Justice Committee

Inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003

Response from the Scottish Government

I attach the Scottish Government’s response to the recommendations in the Justice Committee’s Report following the inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003.

We have followed the numbering of recommendations at the summary at the front of your report. We have also responded to the recommendation at paragraph 32, on research, and have called this recommendation 12.

Roseanna Cunningham
Minister for Community Safety and Legal Affairs
4 September 2013

GOVERNMENT RESPONSE TO THE JUSTICE COMMITTEE REPORT FOLLOWING ITS INQUIRY INTO THE EFFECTIVENESS OF THE PROVISIONS OF THE TITLE CONDITIONS (SCOTLAND) ACT 2003

Recommendation 1. The Committee recognises the value in having in place an effective system to keep the country’s housing stock properly maintained. The Committee acknowledges that evidence taken during the inquiry has demonstrated that some practical difficulties are being experienced in the operation of the relevant provisions in the 2003 Act. The Committee therefore considers that there are some improvements which could be made to the legislation. The Committee has explored these issues during the course of its inquiry and its conclusions are set out below. (paragraph 38).

1. The response by the Government on the Committee’s conclusions is set out under the various relevant recommendations below.

Recommendation 2. The Committee accepts the rationale that some protection needs to be in place to ensure the maintenance of properties which were previously under the responsibility of local authorities. However, evidence has shown that the provisions may not be working on a practical level. It therefore believes that these provisions warrant review to ensure that they operate in practice. (paragraph 50)

Recommendation 3. The Committee is particularly concerned that, although the majority of properties which must comply with this manager burden are reaching the end of the 30-year period, if a deed of conditions was registered in 1995, the manager burden would still have 12 years to run. It therefore calls on the Scottish Government to give careful consideration to the operation of this provision in the 2003 Act. (paragraph 51).
2. The Government has considered this matter and does not plan any change to the legislation in this area.

3. As the Committee notes in paragraph 46 of the Report, two-thirds of homeowners in a development may vote to replace the factor while a manager burden lasting 30 years following right to buy is still in place.

4. The Government accepts that it may be difficult to obtain such a majority, especially where the Registered Social Landlord (RSL) still owns a significant number of the houses. However, the RSL enjoys property rights in relation to the houses which it continues to own and is entitled to a say, on behalf of its tenants, on how communal areas are maintained, and managed.

5. The Government notes the discussion in paragraph 49 of the report on when manager burdens in right to buy (RTB) cases are coming to an end. The Government does not have comprehensive information on this. However, Annex A to this response provides statistical information on total Social Sector RTB Sales from 1979-80 to 2010-11.

6. It can be seen from Annex A that there are a reasonable number of RTB sales in more recent years. However, Section 63(7) of the 2003 Act makes provision on how the period of a manager burden is to be calculated. As paragraph 286 of the Explanatory Notes to the Act says, when “the manager burden is created in a series of dispositions containing the same burdens, the duration of the burden will be calculated from the registration date of the first constitutive deed that created a manager burden in respect of one of those related properties, i.e. the first sale”.

7. Therefore, where the same manager burden has been created in relation to a number of related properties, the duration of the manager burden runs from the first sale of a related property.

8. The Government considers that it may be helpful generally for it to provide more information on the duration of manager burdens, building on the existing Explanatory Notes to the 2003 Act. Therefore, the Government will place more information on its website on the duration of manager burdens.

9. The Government intends no change to the 30 year period for manager burdens following RTB given:

   - As the Committee indicates, it is possible to use section 64 to dismiss a manager by two-thirds majority during the 30 year period.
   - RSLs are entitled to property rights in relation to property which they continue to own.
   - The 30 year period runs from when the first constitutive deed is registered.
   - The Government intends to abolish RTB in any event.

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Recommendation 4. The Committee notes that difficulties appear to have arisen regarding the switching of factors. In particular, the complexity of the legislation may be creating barriers to switching.

Recommendation 5. The Committee understands that there are circumstances where a two-thirds majority threshold should be required in order to switch factors. However, it considers that this may be creating a barrier to switching factors. In particular, it is concerned that this may be difficult to achieve where, for example, data protection measures prevent information relating to owners and landlords being available. It therefore calls on the Scottish Government to give careful consideration to whether the legislation could be amended to remove these types of barriers. (paragraph 68).

