlords with additional options. He said—

“We strongly believe that landlords have an interest in using the measures only when they really want to and when they have struggled to take action… Any consideration of antisocial behaviour measures should involve consideration not only of the impact on the alleged perpetrator’s rights but of the impact on the rights of people who live around and in the community to enjoy their property peacefully.”

94. The Committee notes and welcomes the fact that this provision will not conflict with the responsibilities of social landlords to address the needs of the unintentionally homeless.

95. The Committee also explored with witnesses the nature of any problems social landlords had encountered through the use of short SSTs and whether the

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82 Ekosgen (2013) Consultation on Affordable Rented Housing: Analysis of Consultation Responses. Available at: http://www.scotland.gov.uk/Publications/2012/08/7737
83 Chartered Institute of Housing in Scotland. Written submission, page 6.
increase in the term proposed by the Bill could perhaps exacerbate already difficult situations and make things worse. Jim Hayton of ALACHO indicated that this could be the case, suggesting that—

“If a person has a short tenancy because of previous antisocial behaviour and they persist with that behaviour, neighbours will have to put up with it for 12 months, rather than six. So there are disadvantages, although there are measures to balance that.”

96. In discussing the increase in the minimum period of short SSTs from six months to 12 months with stakeholders, the Committee was told that a small proportion of people who engage in antisocial behaviour have underlying issues, such as mental health issues or learning difficulties, or just living in a highly stressed environment. Jim Hayton of ALACHO gave his view on how he would hope that such issues might be addressed. He said—

“We have high hopes that better-integrated working with our colleagues in health and social care could ensure that the support that people get is holistic and genuinely helpful in sorting out their problems. However, if the behaviour is intractable and continuing, we must accept the possibility that the extension from six to 12-month tenancies would work against rather than for us.”

97. The Committee notes the support for the proposals at this Part of the Bill and it agrees that they will provide a further useful tool to allow social landlords to address antisocial behaviour issues.

98. However, the Committee also acknowledges the calls from some witnesses for further clarity around the definition of antisocial behaviour as it applies to this Part of the Bill. It agrees that the production of appropriate good practice guidance which would provide examples of different types of behaviour which could be taken into account would be extremely useful to social landlords. It calls on the Scottish Government to commit to the production of such guidance.

Scottish secure tenancy

Assignation, sublet, joint tenancy and successions

99. The Bill would also introduce a 12-month qualifying period before a tenant can apply to be added to a tenancy as a joint tenant or before a tenant can sublet (section 13). A 12 month-qualifying period would also be in place for tenancy assignations (increased from the current 6-months) and two new grounds for landlords to refuse consent for an assignation would be introduced. A new 12-month qualifying period would also be introduced for some family members and carers to succeed to a tenancy (section 14).

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100. There was broad support for these measures from stakeholders, including CIH and the SFHA. David Bookbinder of CIH said—

“The measure that gives the landlord an ability to refuse an assignation when the person who would benefit is not in housing need must be welcomed at a time when social housing is in such short supply. We also very much welcome, in the provisions for succession, assignation and so on, the requirement for the prospective beneficiary of succession or assignation to have told the landlord at the time that they were moving in that, from that point, they lived there. That is a significant measure.”

101. Jim Hayton informed the Committee that ALACHO would have found it preferable for landlords to have the power to make such decisions rather than assignation being a right of the tenant. He indicated, however, that his organisation was “happy with the halfway house of extending the qualifying periods…”

102. Tenants’ groups who appeared before the Committee also supported these provisions. For example, Lesley Baird of TPAS said—

“There have been concerns across communities about perceptions of queue jumping, particularly when it comes to assignations. The guidance will be all…but we definitely support the proposals to change the qualifying periods for assignation and subletting.”

103. Ilene Campbell of the Tenants Information Service (TIS) also suggested that the provision of clear guidance was necessary. She said—

“The landlord must provide information that makes it very clear that the tenancy can be assigned 12 months from the point at which the property became the tenant’s main residence. That issue was raised at almost every consultation event.”

104. In its written submission, Carers Scotland raised concerns with regard to the proposals at section 14(b) of the Bill to extend the qualifying period for succession for unpaid carers on the death of a tenant, where this has been the carer’s only or principal home, from six months to 12 months. The organisation stated—

“We have even greater concerns that this qualifying period will only begin once the carer has informed the landlord that this is their only or principal home. We believe that this proposal will disadvantage carers and see little reason for increasing qualifying periods for succession for carers or for this

qualifying period to begin only when a tenant or carer informs the housing provider.\textsuperscript{93}

105. The Committee notes that there is general support for these provisions. However, it would welcome information from the Scottish Government on whether it intends to produce guidance on how it expects them to be applied in practice. More specifically, the Committee calls on the Scottish Government to provide it with a response to the concerns raised in evidence that the provision at section 14(b) might potentially disadvantage unpaid carers.

Grounds for eviction: antisocial behaviour

106. The Bill would simplify the eviction process where an eviction of a tenant with a SST was being sought on the grounds that another court has already convicted a tenant of using the property for illegal or immoral purposes or of an offence in or near the property punishable by imprisonment (section 15). In these cases, the court would not have to decide whether it was “reasonable” to evict the tenant, as is currently the case. The landlord would have to, within 12 months of the tenant’s conviction or appeal, serve a notice on the tenant that the landlord intends to seek recovery of possession of the property.

107. The Committee sought views on how these measures would address some of the problems that social landlords currently experience in seeking to evict tenants with a SST who have acted antisocially. It was also keen to establish whether the proposals would strike an appropriate balance between the rights of landlords and the rights of tenants.

108. Jim Hayton of ALACHO welcomed the proposals and emphasised that they would apply only in cases where a conviction has been made in relation to a serious offence. He stated—

“Unfortunately, some people have suggested that that is an open door for councils to evict people...for things such as dropping litter or playing football on the street. We are not talking about that, and nothing could be further from the truth; we are talking about serious criminal or antisocial behaviour. It could be someone who has been dealing drugs and causing all kinds of problems for years and has then been convicted.”\textsuperscript{94}

109. The Minister confirmed this and explained how the provisions would be applied—

“There is not a mandatory requirement for landlords to evict a tenant who has been convicted of a serious offence. That is not the case, and it is not the intention. A 12-month period is provided for, which gives the tenant an opportunity to amend their behaviour. If that happens, the landlord will not necessarily proceed with eviction. Also, a tenant has the right to challenge

\textsuperscript{93} Carers Scotland. Written submission, page 2.
the position in court if they think that they have been treated unreasonably or unfairly."  

110. However, the Committee also received evidence which suggested that the removal of the test of reasonableness in certain eviction cases could be viewed as a fundamental erosion of tenants’ rights. For example, the LSA said in its written submission that—

“The general view of the solicitors commenting on the Bill is that we have grave concerns concerning the balance of rights and powers adopted particularly to those accused, or guilty of, anti-social conduct or behaviour.”

111. Rosemary Brotchie of Shelter agreed with this view and told the Committee—

“We need to get the balance right between the rights of neighbours and communities, given the impact that antisocial behaviour has on them, and the rights of individual tenants who might have perpetrated antisocial behaviour. Landlords are often in a tricky situation in that regard.”

112. Other witnesses were concerned that not enough information was available on the types of conviction this part of the Bill is intended to cover. Lesley Baird of TPAS said—

“There were issues about getting clarity on what antisocial behaviour means and clarity on the part of the bill that mentions convictions. What convictions are we talking about? After all, a person can be convicted of dog fouling. In a lot of these matters, guidance is required on where a SSST would be offered and it is important that there is absolute clarity in those areas.”

113. The Committee agrees that these provisions will provide a helpful tool to help social landlords to deal more effectively with those tenants who have been convicted of serious criminal acts or antisocial behaviour. However, the Committee considers it essential that, in producing guidance covering the implementation of these measures, an emphasis is placed on the importance of balancing the rights of both tenants and landlords.

114. It also recommends that to assist social landlords and other stakeholders such guidance should provide further clarity on the types of convictions that might lead to an eviction. The Scottish Government is asked to provide details of its intentions in relation to the production of guidance on these provisions in its response to this report.

115. The Committee also heard that the Bill's proposals were unlikely in themselves to be a panacea for antisocial behaviour in communities. CIH stated

96 Legal Services Agency. Written submission, page 1.
in its written evidence that there are “few, if any speedy remedies” for serious antisocial behaviour. Silke Isbrand of COSLA expanded on this theme, saying that—

“...local authorities are still struggling with a number of issues. There are mixed-tenure blocks where antisocial behaviour arises from private properties...There is recurring low-level antisocial behaviour. The problems are different across the spectrum. The general feeling is that the proposals in the Bill are welcome but that the problem will not go away as a result of those proposals, so we need to continue to look at the issue. We need innovative practices as much as other methods.”

116. Ilene Campbell of TIS shared this view, and suggested that co-ordinated partnership working was necessary to address the wider and more fundamental problems of recurring antisocial behaviour. She said—

“The bill will simply tighten up provisions that already exist. However, although everyone will welcome that, I do not think that the measures in the bill in themselves will tackle the issue. The bill will not be the solution to antisocial behaviour in Scotland. Instead, we need the agencies to continue to work together and housing organisations to support agencies, the police and local communities. That is the central issue: people should work together.”

117. Members also explored with witnesses whether there was potential for tenants who are evicted on antisocial behaviour grounds to be continually moved around the housing stock in a local authority area or between council areas, leading to cycles of such behaviour in different places, with the core problem not being satisfactorily addressed. Tony Cain of ALACHO responded to this, stating that it was important that individuals who engaged in serious antisocial behaviour are seen by others in the community to be held accountable for their actions. He said—

“It is very difficult to remove from a home people who are perpetrating acts of antisocial behaviour, but our failure to deliver a response impacts directly on our credibility as a landlord and people’s view of and willingness to engage in that process. If there are no outcomes and problems are not dealt with, people will simply stop reporting issues and withdraw from being prepared to give evidence and assist in tackling the problems.”

