1 Introduction

1.1 As the representative body for housing associations and housing co-operatives in Scotland, the Scottish Federation of Housing Associations (SFHA) welcomes the opportunity to respond to the Scotland Bill Committee’s call for evidence on the Scotland Bill, as introduced into the Westminster Parliament on 30th November 2010 and amended by the Committee of the Whole House.¹

1.2 Housing associations and housing co-operatives in Scotland that are registered under the Housing (Scotland) Act 2001 are classified by the Act as Registered Social Landlords (RSLs). They own and manage 46% of the country’s affordable rented housing stock. This represents 272,401 homes across Scotland. This is concentrated in some of the poorest communities in our country.

1.3 The SFHA submitted evidence to the Session 3 Scotland Bill Committee earlier this year. Our updated evidence is confined to the clauses relating to borrowing powers and insolvency. We also comment upon the Session 3 Scotland Bill Committee’s recommendations on a UK Government commitment to consulting with devolved institutions on any plans for tax and benefit reform.

2 Clause 32 - Borrowing Powers

2.1 The SFHA supports the Scottish Parliament’s call for increased borrowing powers. We note the Secretary of State for Scotland’s statement on 13th June 2011 in respect of the potential extension of such powers to include bond issuance. We also note that this is dependant upon the UK Government’s review of: the costs and benefits of bond issuance over other forms of borrowing; the impact of this on the overall UK fiscal position; whether it would have a negative impact on total UK borrowing.² We await with interest the outcome of this review.

2.2 We also support the Scottish Parliament’s call for the acceleration of borrowing powers where it will assist Scottish economic recovery.

The SFHA has been lobbying the Scottish Government to encourage the use of these powers to invest in much needed new genuinely affordable housing supply. We commend to the Committee that this is a prime example of an area of spend which such powers are ideally designed for: providing nationwide, yet community specific, social benefits, economic stimulus and employment and apprenticeship opportunities. We consider that this potential use strengthens the argument for the acceleration of these


powers, given the growing housing crisis. There are currently 335,000 households on housing association and co-operative housing lists in Scotland.3

2.3 While we understand that the Scottish Budget is constrained by the deficit reduction strategy of the UK Government, we consider that strengthened and accelerated borrowing powers will assist the Scottish Government in making genuinely affordable housing a national priority.

3 Clause 12 – Insolvency
3.1 Since the submission of our earlier evidence to both the Scottish Parliament’s Session 3 Scotland Bill Committee and the UK Parliament’s Scottish Affairs Committee, the SFHA has met with the Parliamentary Under Secretary of State for Scotland and with the Insolvency Service. We had constructive discussions with each and we understand the background to the current wording of Clause 12. However, we remain uncertain about the potential impact of re-reserving to Westminster responsibility for legislation relating to the winding up of registered social landlords in Scotland.

3.2 Housing is a devolved matter and there are no proposals to change this, which is as it should be. The devolved powers enable the Scottish Parliament to legislate on all aspects of housing policy, such as land, tenancies, leases and regulation, including regulation of social housing (an integral part of which is the regulatory regime for addressing the risk of insolvency among RSLs).

3.3 Housing associations and co-operatives make a significant contribution to Scotland’s social housing system. They are not for profit organisations and are accountable to their members. Their constitutional forms range from charities, companies limited by guarantee and Industrial and Provident Societies. They have been subject to regulation since the 1970’s, currently by the Scottish Housing Regulator (SHR). The sector is strong and there have been no cases of RSL insolvency in the past 40 years. However, we must not be complacent given the economic and financial environment in which RSLs now operate. Consequently, there needs to be a provision so that a regulatory authority can deal appropriately and timeously should any cases of potential insolvency arise in the future. Also, in line with the position since 2001, the Scottish Parliament needs to be able to legislate in respect of that authority in light of changing circumstances in Scotland.

3.4 In 2001, by virtue of an amendment to the Scotland Act 1998, responsibility for legislation relating to the insolvency of social landlords in Scotland was devolved to the Scottish Parliament. The amendment order was agreed unanimously in the Scottish Parliament and passed by the UK Parliament.