10. The Government:

- notes these recommendations;
- considers that the written evidence from the UK Information Commissioner provided useful clarification on data protection issues. The Scottish Government will consult with the Information Commissioner’s Office prior to providing publicly available guidance to the property management sector on making a homeowner’s details available to other homeowners in the development;
- will consider if the next edition of the Code of Conduct for property factors could include material on factors disclosing a homeowner’s details to other homeowners, when appropriate;
- intends to produce, and consult key bodies on, public-facing guidance on the relevant provisions of the 2003 Act on the dismissal and replacement of factors;
- is aware that the title conditions for modern housing developments often include provision on the appointment, dismissal and replacement of factors and will consider, with key bodies, if any Government guidance in this area would be helpful; and
- does not plan any changes at the moment to the legislation on the majorities required to dismiss and replace a property factor.

11. As noted in paragraph 61 of the Report, the UK Information Commissioner provided written evidence to the Committee.3

12. This evidence noted that a common inquiry to the Commissioner comes from residents’ associations and homeowners seeking to dismiss their current maintenance company. The evidence said that one option when trying to obtain the required majority “is for the existing maintenance company to provide the residents associations with the contact details of owners but there is no obligation for the company to do so. More often than not, the DPA [Data Protection Act] is quoted as preventing such disclosure and residents therefore perceive it as a barrier to

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3 The UK Information Commissioner’s written evidence is at http://www.scottish.parliament.uk/S4_J usticeCommittee/Inquiries/TC17._Information_Commissioners_Office.pdf
homeowners exercising their right under the 2003 Act when, in reality, the DPA is not a barrier to releasing this information”.

13. The Scottish Government welcomes this clarification and has discussed this issue further with the Information Commissioner. The Scottish Government will consult with the Information Commissioner’s Office prior to providing publicly available guidance to the property management sector on making a homeowner’s details available to other homeowners in the development.

14. In addition, as the Committee is aware, section 14 of the Property Factors (Scotland) Act 2011 requires Scottish Ministers to prepare a code of conduct setting out minimum standards of practice for registered property factors. When the Government next reviews the Code of Conduct we will consider whether material should be added on factors disclosing a homeowner’s details to other homeowners when this is required in relation to the management and maintenance of common areas.

15. Paragraphs 62 to 66 of the report discuss the legislation on the majorities required to dismiss and replace a property factor. The Government notes the points made and recorded in the report against changing the thresholds.

16. The Government consulted in 2012 on making it easier to dismiss and replace property factors, as part of its consultation on Scotland’s Sustainable Housing Strategy. Responses to the consultation were mixed. Annex B to this response to the Committee’s report provides the Government’s response to the question on property factors in the sustainable housing consultation.

17. Paragraphs 53 and 54 of the Committee’s report note the suggestions that public-facing guidance on the provisions of the 2003 Act which relate to the dismissal and replacement of property factors could be useful. The Government intends to produce guidance on this issue, consulting key bodies on its terms. Such guidance could be linked to the publication Common Repair, Common Sense – a guide to the management of tenements in Scotland, which the Government has just taken on from Consumer Focus Scotland.

18. The Government is aware that the title conditions for modern housing developments often include provision on the appointment, dismissal and replacement of factors. The Government will consider, with key bodies, if any Government guidance in this area would be helpful. One option, for example, might be some standardised templates and models to follow when laying down provisions in deeds on the appointment, dismissal and replacement of factors.

4 The current Code of Conduct is at http://www.scotland.gov.uk/Publications/2012/07/6791
5 The consultation is at http://www.scotland.gov.uk/Publications/2012/06/8390/5 (see paragraphs 2.24 to 2.30 and question 19).
6 The analysis of the consultation responses is at http://www.scotland.gov.uk/Publications/2013/02/4438/5 (see paragraphs 3.62 to 3.72).
7 The short version of Common Repair, Common Sense and the more detailed version are on the Government’s website at http://www.scotland.gov.uk/Topics/Justice/law/17975
19. For the meantime, the Government does not plan any legislation in relation to the appointment, dismissal and replacement of factors. The Property Factors (Scotland) Act 2011 has had a significant impact on property factors and it has only been fully in force since 1 October 2012. Any further legislation at this stage could bring further costs which might have to be met by the customers of the property factors. However, the Government will continue to monitor this area closely and would not rule out legislation in future if a clear case were made that cost-effective legislation could make it easier for property owners, acting collectively, to dismiss and replace their factor.