Recovery of possession of properties designed for special needs

118. Section 16 of the Bill provides for landlords to take possession of adapted accommodation where no-one in the household requires it. In its written submission, Citizens Advice Scotland (CAS) welcomed this, saying that it “should

99 Chartered Institute of Housing Scotland. Written submission, page 1.
ensure that the supply of adapted housing to those who require it is increased, whilst at the same time ending the policy of removing adaptations from properties, which are likely to have cost a considerable amount to install.” However, CAS also highlighted the importance of ensuring that, in any such cases, the sitting tenants are not disadvantaged and are moved to appropriate accommodation that meets their needs.  

**Initial/probationary tenancies proposal**

119. During the Stage 1 scrutiny, local authorities and some tenants’ groups expressed disappointment that provisions to allow for initial or probationary tenancies were not included in the Bill and indicated that they viewed this as a missed opportunity. Councillor Harry McGuigan of COSLA explained why local authorities would find these useful—

> “Initial tenancies are useful and they should not be interpreted as being an attempt to make it easier to evict tenants for antisocial behaviour or for other reasons. We feel that initial tenancies provide us with a tremendous opportunity to help new tenants to understand what their responsibilities and rights are and to work with us as a group to ensure that we can minimise the likelihood of antisocial behaviour developing.”

120. Jim Hayton of ALACHO expanded on this, saying that evidence from elsewhere in the UK where initial tenancies are available suggests that these are successful. He said that they appeared to be “a valuable tool in the toolkit, that they do not increase evictions and that they allow landlords to engage with tenants in the critical first year of a tenancy to emphasise that a secure tenancy is a valuable currency. At the same time, initial tenancies provide a meaningful sanction…to tenants....”

121. There were mixed views on the initial tenancies issue amongst the tenants’ groups who provided evidence to the Committee. For example, Hugh McClung of Central Region Tenants Network supported it, saying that it would give landlords time to identify those with an antisocial behaviour tendency. Kevin Paterson of Glasgow and Eilean Siar Tenants Network, on the other hand, said that his tenants’ network considered initial or probationary tenancies to be unacceptable and would represent “an erosion of the Scottish secure tenancy and take away tenants’ rights”.

122. Both TPAS and TIS pointed out that there was no consensus when this issue was discussed with tenants, with strong views expressed both for and against, depending on tenants’ own experiences. However, Ilene Campbell made clear that “TIS would not advocate probationary tenancies, because we do not think that

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103 Citizens Advice Scotland. Written submission, page 4.
there is enough evidence at this stage to suggest that they would have a major impact on antisocial behaviour issues."\textsuperscript{107}

123. The Minister said that she was aware of support for initial tenancies that was shown in the responses to the Scottish Government's consultation, but made clear that she did not think it was appropriate to proceed with initial probationary tenancies at the current time. She said that a number of measures designed to address antisocial behaviour are already included in the Bill. She told the Committee—

"Furthermore, people who come through the homeless route have the right to support for a tenancy, so they are getting that support built into their tenancy. That is right and proper. People who have been waiting for ages on a housing list to get a house that they can make into their own home would all of a sudden be on trial as to whether they may remain in their home. For all those reasons, I do not think that it is right to proceed with that measure. It could be reviewed under a future bill, but I certainly do not think that the time is right."\textsuperscript{108}

124. The Committee notes the support for initial tenancies amongst some stakeholders, particularly local authorities. However, it is of the view that there is no clear indication that it would be appropriate to introduce them at this time. The Committee notes that the Minister has not ruled out considering the initial tenancies proposal further at some future stage and considers that this may be appropriate once the other measures in the Bill designed to assist in dealing with antisocial behaviour have been implemented and their impact fully assessed.

PART 3 - PRIVATE RENTED HOUSING

Transfer to First-tier Tribunal

Private rented sector (PRS)

125. The Bill transfers jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal, which is to be set up under the Tribunals (Scotland) Bill. The grounds which allow someone to raise an action, and the issues to be taken into account in deciding a case, will not change but decisions will be taken by a tribunal rather than a sheriff. The procedural rules will change so that cases are handled in a less formal setting.\textsuperscript{109} However, in line with the general approach in the Tribunals (Scotland) Bill, the full details of how the new private rented sector (PRS) tribunal will operate will largely depend on secondary legislation.

126. The type of matters to be transferred which currently fall under the civil jurisdiction of the sheriff court include:

\textsuperscript{109} Policy Memorandum, para. 133.
repossession cases;
non-repossession cases under existing housing legislation such as applications for damages for unlawful eviction or challenges to refusals by landlords to allow adaptation for disabled tenants;
disputes concerning compliance with tenancy agreements (including actions to recover tenancy deposits); and
landlord registration cases.\textsuperscript{110}

127. The transfer of private rented sector cases from the sheriff court to the First-tier Tribunal was widely welcomed in oral and written evidence, with support received from those representing both tenants and landlords. Concerns with the current system related to the lack of speed in the consideration of cases and a lack of specialist knowledge. Citizens Advice Scotland in particular felt that that one of the current barriers was “the low priority of housing cases within the court system”.\textsuperscript{111}

128. The Scottish Association of Landlords and Scottish Land and Estates informed the Committee of the perceived financial benefits for landlords associated with the speed of treatment of a case, given the expenses that arise with both arrears and legal costs.\textsuperscript{112}

129. Concerns were highlighted in relation to the difficulties in understanding and following the court process. The Scottish Independent Advocacy Alliance believes that “Tribunals are on the whole more accessible for users, particularly those who may be vulnerable, than court proceedings.”\textsuperscript{113}

130. The Committee also heard that the tribunal might offer the opportunity to address an inequity between private sector tenants and landlords. ALACHO’s Jim Hayton stated that “there is a big perception that there is a real imbalance of power between landlords and tenants in the private rented sector—one that does not exist to anything like the same extent in the social rented sector.”\textsuperscript{114}

131. This point was extended in written evidence from the Scottish Tribunals and Administrative Justice Advisory Committee. In their view—

“In cases involving landlords and tenants, there is likely to be an imbalance of power between the parties. It is important that any dispute resolution process is specialist in nature and can redress that imbalance of power through taking an inquisitorial approach.”\textsuperscript{115}

\textsuperscript{110} Policy Memorandum, paras. 135-137.
\textsuperscript{111} Citizens Advice Scotland, Written Submission, page 7
\textsuperscript{113} Scottish Independent Advocacy Alliance. Written Submission, page 1.
\textsuperscript{114} Scottish Parliament Infrastructure and Capital Investment Committee. Official Report, 5 March 2014, Col 2724
\textsuperscript{115} Scottish Tribunals and Administrative Justice Advisory Committee, Written Submission, page 2
132. A number of landlord organisations welcomed “the potential for higher quality and more consistent rulings from more specialised tribunal decision makers”.

133. The Committee, having heard considerable evidence to endorse the transfer to the First-tier Tribunal of private sector cases, supports these provisions in the Bill. However, the Committee requests further information on the operation of the tribunal when it becomes available.

**Costs relating to the establishment of the private rented sector tribunal**

134. The Finance Committee highlighted (Annexe E) that the Financial Memorandum (FM) states that “It is expected that there will be no additional costs for local authorities from proposals for a Private Rented Sector (PRS) tribunal.” However, some local authorities consider that costs may arise in relation to this provision. For example, Renfrewshire Council notes that “as the provider of housing services, the local authority will need to train relevant staff and update existing information to reflect the new changes.”

135. The City of Edinburgh Council also commented on the FM’s assumption, stating that “it is anticipated that the creation of such a tribunal will generate a significant increase in enquiries to the Council and appeals against landlord registration decisions, Rent Penalty Notices and various HMO decisions resulting in increased pressure on existing staff resources.”

136. The ICI Committee noted the Finance Committee’s correspondence. However, the Minister, in evidence to the Committee, restated the Scottish Government’s position that—

“we do not expect that there will be any significant cost to local authorities from our setting up the private rented sector tribunal.”

The Committee is content with the assurances given by the Scottish Government on this matter.

**Houses in multiple occupation**

137. At section 21, the Bill provides an enabling power to transfer Houses in Multiple Occupation (HMO) cases to the jurisdiction of the First-tier Tribunal at a later date because further consultation is considered desirable before deciding whether to transfer these cases.

138. The Committee agrees with this approach.

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118 Letter to the Infrastructure and Capital Investment Committee from the Finance Committee on the Financial Memorandum, 19 February 2014


121 Policy Memorandum, para. 143.
Tribunal members and representation at the tribunal

139. The Bill does not contain any specific provision for the appointment of tribunal members because the PRS tribunal will take advantage of general provisions in the Tribunals (Scotland) Bill. Tribunal members will be appointed by Scottish Ministers after recommendation by the Judicial Appointments Board for Scotland, following its independent appointment processes. Practices and procedures will also be set by secondary legislation under the Tribunals (Scotland) Bill. The PRS tribunal will be able to use legal members and ordinary members when hearing cases.

140. Parties would be able to have legal representation but “it is anticipated that this would not be the norm.” The Scottish Association of Landlords and Scottish Land and Estates supported this approach but also stated that “where it is appropriate, people should be able to access any type of advice, support and information that they need.”

141. CAS also considered that “by encouraging a specialist and interventionist approach parties are less likely to require representation as tribunal members (judges) know the questions to ask to get to the root of issues using plain English.”

142. However, although the approach taken by the tribunal is to move away from representation, the Scottish Independent Advocacy Alliance voiced the concern that—

“Oh even allowing for the fact that Tribunals are generally held to be more user-friendly, accessible and understandable, for some it is likely that they will experience difficulty understanding and following process and procedure, which is made worse by a lack of representation. [...] The inclusion of access to advocacy in this situation would be important to support any vulnerable tenants in understanding and participating in a housing tribunal.”

143. The Committee was reassured by evidence from Scottish Government officials that “some parties might require support to engage effectively with tribunal proceedings and we want to look in more detail at what support we can provide. That could be through the provision of legal aid or through other means: a representation or advocacy service, for example.”