3.5 This amendment has enabled the 2001 Housing (Scotland) Act and, more recently, the 2010 Housing (Scotland) Act to address the potential insolvency of

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3 Statistics supplied to SFHA by the Scottish Housing Regulator (5 July 2011) based on data in the 2009-10 Annual Performance and Statistical Return
Registered Social Landlords (RSLs). The Housing (Scotland) Act 2010 established the Scottish Housing Regulator as an independent body to safeguard tenants’ interests and to regulate the financial well-being and governance of RSLs. The 2010 Act gave the SHR similar powers as existed in the 2001 Act, but added some additional powers to allow the SHR to act quickly where an RSL is facing insolvency, in so doing safeguarding the interests of tenants.

3.6 We recognise that Clause 12 as currently drafted would not change the effect of the provisions in the Housing (Scotland) Act 2010. Our concern is that if amendments to the existing provisions relating to the winding up of RSLs are required at some point in the future, the process may be lengthier than would otherwise be the case had the legislative powers remained devolved. SFHA has been assured by the Under Secretary of State for Scotland that there is no precedent to suggest that this would be the case. We acknowledge that the route for achieving changes to the provisions for the winding up of Scottish RSLs would be a Section 104 Order. However, we remain concerned that Clause 12 as currently drafted has the potential to build in delays to essential early action should an insolvency situation arise.

3.7 We therefore urge the Committee to support the Session 3 Committee’s recommendation that legislative consent to the provisions in the Scotland Bill relating to insolvency should be subject to provisions being drafted which will secure the capacity for devolved legislation to affect the winding up of RSLs.4

4 Housing Benefit

4.1 The SFHA lobbied the Calman Commission in September 20085 and February 20096 about the potential to devolve Housing Benefit and other welfare benefits to the Scottish Parliament. The recommendation in the Commission’s Final Report was:

“There should be scope for Scottish Ministers, with the agreement of the Scottish Parliament, to propose changes to the Housing Benefit and Council Tax Benefit systems (as they apply in Scotland) when these are connected to devolved policy changes, and for the UK Government – if it agrees -to make those changes by suitable regulation.” (Recommendation 5.19)7

4.2 The UK Government, despite earlier indications to the SFHA and others from the Secretary of State for Scotland about the intentions to implement Calman’s

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recommendations in full, has since decided that its own proposals for Welfare Reform, specifically Universal Credit, will address the earlier concerns raised with the Calman Commission in respect of this issue.

4.3 SFHA has been following the passage of the Welfare Reform Bill very closely and we have been raising housing related concerns in our written evidence and briefings. We are dismayed that this Bill has reached its current stage without these significant concerns and those of a wide range of other campaigning organisations in Scotland being addressed. SFHA does not consider that the new Universal Credit will address the hurdles to joined-up housing and social policy in Scotland that we highlighted to the Commission. Consequently, we continue to be disappointed that the Scotland Bill remains silent about the scope for change in Scotland to Housing Benefit and its successor by suitable regulation, despite the spirit of Calman’s recommendation 5.19.

4.4 We note that the Session 3 Scotland Bill Committee recommended that a new inter-governmental forum should be created to provide a space for dialogue to take place about the interface of devolved and reserved matters such as welfare, benefits, employment and skills issues. The Session 3 Committee also recommended that during the passage of any related bill, the UK Government should commit to consulting with devolved institutions on its plans for tax and benefit reform and the interaction with devolved competencies and policies.

4.5 We would urge the Committee to go beyond the Session 3 Committee’s recommendations and to recommend that a clause be incorporated in the Scotland Bill that puts in place an obligation to consult the devolved administrations about the principles and administrative arrangements in respect of any reform proposal that interacts with devolved responsibilities.

4.6 SFHA considers that there is no better example of the need for this than the Welfare Reform Bill. We relayed our concerns about the marginalisation of the devolved administrations to the UK Parliament’s Scottish Affairs Committee in March 2011, but have yet to receive a response.

4.7 We acknowledge that the Secretary of State for Scotland’s statement on 13th June 2011 included a reference to strengthening inter-governmental dialogue in areas of mutual interest in welfare. We urge the Committee to recommend that this is broadened to include the full range of matters where reserved and devolved powers interact.

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5 Concluding Comment

5.1 We urge the Committee to consider our concerns and to take account of them in its report to the Scottish Parliament.

SFHA
9th September 2011