Recommendation 6. The evidence received by the Committee demonstrates the complexity of the law in this area, in particular, regarding the enforceability of real burdens where the land-owning maintenance company model is involved. The Committee notes that this lack of clarity can create uncertainty which is unsatisfactory for all parties. The Committee therefore calls on the Scottish Government to consider whether a review of the law in this area would be welcome. The Committee also notes that a test case might help to clarify these issues. (paragraph 95).

20. As the Committee has noted, the Government consulted in 2011 on maintenance of land on private housing estates. Annex C to this response to the Committee’s report outlines the Government’s response to the outcome of the consultation.

21. The Government considers that the position of consumers of services provided by land-owning land maintenance companies (LMCs) has improved in recent years. The Consumer Code for Home Builders in relation to new homes has been in place since 1 April 2010. Clause 2.1 of the Code lays down that home buyers must be given enough pre-purchase information to help them make suitably informed purchasing decisions. Clause 2.1 goes on to say that in all cases this information must include “a description of any management services and organisations to which the Home Buyer will be committed and an estimate of their cost”.

22. If a home builder fails to meet the requirements of the Code, the home buyer can make a complaint to the Code’s independent Dispute Resolution Scheme.

23. As the Committee has noted, the Property Factors (Scotland) Act 2011 covers land-owning LMCs. Therefore, the statutory Code of Conduct applies to land-owning LMCs and the remit of the Homeowner Housing Panel extends to land-owning LMCs.

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24. The Government accepts, however, that it is not easy for consumers to dismiss and replace land-owning LMCs. This was the key issue covered in the 2011 consultation. In broad terms, there are now three options for the Government: do nothing; invite land-owning LMCs and consumer bodies to work with the Government on a Code of Practice on dismissing and replacing land-owning LMCs; or legislate.

25. The Government has concluded that doing nothing is not an option, given the concerns in this area, including concerns mentioned by the Committee. The Government has also concluded that, at the moment, it would be preferable to prepare a Code of Practice on dismissing and replacing land-owning LMCs, rather than legislate. The Government has a number of reasons for taking that view:

- The Property Factors (Scotland) Act 2011 has had a significant impact on land-owning LMCs.
- It is unclear that legislation would be any more effective than a Code of Practice in relation to the dismissal and replacement of land-owning LMCs.
- As the 2011 consultation and the Committee’s report noted, some sort of provision would be needed in relation to the ownership of the land being maintained. Inevitably, this would make any legislation in this area more complex.

26. Preparing a Code of Practice does not rule out legislation in future if the Code of Practice should turn out to be ineffective. The Government will review the effectiveness of the Code of Practice after it has been operating for three years and will provide a report to the Committee on the outcome of this review.

27. The Government agrees that a test case on the enforceability of the burdens in this area would be helpful. However, as the Committee notes in paragraph 109 of the Report, Consumer Focus Scotland (now Consumer Futures) no longer has responsibility for this area of consumer policy so it cannot support a case in the future.

Recommendation 7. The Committee is concerned to hear that, as well as often having no choice as to the provider of property maintenance services, homeowners feel they have little recourse where standards of service are not met. It welcomes the provisions of the 2011 Act which introduced the Homeowner Housing Panel which it believes will go some way to addressing this issue. However, the Committee is of the view that a transparent mechanism is needed to address issues around the cost of services. The provision of a mediation service in relation to disputed bills may be one way forward. The market may also warrant further examination by UK Government agencies responsible for competition, such as the Office of Fair Trading. The Committee considers that this should be taken forward as a matter of priority. (paragraph 119).

28. The Government agrees with the Committee that the Homeowner Housing Panel provides greater rights to homeowners. Complaints can be taken to the Panel when a property factor (including an LMC) has failed to carry out the property factor’s duties and has failed to ensure compliance with the Code of Conduct for registered property factors. Before applying, the homeowner must give the factor a reasonable
opportunity to resolve the dispute. Information on the cases decided by Homeowner Housing Committees is on the Panel’s website\textsuperscript{10}.