144. Whilst Capability Scotland generally welcomed proposals to transfer cases involving adaptations to let property from the sheriff courts to the new First-tier Tribunal, it considered that “Given the implications to disabled people of
unreasonable refusal to consent for an adaptation we would expect Tribunal Panels to be well trained in disability equality from a Human Rights perspective."\(^{129}\)

145. The Committee supports the approach being taken by the Scottish Government in respect of representation at PRS tribunals. However, now that the Tribunals (Scotland) Bill has completed its parliamentary procedure, the Committee requests that the Scottish Government undertakes to inform the Committee of any policy developments it takes forward in the area of access to, and representation at, private rented sector tribunals.

Extension of the power to social rented sector cases
146. Several witnesses suggested to the Committee that it would have been highly beneficial to transfer social rented sector cases to the First-tier Tribunal system in addition to the private rented sector cases. This had been set out as an option in the Scottish Government’s consultation, but was not carried forward to the Bill. However, witnesses such as Shelter and CIH acknowledged the likely high level of costs involved and considered that focus should be given to the PRS transfer with the option open to expand the tribunal service to the social rented sector at a future date.\(^{130}\) The CIH sought assurance that a future extension of the tribunal system to the social sector “is not closed off forever.”\(^{131}\)

147. Rosemary Brotchie of Shelter “supported the move to take private sector cases out of the sheriff court as the first stepping stone, particularly because there is such a degree of unmet need for dispute resolution in the private rented sector.”\(^{132}\) Continuing that “in the first instance, private rented sector cases should be the priority.”\(^{133}\)

148. Ilene Campbell of TIS considered that there should be consideration of the cost of extending the transfer to the tribunal to social rented sector cases, with a separate consultation on cost.\(^{134}\)

149. The Scottish Government acknowledged the serious nature of cases currently brought to court across both the private and social rented sectors.\(^{135}\) The Policy Memorandum states that “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.”\(^{136}\)

\(^{129}\) Capability Scotland. Written submission, page 3.
\(^{135}\) Policy Memorandum, para. 131.
\(^{136}\) Policy Memorandum, para. 131.
150. The Committee also noted the Scottish Government’s awareness of “the significant case numbers and resource implications of transferring all rented housing cases from the courts”. However, the safeguards that exist within the social rented sector were highlighted by the Minister in evidence where she stated—

―in the private sector, there is not a balance of power between the landlord and the tenant; the redress is not there for the tenant. In the social rented sector, tenants have a right to complain, the social housing charter looks at the housing quality standards and there are a number of other areas that go to the ombudsman. Tenants in the social rented sector have a form of redress that tenants do not currently have in the private rented sector. It was felt very strongly that we should start this tribunal in the private rented sector.‖

151. The Minister highlighted the current court reform process, stating “We would want to see how those reforms bedded in with regard to the social rented sector before giving consideration to extending the tribunal system into the social rented sector.” However, the Committee heard evidence that reforms may not improve matters, for example evidence from COSLA and ALACHO suggested that the court reform would not necessarily provide sufficient improvements. The Scottish Tribunals and Administrative Justice Advisory Committee considers that—

“The intention is that the new summary sheriffs proposed in the current Courts Reform (Scotland) Bill will take an interventionist approach, and will specialise in certain types of civil cases, including housing cases. [...] In reality, however, this will be a very small part of their caseload – the Scottish Government has estimated that 70-80% of their time will be spent on summary criminal cases. It therefore seems unlikely that summary sheriffs will have the opportunity to develop the level of specialism in this area that would exist within a specialist tribunal.”

152. The Committee understands that, in reaching its decision on whether to extend the First-tier Tribunal to the social rented sector, the Scottish Government has had to take wide-ranging financial and operational matters into account. The Committee noted the Minister’s statement that—

“We have said that we will look at how the tribunal system operates in the private rented sector to see whether the system delivers what we intend it to deliver. We will also look at the court reforms when they come in to see whether they have made any changes in the social rented sector or had any impact on it. The situation will have to be monitored and if at a future date..."
we have to legislate or change things further, that point could be considered but it will not happen in the immediate future. We have to see how the tribunal system works in the private sector first and whether it delivers the outcome that we want it to deliver. Then we will look at the court reforms to see whether further changes need to be made.\textsuperscript{142}

153. The Committee accepts the decision and supports the Scottish Government’s commitment to monitoring progress of the private rented sector tribunal and the impact of court reform in order to decide whether further changes should be made for social rented sector cases.

154. The Committee acknowledges work being undertaken in court reform that will affect social rented sector cases that remain within the court system. But it requests further information on how the impact of the reform on these cases will be monitored in order to inform future decision-making on the possible transfer of these cases to the First-tier Tribunal.

Enforcement of repairing standard

155. Part 3 of the Bill also makes provision to expand access to the private rented housing panel (PRHP) by enabling third party applications by local authorities to enforce the repairing standard, which is the standard landlords have to meet to rent out their property.\textsuperscript{143} Section 23(1)(a) enables a third party to apply to the private rented housing panel for a determination of whether a landlord has failed to comply with the repairing standard. (This standard is in section 13 of The Housing (Scotland) 2006 Act.)

156. Currently, only tenants can make an application to the PRHP to seek to enforce the repairing standard. The Bill allows local authorities the ability to report to the panel and aims “to give local authorities additional means to report properties where the condition is thought to be below that standard.”\textsuperscript{144}

157. Throughout evidence-taking the Committee heard of circumstances where tenants may be reluctant to report their landlord for fear of losing their tenancy. Shelter Scotland supported the provision, stating that “Tenants in such situations often do not want to challenge their landlord, because they fear retaliatory eviction and will not take them to a tribunal if they have only a six-month short assured tenancy”.\textsuperscript{145}


\textsuperscript{143} Section 13 of the 2006 Act sets out the repairing standard – a condition that landlords have to meet in order to rent out.


158. The Scottish Government considers that the provision “should help to protect tenants who might feel vulnerable and might not want to take the action that is required.”

159. The Committee was also alerted to the provision’s ability to address the problem of the tenants moving on before their case reaches court. David Bookbinder of CIH welcomed “the proposal in the bill to ensure that a tenant’s moving on does not stop the local authority pursuing the landlord”.

160. However, Shelter Scotland also considered that “the powers must not be implemented in a way that creates conflict between the landlord and the tenant and inadvertently leads to the ending of a tenancy [...] Private tenants’ security of tenure is just not good enough to allow the sector to improve and to continue to meet housing need as it is at the moment. In short, although we welcome the introduction of third-party reporting, we believe that we need to consider what happens to tenants in those circumstances and whether they will be forced to move on from their tenancy.”

161. The Committee supports the provisions on the enforcement of the repairing standard at sections 23 to 25 of the Bill. However, the Committee seeks reassurance from the Scottish Government that it will monitor use of the power and its impact.

162. Some responses to the Finance Committee addressed the resourcing implications of enabling local authorities to make an application to the PRHP in respect of the repairing standard. Concern was expressed in relation to how to estimate costs for local authorities.

163. ALACHO noted—

“that several ALACHO members have drawn attention to the fact that the need to gather evidence on property condition, the processing of applications and defending a case (on appeal of a decision in court) could give rise to significant and potentially onerous new duties to local authorities.”

164. Similar comment was made by the City of Edinburgh Council. South Lanarkshire Council stated that “while we support the intention of the Bill’s approach that local authorities can act as a third party to the PRHP, and consider that the approach could increase flexibility to address poor standards in the PRS, we have some reservations...regarding the resourcing of it.” The Council

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149 Letter to the Infrastructure and Capital Investment Committee from the Finance Committee on the Financial Memorandum, 19 February 2014.
150 Association of Local Authority Chief Housing Officers. Written submission, page 3.
considers it important that “further work is carried out to establish resource requirements” to support councils in relation to this power.

165. The Committee therefore asks the Scottish Government whether it is content that the resource requirements for local authorities of this provision have been considered.

Electrical safety and the repairing standard

166. The Electrical Safety Council (ESC) alerted the Committee to the fact that “According to government statistics, 69% of all accidental fires in Scottish homes (more than 3400 annually) are caused by electricity. Independent research also suggests that private tenants are more likely to be at risk of electric shock or fire than owner occupiers.”\(^{152}\) The ESC considers that changes could potentially be made to the repairing standard to enable improvements in electrical safety to be made.

167. The Committee pursued the points the ESC had raised throughout its evidence taking. It heard suggestions to supplement the Bill’s provisions to provide improvements to the physical standard of private rented housing, in particular:

- mandatory five-yearly checks, carried out by a registered electrician, of electrical installations and any electrical appliances supplied with privately rented homes;\(^{153}\)
- to make the provision of suitable mains smoke alarms mandatory in private rented properties, as battery operated smoke alarms are unreliable;\(^{154}\) and
- to make the installation of carbon monoxide alarms mandatory for all private rented accommodation.\(^{155}\)

168. The Committee supports all of these initiatives and recommends that the Scottish Government brings forward amendments to this effect at Stage 2.

PART 4 – LETTING AGENTS

169. Part 4 of the Bill provides for the registration of letting agents. The two main policy objectives of this part are firstly “to promote high standards of service and levels of professionalism across the country” and secondly, “to provide landlords and tenants with easy access to a mechanism that will help to resolve disputes when these arise.”\(^{156}\)

170. Under the provisions Scottish Ministers are required to create and maintain a national register of letting agents. Letting agents must apply for registration and

\(^{152}\) Electrical Safety Council. Written submission, page 1.


\(^{156}\) Policy Memorandum, para. 20.
section 30 of the Bill sets out “fit and proper person considerations” which apply to their application. Letting agents would be required to re-register after three years or be removed from the register. Scottish Ministers can also remove a letting agent from the register if they consider that the agent no longer meets the fit and proper person test. Appeals on decisions made in respect of the register can be made to the First-tier Tribunal.

171. Section 41 of the Bill gives Scottish Ministers the power to create a Code of Practice which sets out the standards of practice which are required by people who carry out letting agency work. The Bill enables a tenant or landlord to apply to the First-tier Tribunal for a determination that a letting agent has failed to comply with the Code of Practice.

172. The provisions in the Bill are based largely on the system of regulation operating for property factors, introduced by the Property Factors (Scotland) Act 2011.

173. Evidence to the Committee widely supported the establishment of a registration scheme for letting agents. Disagreement with the provisions centred on whether the Bill has gone far enough in its registration requirements and the extent of the governance of letting agents. Concerns were raised in relation to the effectiveness of the current Property Factors (Scotland) Act 2011 and whether the Bill should mirror its provisions in respect of registration.

174. The Royal Institution of Chartered Surveyors (RICS) suggested that the Act’s necessary “qualifications” for registering as a property factor are “too low and very simplistic”, with the result that property factors with “a history of malpractice or misconduct, are now legitimised to practice.” LetScotland “would not support simply replicating the process and principles established for the Property Factors Register.”

175. Debate around the extent of the Bill’s ability to tackle bad practice of letting agents also focused on the Bill’s provision on the Code of Practice. ARLA does “not think that the proposed Code of Practice (outlined at section 41) which will contain a prescriptive set of requirements is sufficient to raise standards in the industry.”

176. RICS set out in written evidence the requirements that it perceived should be included in any Code of Practice. These were that letting agents should—

- avoid conflicts of interest and any actions or situations that are inconsistent with its professional obligations;
- provide regular training and/or continuing professional development (CPD) for all staff;
- make provisions for their tenants and landlords to access a comprehensive complaints handling procedure;

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157 Royal Institute of Chartered Surveyors Scotland. Written submission, page 3.
158 LetScotland. Written submission, page 2.
159 Association of Residential Letting Agents. Written submission, page 3.
have access to separate client money bank account and client money protection; and
• carry professional indemnity insurance.\textsuperscript{160}

177. The Minister stated that—

“We have looked at the Property Factors (Scotland) Act 2011, and I agree that, in practice, we might need something stronger for letting agents.”\textsuperscript{161}

178. The point was developed later in evidence when the Minister stated—

“We will certainly look at strengthening what is required of a letting agent. We are not going down the road of thinking that letting agents have to be a member of a professional body, because that is about the industry regulating itself. In effect, it would say who gets into and out of the register. However, we will certainly look at things such as training, qualifications and how letting agents operate their business.”\textsuperscript{162}

179. The Committee has heard evidence, both from those within and outside the letting agent profession, to support the strengthening of the provisions regarding the registration and governance of letting agents.

180. The Committee recognises that much of the detail of the register of letting agents and the Code of Practice is subject to further regulations. However, the Committee recommends that the Scottish Government considers how it might include on the face of the Bill details of what those regulations might cover, such as professional conduct, qualifications/training and financial obligations.

181. In oral evidence, the Committee heard concerns in relation to the three year registration period at section 34 of the Bill. Witnesses considered that agents should be required to re-register on a more regular basis.\textsuperscript{163}

182. The Committee recommends that the Scottish Government considers an initial period of registration of one year before an agent progresses to three year registration.

183. In response to whether the Code of Practice could “help the sector develop more sustainable business practices”, RICS stated that it is currently collaborating with the UN Global Compact to produce a best practice toolkit for the real estate, land and construction sector, and would welcome any future opportunity to discuss the progress of this initiative with Members.

\textsuperscript{160} Royal Institute of Chartered Surveyors Scotland. Written submission, page 6.
184. Given letting agents’ role in property management and in providing advice to landlords, the Committee recommends that the Scottish Government considers how the Code of Practice could seek to encourage letting agents to support Scotland’s climate change targets in this capacity.

185. The Committee heard that it is not clear how many letting agents operate in Scotland, although the Policy Memorandum suggests that there are an estimated 750 providers operating, managing around 150,000 lettings a year, which equates to 50% of all annual lettings in the private rented sector. The Policy Memorandum also points out the range of property management services for landlords provided by solicitors, estate agents and accommodation agencies.\(^\text{164}\)

186. The Committee considers that the Scottish Government should take an active role in identifying unregistered letting agents and seeks the Minister’s views on how this might be taken forward.

187. RICS has also raised with the Committee that the letting agent registration system should also have provisions “for ensuring that letting agents that fail the ‘fit and proper’ person test, or are struck off, are not allowed to re-enter the sector through alternate means; for example, by taking a ‘lower’ position in a large firm i.e. not director level, as to avoid ‘detection’ when the company applies for registration.”\(^\text{165}\) ARLA has raised similar concerns.\(^\text{166}\)

188. The Committee seeks clarification from the Scottish Government on how this might be tackled through registration or the Code of Practice.

PART 5 – MOBILE HOME SITES WITH PERMANENT RESIDENTS

Context

189. Residential mobile homes are also known as “park homes”, and are used by their owners as a permanent home. Mobile home parks are increasingly popular with elderly residents. People living in park homes rent the land their mobile home stands on from the site (park) owner for a pitch fee, but own the mobile home itself.

190. Research by Consumer Focus (2013, identified 92 mobile home sites in Scotland, with around 3314 mobile homes, spread across 22 local authority areas. In the same research, 61% of residents stated that they were satisfied with the site they lived on. However, 29% expressed dissatisfaction and 73% reported at least one problem on their site in the last five years. Problems experienced on site included maintenance, security and safety standards. Some respondents reported problems with their site owner or manager’s behaviour, including intimidation, or damage to property.\(^\text{167}\)

\(^{164}\) Policy Memorandum, para. 209.
\(^{165}\) Royal Institute of Chartered Surveyors Scotland. Written submission, page 4.
\(^{167}\) SPICe briefing on the Housing (Scotland) Bill, page 38.
Intentions of the Bill

191. Part 5 of the Bill provides the licence mechanisms by which the Scottish Government intends to address problems experienced by permanent residents of mobile and park homes.\(^\text{168}\)

192. Scottish Government analysis of its consultation found residents were supportive of the principles of Part 5, and welcomed legislation which would protect permanent residents and improve site conditions across the country. However, a number of stakeholders have raised concerns with the Committee concerning the potential impacts of this legislation, and comments focused on a few key areas, including:

- the proposed three year renewal/review period for licences;
- the costs associated with site licencing;
- the fit and proper persons test; and
- local authority enforcement.

193. This Committee has addressed these issues in some detail in this report in order to take account of the wide range of points highlighted in oral and, particularly, written evidence.

Part 1A site licence

Duration of site licences

194. Section 56 of the Bill proposes that mobile home site licences would be renewed every three years. This provision divided respondents during the Scottish Government’s consultation period, and during the Committee’s scrutiny process.

195. The Committee heard that some respondents welcomed the proposed three year licence renewal period rather than the current situation by which licences are treated as being for an indefinite period.\(^\text{169}\) Other stakeholders were opposed to fixed term licences.

Impact upon site financing

196. The British Holiday and Home Park Association (BH&HPA) raised concerns about the potential impact of set licence renewal periods on financial arrangements for park homes. In evidence to the Committee, the BH&HPA cited the impacts of similar licencing on park home sites in Wales\(^\text{170}\), where withdrawal of financing has been experienced.\(^\text{171}\)

197. The Minister responded during her evidence to the Committee that the Scottish Government was aware that this may be an issue, but that it had no firm

\(^{168}\) Policy Memorandum, para 231.

\(^{169}\) Angus Council. Written submission, page 3.


evidence on this matter. She added that Scottish Government officials were in discussion with Welsh Assembly colleagues to establish the facts on this matter.\textsuperscript{172}

198. The Committee is concerned by the suggestion that financial lenders may withdraw support for sites on the basis of the introduction of fixed term licences. The Committee supports the Scottish Government’s commitment to learning from experiences following the introduction of similar legislation by the Welsh Assembly and to establish whether there has been an impact on lending for mobile home sites in Wales.

199. The Committee recommends that the Scottish Government also work with lenders groups to clarify their views on the introduction of a fixed term licence, and what it might mean in Scotland.

Alternative approaches
200. The Committee heard that mobile and park home owners and representative groups were in favour of a system where licences are subject to review rather than renewal, with an assumption in the favour of continuation of the licence.\textsuperscript{173}

201. Residents groups took a similar view from the perspective of avoiding rogue operators from using a fixed term licence to threaten residents. Both Brian Doick, of the National Association of Park Home Residents, and David Tweddle, of the Independent Park Home Advisory Service, were in agreement that the expanded range of local authority enforcement powers provided for in the Bill, and the fit and proper person test (FPPT), would mean that a fixed term licence was unnecessary, and that licences could continue in perpetuity subject to compliance by site owners.\textsuperscript{174}

202. The Minister clarified in evidence the Scottish Government’s vision for a fixed term licence—

“I do not want to say that the licence will roll on, which might mean something else, but the bill says that the licence will be renewed automatically every three years, unless the site owner has breached requirements. As the park owners suggested, they would apply for the licence and, although they would have to apply again three years later, the local authority would automatically renew the licence, unless any breaches had occurred. We are not quite sure how that differs from what the owners propose.”\textsuperscript{175}

203. It has been clear from evidence that there is some confusion about the implications of the use of the word ‘renewal’ in the Bill versus ‘review’. The Committee recommends that the Scottish Government sets out as clearly as possible what it intends by using the word ‘renewal’ as opposed to ‘review’,
and what the implications are for site residents as part of an education campaign for residents and site owners.

Local authorities

204. Some witnesses expressed concern about the lack of local authority involvement with mobile home sites. Mobile home residents’ representative Brian Doick told the Committee that local authorities have not had a duty to police site licence conditions, and so checks have not taken place.¹⁷⁶

205. Local authorities themselves expressed concerns regarding licencing, particularly regarding enforcement tools and the availability of resources. Angus Council was of the view that policing licencing conditions can be challenging and costly, especially in its region where there are a large number of mobile home sites of varying types. It stated—

“…in Angus breaches of planning permission and breaches of site licences are relatively common. We are not convinced that the Bill has sufficient cost efficient tools and penalties to deter misbehaviour until further legislation is introduced to address holiday and migrant worker sites. Again there will be cost implications in terms of administration for local authorities and in the current time when savings are being made there could be inadequate resources.”¹⁷⁷

206. Local authorities also stated their concern about sites which are officially designated as holiday sites, but where there is evidence to suggest they also have permanent residents. Angus Council noted that there are increasing numbers of such sites in its region—

“The Bill deals with permanent residential sites only and does not address the issue of “holiday” sites. The boundaries between the two in practical terms are very often blurred as many sites are a mixture of residential and so called holiday lets.”¹⁷⁸

207. Local authorities¹⁷⁹ and COSLA¹⁸⁰ added that it was unclear where, or if, migrant workers sites would fit into the Bill, and requested clarification on this matter.