29. On transparency of cost of services, section 1 of the Code of Conduct for Property Factors\textsuperscript{11} requires factors and LMCs to provide a written statement of service for homeowners. This has to include information on financial and charging arrangements.

30. On mediation for disputed bills, the Government agrees that mediation between the homeowner and the factor or LMC can be a way of resolving disputes. However, the Government would not intend to fund any such mediation service, especially as the Government is already incurring expenditure through financing the Homeowner Housing Panel. Disputes on bills between a homeowner and a factor or LMC could usually be taken through the small claims procedure. The Scottish Court Service provides information on how to use the small claims procedure.\textsuperscript{12}

31. On a further examination of the market by the UK competition authorities, such as the Office of Fair Trading (OFT), the Committee will be aware that competition is a reserved matter and the Scottish Government is not responsible for the OFT. However, we have discussed the Committee’s recommendation with the OFT.

32. The OFT have noted that as the Committee is aware, the OFT has only relatively recently carried out a market study into this sector (2009)\textsuperscript{13}. The OFT found that there was a lack of effective competition in this market, difficulties with switching, and that the complexity of the legal situation meant that there was a need for an effective independent complaints and redress mechanism which is easily accessible to the owners of shared property. The OFT also recommended that the Scottish Government should reconsider the provisions of the Title Conditions (Scotland) Act 2003, which the Committee has now done. (As indicated above, the Scottish Government has decided against bringing forward legislation at this stage to amend the 2003 Act in relation to the dismissal and replacement of property factors and LMCs).

33. The OFT have noted that in the period since the OFT published its findings and recommendations, there have also been further important developments in this sector, such as the introduction of the Property Factors (Scotland) Act 2011.

34. Given all of the above, the OFT is unclear what value a further examination of the market by the OFT would add at this point in time. The causes of the problems in this market were identified in the OFT’s 2009 report and the 2011 Act introduced to address many of the problems is still bedding in. Its effects will take time to feed through and the OFT would not expect to revisit this market in the near future unless there was significant new information brought to their attention.

\textsuperscript{10} See http://hohp.scotland.gov.uk/prhp/2562.325.348.html
\textsuperscript{11} The Code of Conduct for Property Factors is on the Government’s website at http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privateowners/propertyfactors/2011Act
\textsuperscript{12} The Scottish Courts Service information on the small claims procedure is at http://www.scotcourts.gov.uk/taking-action/small-claims
\textsuperscript{13} The OFT’s Market Study is at http://www.oft.gov.uk/OFTwork/markets-work/scottish
Recommendation 8. The Committee also notes the land-owning maintenance model comes about when local authorities withdraw from taking responsibility for maintenance of green space around new developments. However, it considers that there may still be a role for local authorities to take some responsibility for ensuring that the maintenance of these common areas is carried out in a fair and equitable way. In the interim, the Committee calls on local authorities to review all the levers at their disposal – including the planning process and the collection of capital payments from developers – to ensure that sustainable, long-term maintenance arrangements are supported. In the longer-term, the Committee calls on the Minister for Local Government and Planning and local authorities to review the arrangements in place for land maintenance, recognising that green space has a wider benefit to communities and that there is a role for local accountability. (paragraph 120).

35. The Government has discussed this recommendation with the Convention of Scottish Local Authorities (COSLA).

36. Clackmannanshire Council have recently considered this issue. Following this, Clackmannanshire Council asked COSLA to support a change in primary legislation so that adoption and maintenance of public open space be treated consistently with the adoption and maintenance of associated public roads, footpaths and street lighting.

37. This proposal was considered by COSLA’s Community Well-being Executive Group. At this Group, COSLA decided that a discretionary approach be considered whereby councils could have the first choice option to take on the maintenance role but that this should not be mandatory given resource and other implications.

38. The Government agrees, and welcomes, that one option in relation to the maintenance of land on housing estates is for local authorities to adopt and maintain the land. As COSLA indicated, there are potential resource implications for local authorities in doing that. The Government recognises that, as a result, local authorities may not wish to adopt and maintain land in housing estates. In addition, if a commuted or capital sum is obtained from the developer, the developer may need to recover these costs. This could lead to the initial prices of new houses being higher.