208. The Finance Committee, in its letter to the ICI Committee noted the concerns raised by Angus Council regarding the cost of licence policing, and the issue of migrant worker site and holiday sites.¹⁸¹

209. The Minister responded on the matter of resourcing that the provisions of the Bill were intended to cover most or all of the cost of the licencing and inspection scheme—

¹⁷⁷ Angus Council. Written submission, page 3.
¹⁷⁸ Angus Council. Written submission, page 3.
¹⁷⁹ Angus Council. Written submission, page 3.
¹⁸⁰ COSLA. Written submission, page 1.
¹⁸¹ Finance Committee. Written submission, page 2.
“The bill gives local authorities an income stream in relation to issuing and enforcing mobile home site licences. It also gives them the ability to claim back from site owners the costs of any enforcement action. We expect the fees to cover the cost of a site inspection at least once in the term of a licence.”

210. The Minister also clarified the Scottish Government’s intention that local authorities would concentrate their resources on problem sites where a greater degree of intervention is required.

211. The Committee recognises concerns about the potential impact on resources of the new licencing scheme but, as outlined by the Minister, the scheme should in effect be cost neutral.

212. The Committee recommends that the Scottish Government works with local authorities to enhance councils’ understanding of mobile and park home site regulations, and to enhance awareness, and embed the need for a consistent and thorough approach to inspections.

Cost of site licencing
213. Provisions in the Bill would allow local authorities to charge fees for granting site licences and to set the level for those fees. The Bill grants Scottish Ministers the powers to set the maximum level of fee in regulations, and specifies the matters which a local authority must take into account when setting fees. It is the intention that the fee would allow local authorities to carry out necessary inspections on a cost neutral basis, and that the fee charged could be flexible to take into account the size of the site in question.

214. CAS was supportive of the charging measures, but felt that local authorities should be bound to carry out certain specified inspections, in addition to any routine inspections.

215. The BH&HPA did not object to the principles of site licence fees, but suggested a number of points regarding fee levels, and how the money from fees should be used.

216. One mobile home site owner suggested that consideration be given to sites where there are both holiday homes and permanent residents, to ensure that there was not an unfair duplication of costs for different licences for the same site.

217. Residents representatives groups expressed opposition to the cost of licencing being passed onto residents—

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184 Policy Memorandum, para 251.
187 Craigtoun Meadows. Written submission, page 2.
“The resident is paying for the owner’s licence, but that should be a business cost to him. That is a disgrace, but owners seem to have got away with it in England. We certainly do not agree with that.”\textsuperscript{188}

218. Written evidence from the Minister clarifies the Scottish Government’s position that the cost of licencing could be passed onto residents, but that protections in the Bill will ensure that the fee for the site (thus cost to the residents) will be proportionate to the size of the site. Fees will not exceed a maximum licencing fee that will be set by Ministers. Scottish Government research suggested that the average cost increase to site residents as a result of the new licencing scheme will be between £5 and £10 per annum.\textsuperscript{189}

219. The Committee recognises that there is flexibility in the Bill to ensure that the cost of a site licence is proportionate to the size of the site, and should reflect only the costs of administering the licence scheme.

220. The Committee views the expected cost increase for residents to be fair given the increased protections residents will enjoy under the provisions of the Bill. The Committee recommends that the Scottish Government considers the ways by which it can be ensured that the additional cost to residents (if passed on) is in line with the plan set out in its letter to the Committee of 21 March 2014.

Impact of perceptions around licencing

221. The Committee heard that a three year renewal cycle could put prospective park residents off purchasing a park home due to uncertainty about what might happen if a site were to lose its licence.\textsuperscript{190}

222. The Committee also received written evidence from a number of permanent site residents expressing confusion about what the Bill might mean for them in the future. One couple said—

“If the new licensing scheme goes ahead we feel that we would be in a very worrying situation as we would be put in a position of “wait and see” if the Site is going to be granted a licence every 3 years? Where are we to live if the site is not granted a licence?”\textsuperscript{191}

223. The Committee also heard from a number of stakeholders their concern that the fixed-term licence might be used as a ‘weapon’ by rogue site operators to threaten and intimidate vulnerable site residents. David Tweddle, of the Independent Park Home Advisory Service, outlined to the Committee how residents could be misinformed by such site owners.\textsuperscript{192}

\textsuperscript{189} Minister for Housing and Welfare. Written submission, 21 March 2014.
\textsuperscript{190} Craigendmuir Ltd. Written submission, page 2.
\textsuperscript{191} Janis and Thomas Stoddart. Written submission, pg 1.
224. The Minister responded to these concerns by stating that the intention of the fixed term licence is to protect residents—

“I know that evidence has suggested that site owners are telling tenants, “If we lose our licence after three years, you’re off the site.” That is simply not the case. We need to do some work on that by talking to both site owners and residents to assure them that that is not the intention. The intention was to protect tenants, and the situation seems to be turning, so we will issue advice and information to residents and to site owners about our views on the matter.”

225. The Committee has heard in evidence that there is confusion about the potential impacts which the new licencing scheme may have upon residents of mobile and park home sites, both for site owners, and prospective and current residents. It is concerned that deliberate or accidental misinformation could create undue stress and concern, and negatively impact upon people’s ability to buy or sell their mobile homes. The Committee welcomes the Scottish Government’s assurances that the loss of a site licence to the owner would not result in the eviction of site residents, and that statements to the contrary by site owners is misinformation, deliberate or otherwise.

226. The Committee recommends an awareness campaign to ensure that residents and site owners are provided with accurate and clear information about the intentions and impacts of the Bill. This should specify where further information can be accessed, and bodies they can contact for support. The Committee believes that this would both support legitimate site owners, and empower residents, as well as providing reassurance and answering core questions.

Fit and proper person test

227. A FPPT is provided for in the Bill, and would require those applying for, or looking to renew, a site licence to satisfy a test to confirm that they are a ‘fit and proper person’ to hold the site licence. The test would consider a range of factors as laid out in the Policy Memorandum.

228. The inclusion at section 61 of a FPPT was generally welcomed by stakeholders who believed that it would help to weed out rogue site operators, ensure the safety and security of site residents and help local “authorities when granting, managing and reviewing licences.”

229. Brian Doick of the National Association of Park Home Residents expressed in evidence to the Committee his belief that the new test could prove to be significant. Barry Plews, of the Park Home Legislation Action Group, added that

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194 Policy Memorandum, page 45.
it would have a positive impact upon the types of persons permitted to run a site.\textsuperscript{197}

230. However, mobile home site owners representative group BH&HPA expressed reservations about the provisions as they stand, and called for the criteria for the test to be clearly defined, as well as applied consistently across Scotland.\textsuperscript{198} It recommended in its written submission that a national FPPT would help ensure consistency. It said—

“We would further recommend that a standard procedure be set-up to establish fit and proper status for applicants so that it can be used across all local authorities in Scotland to ensure consistency throughout the country.”\textsuperscript{199}

231. Similarly, Brian Doick suggested that a register of persons deemed not to be fit and proper persons should be kept and the information should be shared between local authorities.\textsuperscript{200}

232. CAS recommended that an addition should be made to the list of criteria in the FPPT – that an individual seeking a licence should not have been shown to profiteer on energy costs. Although legislation is in place which specifies that utilities on mobile home sites should only be re-sold to residents on the basis of cost plus a small administration fee, CAS believed that this may not always be complied with. It said —

“Despite this Consumer Futures found extensive suspicion on the parts of residents that site owners were profiteering from the resale of utilities and we believe that if profiteering is proven this should be considered as part of a FPPT.”\textsuperscript{201}

233. Tenancy and Estate Management Service (TEMS) also highlighted the concerns raised in Scottish Government consultations about the potential for rogue operators to subvert the FPPT. It stated—

“We respect the views expressed in the consultation that the system should seek to avoid onerous bureaucracy and that for the more malicious site owners there is often a difficulty in identifying from complex business and family structures, who should sit the fit and proper test.”\textsuperscript{202}

234. The Committee believes that the FPPT represents a positive step in ensuring the safety and security of park home residents in Scotland, and in driving up standards in the industry. It is vital that the test be consistent, fair and robust to ensure that rogue operators are exposed.

\textsuperscript{198} British Home & Holiday Park Association. Written submission, page 8.
\textsuperscript{199} British Home & Holiday Park Association. Written submission, page 9.
\textsuperscript{201} Citizens Advise Scotland. Written submission, page 13.
\textsuperscript{202} Tenancy and Estate Management Service. Written submission, page 6.
235. The Committee recommends that the Scottish Government consider the feasibility and potential benefits of a FPPT register in Scotland which could be shared across local authorities in Scotland, and which captures data about site owners who have passed FPPT, and applicants who do not. The Committee is of the view that this will help to ensure that compliant site owners are enabled to expend their businesses as they wish, and that non-compliant owners are prevented from simply moving to another authority and continuing to employ non-compliant behaviours.

236. The Committee also recommends that the Scottish Government considers whether there is scope in the FPPT to take into account issues regarding operators who have been shown to have profiteered from energy re-sale to mobile home owners.

Local authority enforcement at relevant permanent sites

237. The Scottish Government intends that the provisions in the Bill on enforcement powers for local authorities will help tackle non-compliant behaviour.203

238. These provisions are intended to operate on a ‘polluter pays’ principle whereby compliant site owners would not be penalised for the behaviours of non-compliant site owners.