39. There are other alternative ways of managing land. As paragraphs 1.13 and 1.14 of the 2011 consultation noted, the Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 (SI 2009/729) is now in place. This allows land owners to create Development Management Schemes to manage property where there is a shared interest. The Scheme would generally be used by

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14 The relevant council Committee paper is at http://www.clacksweb.org.uk/document/meeting/1/379/3669.pdf
15 The relevant paper is at http://mastertonheights.co.uk/COSLA%20maintenace%20of%20open%20spaces.pdf
developers at the outset of development, as it may be difficult to secure the agreement of individual owners at a later stage.

40. Under the Scheme arrangements, the management is entrusted to an owners’ association, the membership of which consists of all the owners of units in the development. The Order provides that the owners’ association will be a body corporate. The Government does not have statistics on use of the Scheme but understands it has not been used very frequently. However, the Government is aware of some increasing interest in the Scheme and will provide more information about it on its website.

41. The Government accepts the Committee’s recommendation that, in the longer term, the arrangements in place for land maintenance should be reviewed by the Government, working with local authorities, developers, land maintenance companies and bodies representing the consumer interest. As the Committee says, green space has a wider benefit to communities and there is a role for local accountability. In addition, the issues in this area are highly complex and the Government will continue to monitor land maintenance issues closely.

Recommendation 9. The Committee is concerned that the Lands Tribunal may not be accessible to individual homeowners. In particular, it is concerned that expenses liability may deter homeowners from using the Lands Tribunal. It welcomes the alternative approaches to expenses suggested by the Lands Tribunal in its written submission, including the suggestion of a cap on expenses, which goes some way to improve the situation, but it would still result in expense for a homeowner defending their right to object to the removal of a burden, and that is fundamentally unfair. The Committee calls on the Scottish Government to consider these concerns in more detail. (paragraph 131).

42. The Scottish Government accepts this recommendation and will consider this issue further. The Government will write to the Committee again once we have considered further.

43. Section 103 of the Title Conditions (Scotland) Act 2003 makes provision on expenses in Lands Tribunal cases under the 2003 Act. Section 103(1) provides that the Tribunal may “make such order as to expenses as they think fit but shall have regard, in particular, to the extent to which the application, or any opposition to the application, is successful”

44. The 2003 Act has its origins in a report by the Scottish Law Commission. Issues in relation to expenses were discussed in the report when the Commission made its recommendation in this area17.

45. As the Committee notes, the Lands Tribunal provided supplementary evidence to the Committee on expenses and compensation. As the Report notes, one option suggested by the Tribunal is a possible cap on expenses. The Tribunal

also mentioned other options such as substituting a broad test of reasonableness instead of express reference to success and authorising the Tribunal to make their decision on the basis of written material and a site visit.

46. This is not a straightforward issue, as there are always bound to be expenses associated with actions in the Lands Tribunal or in any other court or Tribunal. However, the Government accepts that there are concerns in relation to expenses. Therefore, the Government will consider the matter further and write to the Committee again.

Recommendation 10. The Committee accepts the general view that the culture of common maintenance is not prevalent in Scotland. It notes that it is the duty of solicitors and developers to highlight to individuals, during the property purchasing process, their responsibilities with regard to common maintenance. The Committee is encouraged by the submissions suggesting that establishing residents’ associations may help to improve the situation. To enhance this, the Committee calls on the Scottish Government to make provision to raise awareness of homeowner responsibilities more generally. (paragraph 151).

47. The Scottish Government accepts this recommendation.

48. As indicated in the comments in relation to recommendation 6, the Consumer Code for Home Builders contains material on telling prospective home-owners about any management services they would be committed to.

49. The Law Society of Scotland publication, Buying a Property¹⁸, says that solicitors will check conditions (burdens) in title deeds that will have to be observed by any owner and that these could include “an obligation to pay a management fee for repairs and maintenance”.

50. The Government agrees that there is evidence of the benefits of residents’ associations and, working with other bodies and building on existing material, will produce a guide on setting them up. (As indicated under recommendation 8, the Government will also promote the use of Development Management Schemes, where appropriate).

51. On raising awareness of homeowner responsibilities more generally, the Government will consider what more could be placed on its website and in publications such as Common Repair, Common Sense.

Recommendation 11. The Committee notes that degree of concern expressed about the operation of section 53 of the 2003 Act. It also notes that there is no consensus as to how these issues should be addressed. It therefore agrees that the provisions in section 53 would warrant consideration by the Scottish Law Commission. The Committee calls on the Scottish Government to invite the Scottish Law Commission to take forward a review of section 53 as part of its work programme. (paragraph 166).

¹⁸ This is on the Law Society of Scotland’s website at http://www.lawscot.org.uk/media/2132/3799_Buying_A_Property.pdf
52. The Scottish Government accepts this recommendation and has suggested the following terms of reference to the Scottish Law Commission: “To review section 53 of the Title Conditions (Scotland) Act 2003 in the context of part 4 of the Act and make appropriate recommendations for reform”.

53. The Commission already has a full programme of work under the Eighth Programme of Law Reform. The Eighth Programme runs until the end of 2014 so work on this planned reference would most likely commence early in the Ninth Programme (2015).

Recommendation 12. The Committee did not receive a wide number of submissions from property owners and groups representing consumers. The Committee therefore recommends that, in taking forward the proposals in the report, the Scottish Government commissions research into the experience of home owners in this area. (paragraph 32).

54. The Scottish Government has noted this recommendation in paragraph 32 of the report. The Government does not plan any further research at this stage but will continue to take every opportunity available to obtain information on home owners’ experience of property factors and land maintenance companies.

55. The Government agrees that it is important to obtain views from consumers of the services being provided. Some research has been carried out in recent years. In March 2011, Consumer Focus Scotland published their report Consumer Experiences of Land-owning Land Management Companies19.

56. Annexe B to the Office of Fair Trading Market Study on Property Managers in Scotland outlines the findings of a survey of consumer experiences of property management20.

57. The Scottish Government is also monitoring the number of cases dealt with by the Homeowner Housing Panel. Decisions made by the Panel are on the Panel’s website21.

Scottish Government
September 2013

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19 This can be found at http://www.consumerfocus.org.uk/scotland/files/2011/03/CFS-Land-Management-Report-v7.pdf
20 Annexe B to the OFT report can be found at http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft1046b.pdf
21 See http://hohp.scotland.gov.uk/prhp/2562.html
## ANNEX A

### Total Social Sector Right to Buy Sales, 1979 to 2010-11

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<th>Financial Year</th>
<th>Total RTB Sales</th>
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<td>1986/87</td>
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<td>2010/11</td>
<td>2,021</td>
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<td><strong>Total</strong></td>
<td><strong>454,813</strong></td>
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</table>

Source: Local Authority data from Sales 1 and Sales 3 returns to Scottish Government Housing Statistics branch


Notes:
1. Include sales of Local Authority, New Towns and Scottish Homes stock, and includes Registered Social Landlord stock from 1998-99
2. Excludes sales of RSL stock from 1986 to 1997-98 (RSLs were not covered by RtB legislation prior to 1998)
3. Preserved style RtB includes contractual and pre-2001 act RtB sales in RSLs
4. For RTB sales under preserved terms and modernised terms. Does not include voluntary or Rent to Mortgage sales.
Annex B: Government response to the question on property factors in the sustainable housing consultation.

1. Question 19 in “Homes that don’t cost the earth: a consultation on Scotland’s Sustainable Housing Strategy” asked what action, if any, do you consider the Government should take to make it easier to dismiss and replace property factors.

2. Following consideration of the responses to this consultation and the report by the Justice Committee on the effectiveness of the Title Conditions (Scotland) Act 2003, the Government has decided to:

2.1 Make no changes at the moment to the legislation on the majorities required to dismiss and replace a property factor.

2.2 Consult with the UK Information Commissioner’s Office prior to providing publicly available guidance to the property management sector on making a homeowner’s details available to other homeowners in the development.

2.3 Consider if the next edition of the Code of Conduct for property factors could include material on factors disclosing a homeowner’s details to other homeowners, where appropriate.

2.4 Produce public-facing guidance on the relevant provisions of the 2003 Act on the dismissal and replacement of factors. This guidance could be linked to the publication Common Repair, Common Sense – a guide to the management of tenements in Scotland.