239. There was some debate between stakeholders about the levels of fines proposed in the Bill. The maximum fine level was raised to ensure consistency with other areas of legislation. The CAS took the view that fines should be unlimited204, whereas the BH&HPA took the view that the proposed maximum fine was too high.205 Craigtoun Meadows suggested there should be a sliding scale of fines for non-compliance.206

240. The Committee asked residents’ representatives whether the Scottish Government’s proposed range of enforcement tools in the Bill is wide enough to act as a deterrent to rogue operators, whether the tools are proportionate, and whether they suggested any additional enforcement tools for local authorities. The representatives agreed that they were happy with the range “as long as the enforcement tools are used.”207

241. The Committee also asked whether the representatives were content that residents would be protected from fines being passed on by site owners, and respondents were content that the Bill takes measures to protect residents from this.

242. When questioning the Minister on the same issue the Committee sought assurances that fines could not be passed on to residents. She sought to assure

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203 Policy Memorandum, page 47.
204 Citizens Advice Scotland. Written submission, page 14.
206 Craigtoun Meadows. Written submission, page 2.
the Committee that this is something the Scottish Government would not tolerate—

“The intention is certainly not that residents should pay for bad services that landlords have been made to correct. We will look into that.”

243. On 21 March 2014, the Minister wrote to the Committee with further information and acknowledged that, as it stands, the Bill does not protect residents from potentially bearing the cost of fines, but sought to assure the Committee that this would be considered at Stage 2 of the Bill. She said—

“Under section 68 of the Bill, if a local authority took enforcement action against a site owner it could recover the costs of that action from the site owner. As currently drafted, the Bill would not prevent the site owner from passing on those costs to residents through pitch fees…I am looking at the possibility of whether it would be possible to amend the Bill to prevent that happening.”

244. The Committee is concerned at the prospect of fines for non-compliance by site owners being passed on to residents. The Committee is of the view that it is insupportable that residents should pay for a good service, not receive it, and end up paying the fine for the non-compliance of the site owner and the bad service they themselves received. However, the Committee is reassured that the Scottish Government is considering the possibility of addressing this issue at Stage 2.

PART 6 – PRIVATE HOUSING CONDITIONS

Objectives

245. In Part 6 of the Bill, the Scottish Government’s objective is to ensure that local authorities have a range of powers to tackle poor conditions in the private sector. It is intended that these new discretionary powers will give councils a wider range of tools to use as part of a strategic approach to improving poor standard housing in their areas.

246. The Policy Memorandum to the Bill lays out the objectives of the provisions on house condition enforcement powers, which 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;
- reduce the administrative burden of maintenance orders;
- enable local authorities to include incidental work to address safety and security work notices; and


209 Minister for Housing and Welfare. Written submission, 21 March 2014.

210 Policy Memorandum, para. 274.
• provide local authorities with effective means to recover the costs of work to address disrepair from owners of commercial property in housing blocks.

247. Stakeholders generally welcomed of the new powers and clarification of existing powers, and saw it as a positive opportunity to tackle poor housing standards in private ownership. Others saw the new powers and amendments as limited, and a potential additional burden on local authorities.

**Tenement management scheme - “missing share”**

248. Section 72 of the Bill makes provisions to allow local authorities to step in where an owner is unwilling or unable to pay or cannot be found or identified. It also makes provision for local authorities to use repayment charges to recover the costs of paying the missing shares.211

249. Property management groups in particular welcomed this aspect of the Bill, and saw it as beneficial to those landlords with properties in multi-ownership buildings. Edinburgh Scottish Property Centre (ESPC) stated in its submission to the Committee—

“It will put an end to the current situation that some landlords can face in having to cover other people’s share of communal repairs in order to comply with the repairing standard for their property and provide a compliant property for their tenants.”

250. However, some local authorities took the view that the ‘missing share’ powers were not new, and that the clarifications under Part 6 of the Bill would make little difference in real terms. Glasgow City Council stated that it believed the ‘missing share’ power already exists. It said—

“Authorities already have ‘missing shares’ powers under Section 50 of the Housing (Scotland) Act 2006 therefore the Council questions the relevance or need for this.”

251. The biggest concern raised around the ‘missing share’ powers was that of local authority resources, both to fund the resources up front and to recover the costs. Local authorities, and some residents groups, believed that resources were already under pressure, and that enacting these powers may add to the strain. The City of Edinburgh Council stated in its submission that—

“While amendments to support home owners to carry out shared repairs are welcome, there is some concern that local authorities will be unable to make use of these powers because of a lack of resources to cover upfront costs and difficulty in recovering costs.”

252. This was a view echoed by Jim Hayton, of ALACHO, in oral evidence to the Committee. He said—

211 SPICe briefing on the Housing (Scotland) Bill, page 44.
212 ESPC. Written submission, page 3.
“There are some amendments in the bill to the tenement management scheme to allow local authorities to step in and pay so-called missing shares, where owners are reluctant to carry out works... those are broadly welcomed by local authorities... We still have the thorny problem of paying the money up front and trying to recover it.”  

215 The period of time for repayment was highlighted in submissions as an area of contention for local authorities. In its submission, the City of Edinburgh Council stated that it believes 30 annual payments to be excessive and financially problematic for the council over such a long period. The Council suggested that the option of payment over 30 years may, in fact, act as a disincentive to swift repayment. It took the view that there is a need for greater flexibility, and stated—

“The period of 30 years for an owner to pay back their share through repayment charges is not suitable for all individuals and circumstances. It is recommended that local authorities should be given the flexibility to determine the time period over which the share must be paid back based on individual circumstances. It would also be more valuable and applicable if there was minimal risk of non-recovery of the funds, and therefore it is recommended that the charging order should be secured by prior ranking.”  

216 In its written evidence to the Committee, Glasgow City Council welcomed the amendments as they highlight the wider issue of home owners being unable to fund essential repair and maintenance to their homes, which Glasgow City Council believes is a significant issue in its area. As such, Glasgow City Council and Edinburgh City Council both highlighted guidance following the Housing (Scotland) Act 2006 which suggested that a national lending unit might be appropriate—

“Previous Scottish Government guidance following the Housing (Scotland) Act 2006 highlighted the need for a national lending unit to support owners to carry out repairs. This unit was never established by the Scottish Government but the issue of the affordability of repair and maintenance of private housing stock remains, which has wider implications for the future of housing supply in the city.”  

217 The Minister and her officials told the Committee during evidence that the intention of the amendment to existing legislation was to improve private housing generally. She was of the view that—

“The missing share problem has been a major difficulty in getting houses brought up to quality and standard. I think that the proposal will be of assistance and local authorities tell us that it will assist them considerably.”  

218 The Committee welcomes the intention of the amendments to the Tenements (Scotland) Act 2004 to allow local authorities to support owners  

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217 Glasgow City Council. Written submission, page 8.  
in tenements to progress repairs and maintenance in cases where the
majority of owners support the work, but a minority of shares are ‘missing’.

257. The Committee also acknowledges the mixed response of local
authorities to these amendments, with the principles of the amendments
being generally welcomed but the practicalities of initially resourcing the
‘missing shares’, and laterally the cost and administrative burden of
recouping ‘missing shares’, raising concerns.

258. The Committee takes the view that as the ‘missing share’ amendments
are powers rather than duties, it can be expected that there will be variation
between authorities as to whether they choose to employ these powers or
not. Therefore, the Committee welcomes the principles of these
amendments, but believes that the impact may be limited by local
authorities’ reticence, or inability, to commit funding where they believe it
may have difficulty recovering it, and the timescales for recovering those
funds is prolonged.

259. The Committee is of the view that a 30-year repayment period is
excessive, and that there is sense in the suggestion that local authorities
should be given the flexibility to determine the time period over which the
share must be paid back based on individual circumstances. The Committee
recommends that the Scottish Government considers the feasibility of this
suggestion, and considers other ways of enabling and encouraging local
authorities to use these powers where appropriate.

Work notices, maintenance orders and repayment charges

Objectives
260. The Bill makes several minor changes to the powers associated with work
notices and maintenance orders and plans as set out in the 2006 Act. These
amendments are described on page 45 of the SPICe briefing.

261. As with the ‘missing share’ power in Part 6, the new powers regarding work
notices and maintenance plans were broadly welcomed by stakeholders.

262. City of Glasgow Council stated—

“The streamlining of the maintenance order process is welcomed as are the
proposals to allow local authorities to record repayment charges against
commercial premises and increasing the scope of work to allow security
measures to be included within Work Notices.”

263. But similarly to the missing share provision, questions were raised regarding
local authority resources. Angus Council in its written statement said—

“Again the question to ask would be who is going to be responsible for
managing this provision as at the present time local authorities are stretched

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219 Glasgow City Council. Written submission, page 8.
on resources and if they were given more discretionary powers additional resources would be needed.”

264. This was echoed in West Lothian Council’s submission—

“The proposed changes to work notices and maintenance plans are welcomed, although may create expectation which resources do not exist to satisfy.”

265. The Committee welcomes these powers but, as with the ‘missing share’ provision, encourages the Scottish Government to consider other ways of enabling and encouraging local authorities to use these powers where appropriate.

Sustainability in private housing
266. The Policy Memorandum to the Bill states that the Scottish Government considers that amendments to local authority house condition enforcement powers will promote environmental, social and economic aspects of sustainable development. Improvement to private home disrepair will improve energy efficiency (reducing fuel consumption and waste) and the physical environment, which will in turn have a positive social, environmental and economic impact upon people’s lives.

267. Stakeholders generally took the view that the Bill would do little to support the improvement of energy efficiency in private housing. The SFHA said—

“… we would repeat our concerns in relation to the physical standards of privately owned homes, particularly in respect of energy efficiency, that they are generally much lower than in the social rented sector. There is nothing in this Bill that would have a robust impact on driving these standards up in the privately owned sector.”

268. Both RICS and the City of Edinburgh Council suggested that, in properties of multiple ownership, there would be benefit in owners taking a planned approach to maintenance, with regular roof inspections being a key point. They take the view that a planned approach may help identify problems before they become serious, and enable the work to be carried out swiftly. They envisaged ‘stairwell committees’ developing maintenance plans for their buildings, with guidance and advice from local authorities, and the possibility of enforcement measures if necessary.

269. The Committee recognises the importance of improving domestic energy efficiency in order to meet Scotland’s ambitious climate change targets. The Committee notes that this Bill does not directly address energy efficiency of private housing and recalls its previous recommendation that

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221 West Lothian Council. Written submission pages 8–9.
222 Scottish Federation of Housing Associations. Written submission, page 9.
223 Royal Institute of Chartered Surveyors. Written submission, page 8.
the Scottish Government considers the introduction of minimum standards across the private sector earlier than 2018.\textsuperscript{225}

270. The Committee sees the value in suggestions regarding the creation of maintenance and inspection systems in properties of multiple ownership, and considers that this would promote community empowerment, and prevent minor repairs and associated costs spiralling as a result of continued disrepair. However, the Committee also recognises the potential difficulties which individual properties may experience in setting up and administering such schemes, especially in properties of mixed tenure.

Other issues
271. The Policy Memorandum to the Bill states that it is intended that condition enforcement powers would support housing improvements, 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.\textsuperscript{226}

272. Inclusion Scotland noted in its submission that it was unclear how the provisions in Part 6 would support this intention—

“...it is not clear from the Bill or the Explanatory Notes how the enforcement powers will enable adaptations to housing for disabled people. We hope this can be clarified by the Scottish Government during Stage 1.”\textsuperscript{227}

273. The Committee welcomes any provision which enables people to live independently in their own homes for as long as possible. While it is possible to envisage how improvement to energy efficiency and physical improvements to properties may support older people in continuing to live independently, the Committee shares Inclusion Scotland’s lack of clarity about how these provisions will support adaptation for disabled people. The Committee would welcome more information from the Scottish Government on this point.

PART 7 – MISCELLANEOUS

Scottish Housing Regulator: transfer of assets following inquiries
274. Section 79 (paragraph a) of the Bill proposes to remove the requirement for the Scottish Housing Regulator (SHR) to consult with tenants prior to the removal of assets of a registered social landlord (RSL) where there is immediate threat of insolvency.

275. The Policy Memorandum states that that this provision will create a narrow exception to the general duty at section 67(4) of the Housing (Scotland) Act 2010 which requires the SHR always to consult tenants and lenders before it directs a transfer of assets. It indicates that it is “intended to address cases where the SHR

\textsuperscript{226} Policy Memorandum, para. 281.  
\textsuperscript{227} Inclusion Scotland. Written submission, page 3.
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”.  

276. The Policy Memorandum also states that, although the Scottish Government consulted the SHR on this proposal, there was no formal consultation with “representatives of tenants, lenders, RSLs and other stakeholders” prior to its inclusion in the Bill.  

277. Tenants’ representatives who provided evidence to the Committee voiced strong opposition to this provision, For example, Lesley Baird of TPAS said—

“To say that it is unpopular would be an understatement. What is the regulator doing if we get to the stage at which we have to transfer properties without any consultation? How long does it take? There is absolutely no support at all for that proposal.”

278. Ilene Campbell of TIS questioned at what stage the SHR would make a decision that immediate action was required and there was no opportunity to consult with tenants. She expressed the view that, even in urgent circumstances, tenants still had a right to be consulted, even if this had to be carried out to an abbreviated timescale. She also queried how a point could be reached where such urgent action was required, without earlier warnings having become apparent—

“If we were advising a group of tenants on the matter, they would ask why they were only being informed about the situation so late on in the day. In such a case, something would have gone wrong in the regulatory process, because there would have been lots of warnings signs before the situation arose.”

279. Jennifer Macleod of the Highland and Argyll and Bute Tenants Network agreed that it should be possible to identify at an earlier stage through appropriate monitoring when an RSL is experiencing financial difficulties. She also argued that the provision eroded tenants’ rights and said—

“If an organisation has to be dissolved or passed on to another housing association, the tenants must be consulted. Over the past 10 years, we as tenants have been given rights that we did not dream of having 20 years ago. The proposal is a backwards step....”

280. The Committee raised these concerns with the Minister who stated that the provision was “about protecting tenants to ensure that in those very extreme
circumstances they would be protected and they would have a landlord”. She explained—

“We envisage it being exercised only if a social landlord is in financial jeopardy that means that they could imminently become insolvent as the lender could call in the debt. In those circumstances, a direction from the Scottish Housing Regulator to transfer the assets to another registered landlord would reduce the likelihood of that happening. In those circumstances, there might not be time to consult.”

281. The Committee understands and accepts the rationale behind the Scottish Government’s decision to include this provision in the Bill. However, it considers it to be very unfortunate that the opportunity was not taken to consult key stakeholders in advance of the Bill’s introduction to explain the reasons behind its approach. It is of the view that it is possible that such dialogue may have served to reassure those stakeholders who are now opposed to its inclusion in the Bill that it is designed to provide added protection for tenants, as opposed to what they consider to be a diminution of tenants’ rights.

282. The Committee calls on the Scottish Government to provide details of how it intends to engage with stakeholders, tenants’ representative groups and RSLs in particular, to provide clarity on the specific circumstances in which this power would be used. It also recommends that clear and unambiguous guidance should be produced by the Scottish Government setting out these circumstances and the process to be followed by the SHR should they arise.

283. The Committee further recommends that this guidance should set out how, in the event that this power is to be used by the SHR, information on the specific reasons for its use should be quickly and effectively communicated to all affected tenants and representative groups.

RSL restructuring – proposal for ballot of tenants

284. When appearing before the Committee, the Minister indicated that representations from the GWSF had been received which contained what she described as “compelling arguments” as to why tenants should be balloted when an amalgamation or a merger of RSLs is proposed. The GWSF also set out the reasoning behind its proposal in its written submission to the Committee.

285. She explained that tenants are currently only balloted if there is a proposal to change their landlord, whereas a ballot is not required if a housing association intends to amalgamate with, or enter a constitutional partnership with, a larger housing association.

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234 Glasgow and West of Scotland Forum of Housing Associations. Written submission, page 9.
286. The Minister advised the Committee that the Scottish Government believes that “for there to be openness and transparency, tenants perhaps should be consulted in those circumstances.” She indicated that she would be writing to stakeholders to inform them that the Scottish Government is minded to consider addressing this matter at Stage 2. The Committee notes that a consultation letter was issued on 12 March 2014.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

287. Under Rule 9.6.2 of Standing Orders, where a Bill contains provisions conferring powers to make subordinate legislation, the Delegated Powers and Law Reform (DPLR) Committee must consider and report to the lead committee on those provisions.

288. The DPLR Committee report is attached at Annexe D.

Powers to issue guidance

Section 4(2) – Power to issue guidance regarding the making or altering of social landlords’ rules on allocation of housing (inserts new subsection (3A) in section 21 of the Housing (Scotland) Act 1987).

Section 7(2) – Power to issue guidance on the maximum period preceding an application for housing during which a social landlord may take account of certain circumstances, and on the maximum period for which a landlord may make an applicant ineligible for the allocation of housing as a result of those circumstances (inserts new section 20B(3) in the Housing (Scotland) Act 1987).

Section 8(1) – Power to issue guidance regarding the creation of, or conversion of a tenancy to, a short Scottish secure tenancy on the grounds of antisocial behaviour (inserts new section 34(9) in the Housing (Scotland) Act 2001).

289. The DPLR Committee welcomes the Scottish Government’s commitment to consult on and publish any guidance issued under the powers conferred by sections 4(2), 7(2) and 8(1) of the Bill. However, the DPLR Committee asks the Scottish Government to consider bringing forward amendments at Stage 2 to require consultation on, and publication of, any guidance issued by the Scottish Ministers under the powers conferred by those sections.

290. The ICI Committee supports the view of the DPLR Committee and requests that the Scottish Government brings forward amendments to require consultation on and publication of the guidance at Stage 2.

Letting Agent Code of Practice

Section 41(1) – Power to set out a code of practice which makes provision about the standard of practice of persons who carry out letting agency work.

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291. Under section 41(3) of the Bill, the Scottish Ministers must consult on a draft of the Letting Agent Code of Practice before it is finalised. The regulations which set out a Code of Practice are subject to negative procedure.

292. The DPLR Committee has asked the Scottish Government to consider further in advance of Stage 2 of the Bill whether the significance of the legal consequences of failure to comply with a letting agent code of practice are such that the affirmative procedure is a more suitable level of parliamentary scrutiny than the negative procedure.

293. **Given the importance of the Code of Practice, the ICI Committee supports the DPLR Committee recommendation and seeks the Scottish Government’s views on this power.**

**Power to make provision in relation to procedure**

Section 60 – Power to make provision concerning the procedure to be followed in relation to the application and transfer of site licences, and appeals relating to site licences (Inserts section 32N in the Caravan Sites and Control of Development Act 1960).

294. New section 32N of the 1960 Act gives the Scottish Ministers the power, by regulations, to make provision in relation to the procedures to be followed for an application for a site licence, an application for consent to transfer a site licence, and the transfer of a site licence on death. It also allows Ministers to make provision in relation to appeals against a decision by a local authority to refuse a licence application, to transfer a licence, to refuse consent to transfer a licence or to revoke a licence.

295. The ICI Committee notes the series of points that the DPLR Committee has raised with the Scottish Government in relation to the drafting, effect and points of consistency within this section of the Bill. The overall point made by the DPLR Committee concerns the balance between what is on the face of the Bill and in the regulations.

296. **The ICI Committee will monitor the Scottish Government’s response in respect of this provision in advance of Stage 2 consideration.**

**Power to vary maximum fine**

Section 63 - Power to vary maximum fine. (Inserts section 32T in the Caravan Sites and Control of Development Act 1960)

297. The DPLR Committee does not consider that section 32T(1) of the 1960 Act (inserted by section 63 of the Bill) should confer an unlimited discretion to vary the maximum fine for conviction in respect of the offences listed. It considers that the circumstances under which the maximum fine may be varied are matters for the Parliament and that the power should be restricted to permit variation of the maximum fine only where it appears to the Scottish Ministers that particular circumstances apply. The DPLR Committee considers that these circumstances should reflect the specific policy intention in taking the power.
298. The ICI Committee supports the DPLR Committee’s request that the Scottish Ministers consider bringing forward a suitable amendment at Stage 2.