2.5 Consider if any Government guidance on title conditions for modern housing developments on the appointment, dismissal and replacement of property factors would be helpful.

2.6 Produce a guide on establishing residents’ associations.

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The consultation is at http://www.scotland.gov.uk/Publications/2012/06/8390/5 (see paragraphs 2.24 to 2.30 and question 19). The analysis of the consultation responses is at http://www.scotland.gov.uk/Publications/2013/02/4438/5 (see paragraphs 3.62 to 3.72).
Annex C: Government response to the consultation on the maintenance of land on private housing estates.

1. In 2011, the Government consulted on the maintenance of land on private housing estates\(^{23}\).

2. Since then, the Property Factors (Scotland) Act 2011 has come into force. This establishes a registration scheme for land maintenance companies and property factors, a Code of Conduct for them to follow and the Homeowner Housing Panel. Homeowners can apply to the Panel for a determination as to whether their land maintenance company or property factor has failed to carry out their factoring duties, or failed to comply with the Code of Conduct.

3. However, the 2011 Act does not deal with the issue of dismissing and replacing land-owning land maintenance companies. The Government has, at this stage, decided against legislation on this issue but will keep the matter under close review. The Government has decided to:

3.1 Invite land-owning land maintenance companies and consumer bodies to work with the Government on a Code of Practice on dismissing and replacing land-owning land maintenance companies. This Code will build on existing work and will be publicly available.

3.2 Review the effectiveness of the Code of Practice after it has been operating for three years and provide a report to the Justice Committee of the Scottish Parliament on the outcome of this review.

3.3 Review the arrangements in place for land maintenance, working with local authorities, developers, land maintenance companies and bodies representing the consumer interest.

3.4 Produce a guide on establishing residents’ associations.

3.5 Ensure information is available on the creation of Development Management Schemes to manage property where there is a shared interest.

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### ANNEX D: LIST OF INTENDED GOVERNMENT ACTIONS

<table>
<thead>
<tr>
<th>Action No.</th>
<th>Paragraph in response to Committee</th>
<th>Intended action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>8</td>
<td>Place more information on the Government’s website on the duration of manager burdens.</td>
</tr>
<tr>
<td>2.</td>
<td>13</td>
<td>Consult with the UK Commissioner’s Office before providing publicly available guidance to the property management sector on making a homeowner’s details available to other homeowners in the development.</td>
</tr>
<tr>
<td>3.</td>
<td>17</td>
<td>Produce public-facing guidance on the provisions of the Title Conditions (Scotland) Act 2003 on the dismissal and replacement of property factors.</td>
</tr>
<tr>
<td>4.</td>
<td>18</td>
<td>Consider if it would be helpful to produce Government guidance on title conditions for modern housing developments which include provision on the appointment, dismissal and replacement of property factors.</td>
</tr>
<tr>
<td>5.</td>
<td>25</td>
<td>Prepare a Code of Practice on the dismissal and replacement of land-owning land maintenance companies.</td>
</tr>
<tr>
<td>6.</td>
<td>26</td>
<td>Review the effectiveness of the Code of Practice on the dismissal and replacement of land-owning land maintenance companies after three years, and report to the Justice Committee on the outcome of this review.</td>
</tr>
<tr>
<td>7.</td>
<td>40</td>
<td>Provide more information on its website about the Development Management Scheme.</td>
</tr>
<tr>
<td>8.</td>
<td>41</td>
<td>Review the arrangements for land maintenance on housing estates.</td>
</tr>
<tr>
<td>9.</td>
<td>42 to 46</td>
<td>Consider further the issues in relation to expenses in the Lands Tribunal, and write to the Committee again.</td>
</tr>
<tr>
<td>10.</td>
<td>50</td>
<td>Produce a guide on setting up residents’ associations.</td>
</tr>
<tr>
<td>11.</td>
<td>51</td>
<td>Consider what more could be done to raise awareness of homeowner responsibilities in relation to maintenance of common areas.</td>
</tr>
<tr>
<td>12.</td>
<td>52</td>
<td>Ask the Scottish Law Commission to review section 53 of the 2003 Act.</td>
</tr>
</tbody>
</table>

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