CONCLUSION

General principles
299. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill. In doing so, the ICI Committee has taken into consideration evidence from a wide range of groups and stakeholders.

300. The Committee welcomes the Housing (Scotland) Bill as providing a package of measures which will contribute to the improvement of housing in the social, private rented and owner-occupied sectors.

301. The Committee has made a number of recommendations and comments in this report in response to the evidence it has heard. It calls on the Scottish Government to consider and respond to these during the later stages of the Bill’s parliamentary scrutiny.

302. The Committee recommends that the Parliament should agree to the general principles of the Bill.
ANNEXE A: EXTRACTS FROM THE MINUTES OF THE INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

27th Meeting, 2013 (Session 4) Wednesday 18 December 2013

Housing (Scotland) Bill: (in private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

1st Meeting, 2014 (Session 4) Wednesday 15 January 2014

Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Linda Leslie, Housing Strategy Team Leader, Claire Tosh, Team Leader, Private Housing Services, Barry Stalker, Team Leader, Private Rented Sector Policy, Daniel Couldridge, Senior Policy Officer, Housing Options and Support, and Colin Brown, Senior Principal Legal Officer, LAD Division, Scottish Government.

2nd Meeting, 2014 (Session 4) Wednesday 22 January 2014

Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Rosemary Brotchie, Policy Manager, Shelter Scotland;
David Bookbinder, Head of Policy and Public Affairs, Chartered Institute of Housing in Scotland;
Andy Young, Policy Manager, Scottish Federation of Housing Associations;
Alan Benson, Director, Glasgow and West of Scotland Forum of Housing Associations;
Paul Brown, Chief Executive Officer, Legal Services Agency;
Michael Clancy, Director of Law Reform, The Law Society;
Garry Burns, Prevention of Homelessness Caseworker, Govan Law Centre.

3rd Meeting, 2014 (Session 4) Wednesday 29 January 2014

Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

John Blackwood, Policy and Parliamentary Affairs Director, Scottish Association of Landlords;
Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates.
4th Meeting, 2014 (Session 4) Wednesday 5 February 2014

Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Kathleen Gell, Convenor, The Council of Letting Agents;
Jonathan Gordon, Chair, PRS Forum, RICS Scotland;
Ian Potter, Managing Director, The Association of Residential Letting Agents;
Malcolm Warrack, Chairman, Let Scotland.

5th Meeting, 2014 (Session 4) Wednesday 19 February 2014

Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Brian Doick, President, National Association of Park Home Residents;
Barry Plews, Chair, Park Home Legislation Action Group;
David Tweddle, Senior Consultant/Membership Secretary, Independent Park Home Advisory Service;
Colin Fraser, Chair, and Jeanette Wilson, Policy Director, Scotland, British Holiday and Home Park Association.

6th Meeting, 2014 (Session 4) Monday 24 February 2014

Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Ilene Campbell, Director, Tenant Information Service;
Lesley Baird, Chief Executive, Tenants’ Participation Advisory Service, Scotland;
Hugh McClung, Chair, Central Region Tenants’ Network;
Jennifer MacLeod, Chair, Highland, Argyll and Bute Tenants’ Network;
Kevin Paterson, Chair, Glasgow & Eilean Siar Tenants’ Network.

7th Meeting, 2014 (Session 4) Wednesday 5 March 2014

Housing (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Councillor Harry McGuigan, Spokeperson for Community Wellbeing and Safety,
Silke Isbrand, Policy Manager, Community Resourcing Team, Housing, and David Brewster, Senior Environmental Health Officer, COSLA;
Jim Hayton, Policy Manager, and Tony Cain, Head of Housing and Customer Service, Stirling Council, ALACHO.
8th Meeting, 2014 (Session 4) Wednesday 12 March 2014

**Decision on taking business in private:** The Committee agreed to take item 5 and future consideration of draft reports on the Housing (Scotland) Bill, in private.

**Housing (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—
Margaret Burgess, Minister for Housing and Welfare, William Fleming, Head of Housing Services Policy Unit, Barry Stalker, Principal Policy Officer, Private Rented Housing, Daniel Coulridge, Senior Policy Officer, Private Housing Services Team, and Colin Brown, Senior Principal Legal Officer, Scottish Government.

10th Meeting, 2014 (Session 4) Wednesday 26 March 2014

**Housing (Scotland) Bill (in private):** The Committee considered a draft Stage 1 report and agreed to consider a revised draft at its next meeting.

11th Meeting, 2014 (Session 4) Wednesday 2 April 2014

**Housing (Scotland) Bill (in private):** The Committee agreed a revised draft Stage 1 report.
ANNEXE B: EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

1st Meeting, 2014 (Session 4) Wednesday 15 January 2014

Oral Evidence

2nd Meeting, 2014 (Session 4) Wednesday 22 January 2014

Written Evidence
Shelter Scotland (272KB pdf)
Chartered Institute of Housing (287KB pdf)
Scottish Federation of Housing Associations (318KB pdf)
Glasgow and West of Scotland Forum of Housing Associations (867KB pdf)
Legal Services Agency (96KB pdf)
The Law Society (147KB pdf)

Oral Evidence

3rd Meeting, 2014 (Session 4) Wednesday 29 January 2014

Written Evidence
Scottish Association of Landlords (112KB pdf)

Oral Evidence

4th Meeting, 2014 (Session 4) Wednesday 5 February 2014

Written Evidence
Royal Institute of Chartered Surveyors (RICS) (413KB pdf)
Association of Residential Letting Agents (765KB pdf)
Let Scotland (162KB pdf)

Oral Evidence

5th Meeting, 2014 (Session 4) Wednesday 19 February 2014

Written Evidence
British Holiday and Home Parks Association (351KB pdf)

Oral Evidence

6th Meeting, 2014 (Session 4) Monday 24 February 2014

Written Evidence
Tenants Information Service (TIS) (136KB pdf)
TPAS Scotland (198KB pdf)
Highland and Argyll & Bute Tenants Organisation (147KB pdf)

Oral Evidence
7th Meeting, 2014 (Session 4) Wednesday 5 March 2014

Written Evidence
ALACHO (285KB pdf)
COSLA (115KB pdf)

Oral Evidence

8th Meeting, 2014 (Session 4) Wednesday 12 March 2014

Oral Evidence
ANNEXE C: OTHER WRITTEN EVIDENCE

Aberdeen City Council (183KB pdf)
A Flat in Town Limited (84KB pdf)
ALACHO (285KB pdf)
Almond Housing Association (157KB pdf)
Amnesty International (109KB pdf)
Angus Council (138KB pdf)
Argyll and Bute Council (205KB pdf)
Article 12 in Scotland (137KB pdf)
Association of Residential Letting Agents (765KB pdf)
Borders Edinburgh East Lothian and Midlothian RTO Network (79KB pdf)
British Holiday and Home Parks Association (351KB pdf)
Brodies LLP (85KB pdf)
Cameron, Anne (Individual) (66KB pdf)
Capability Scotland (81KB pdf)
Carers Scotland (286KB pdf)
Chartered Institute of Housing (287KB pdf)
Citizens Advice Scotland (305KB pdf)
City of Edinburgh Council (219KB pdf)
Clackmannanshire Tenants and Residents Federation (189KB pdf)
Clouds Property Management (86KB pdf)
Colinton Lettings (187KB pdf)
COSLA (115KB pdf)
Council of Mortgage Lenders (92KB pdf)
Craigmendmuir Limited (75KB pdf)
Craigtoun Meadows Ltd (78KB pdf)
Cramond, R D (Individual) (1232 KB pdf)
Crisis (134KB pdf)
Diponio, Maria (Individual) 111KB pdf)
Dundee Federation of Tenants Associations (195KB pdf)
East Ayrshire Tenants and Residents Federation (186KB pdf)
East Fife Federation Tenants and Residents Association (137KB pdf)
East Lothian Tenants Residents Panel (206KB pdf)
Infrastructure and Capital Investment Committee, 4th Report, 2014 (Session 4) —
Annexe C

Edinburgh University Students Association (EUSA) (126KB pdf)
Electrical Safety Council (455KB pdf)
Elliot, Douglas (Individual) (61KB pdf)
Energy Action Scotland (69KB pdf)
ESPC (192KB pdf)
Factotum (112KB pdf)
Five Sisters and Cairn Rock Housing Networks (147KB pdf)
Glasgow City Council (149KB pdf)
Glasgow and West of Scotland Forum of Housing Associations (867KB pdf)
Gilmore, Sheila MP, Edinburgh East (146KB pdf)
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Supplementary Written Evidence—
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Additional written evidence, Chartered Institute for Housing from 22.01.14 oral evidence (236KB pdf)
Additional written evidence, Scottish Federation of Housing Associations from 22.01.14 oral evidence (84KB pdf)
Additional written evidence, The Law Society of Scotland from 22.01.14 oral evidence (114KB pdf)
Additional written evidence, BH&HPA from 19.02.14 oral evidence (114KB pdf)
Additional written evidence, BH&HPA dated 11.03.14 from 19.02.14 oral evidence (79KB pdf)
Additional written evidence, Let Scotland (264KB pdf)
ANNEXE D: REPORTS FROM OTHER COMMITTEES

The Delegated Powers and Law Reform Committee report on the Housing (Scotland) Bill can be found on the Scottish Parliament’s website through the following link—

18th Report, 2014 (Session 4): Housing (Scotland) Bill
ANNEXE E: CORRESPONDANCE FROM OTHER COMMITTEES

Finance Committee correspondence on the Housing (Scotland) Bill can be found at the following link—

Letter to the Infrastructure and Capital Investment Committee from the Finance Committee on the Financial Memorandum, 19 February 2014
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