Passage of the

Housing (Scotland) Bill
2013

SPPB 205
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SP Bill 41 (Session 4), subsequently 2014 asp 14

SPPB 205

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

Annexes B-E of the Infrastructure and Capital Investment Committee’s Stage 1 Report (the oral and written evidence received by the Committee and reports to it by other committees) were originally published on the web only. This material, along with relevant additional material, is included in full in this volume as part of the Annexes to the Stage 1 Report.

The Scottish Government made a written response to the report of the Delegated Powers and Law Reform Committee at Stage 1, in addition to the Government’s general response to the Stage 1 Report of the Infrastructure and Capital Investment Committee. The Delegated Powers and Law Reform Committee considered the response at its meeting on 1 April 2014. Relevant material from that meeting, including the Scottish Government’s response, is included in this volume.
# Housing (Scotland) Bill

**[AS INTRODUCED]**

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Housing (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about housing, including provision about the abolition of the right to buy, social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes.

**PART 1**

**RIGHT TO BUY**

1 **Abolition of the right to buy**

   (1) Sections 61 to 81, 84 and 84A of the 1987 Act (right to buy provisions) are repealed.

   (2) Section 52 of the 2001 Act (reports on right to buy) is repealed.

   (3) Sections 145 to 147 of the 2010 Act (duties to collect information in relation to right to buy) are repealed.

2 **Amendment of right to buy provisions**

   In the 1987 Act—

   (a) in section 61ZA(1) (limitation on the right to purchase: new tenants), after “occupation” insert “as a tenant”, and

   (b) in section 61F (limitation on the right to purchase: new supply social housing), repeal the words “created before the relevant day” in each place where they occur.

**PART 2**

**SOCIAL HOUSING**

Allocation of social housing

3 **Reasonable preference in allocation of social housing**

   In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (1) substitute—
“(1) A social landlord must, in relation to all houses held by it for housing purposes, secure that in the selection of its tenants a reasonable preference is given to the persons mentioned in subsection (1ZA).

(1ZA) The persons are—

(a) persons who—

(i) subject to subsection (1A), are homeless persons and persons threatened with homelessness (within the meaning of Part 2), and

(ii) have unmet housing needs,

(b) persons who—

(i) are living under unsatisfactory housing conditions, and

(ii) have unmet housing needs, and

(c) tenants of houses held by the social landlord which the social landlord considers to be under-occupied.

(1ZB) For the purposes of subsection (1ZA), persons have unmet housing needs where the social landlord considers the persons to have housing needs which are not capable of being met by housing options which are available.”.

4 Rules on priority of allocation of housing: consultation

(1) After section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), insert—

“20A Rules on priority of allocation of housing: consultation

(1) Before making or altering its rules governing the priority of allocation of houses, a social landlord must—

(a) consult the persons mentioned in subsection (2), and

(b) prepare and publish a report on the consultation.

(2) The persons are—

(a) applicants on its housing list (within the meaning of section 19),

(b) tenants of the landlord,

(c) bodies for the time being registered in the register of tenant organisations maintained by the landlord under section 53(3) of the Housing (Scotland) Act 2001 (asp 10), and

(d) such other persons as the landlord thinks fit.

(3) A social landlord may publish a consultation report mentioned in subsection (1)(b) in such manner as it thinks fit (and may in particular publish a joint report with any other social landlord).”.

(2) In section 21 of the 1987 Act, after subsection (3) insert—

“(3A) In making or altering its rules governing the priority of allocation of houses, a social landlord must have regard to—

(a) any local housing strategy (within the meaning of section 89(1)(b) of the Housing (Scotland) Act 2001) for its area, and

(b) any guidance issued by the Scottish Ministers.
(3B) The Scottish Ministers may by regulations prescribe persons of a description or type who a social landlord must include in its rules governing the priority of allocation of houses.

(3C) Regulations under subsection (3B) are subject to the affirmative procedure.”.

(3) The title of section 21 of the 1987 Act becomes “Rules relating to the housing list and to transfer of tenants”.

5 Factors which may be considered in allocation: age

In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing)—

(a) subsection (2)(a)(vi) is repealed, and

(b) for subsection (2B) substitute—

“(2B) Where a social landlord takes into account the age of an applicant aged 16 years or over in the allocation of housing falling within subsection (1), the social landlord must nevertheless treat the applicant as protected from unlawful discrimination on the grounds of the protected characteristic of age (within the meaning of Part 2 of the Equality Act 2010 (c.15)).”.

6 Factors which may be considered in allocation: ownership of property

(1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (2)(a)(viii) substitute—

“(viii) where any of the circumstances in subsection (2C) apply to that person, the ownership of, or value of, heritable property owned by—

(A) the applicant,

(B) a person who normally resides with the applicant, or

(C) a person who it is proposed will reside with the applicant.”.

(2) After subsection (2B) insert—

“(2C) The circumstances are that—

(a) in the case of a property which has not been let, the owner cannot secure entry to that property,

(b) it is probable that occupation of the property will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14) from some other person residing in that property,

(c) it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that property or elsewhere,

(d) occupation of the property may endanger the health of the occupants and there are no reasonable steps which can be taken by the applicant to prevent that danger.”.
Determination of minimum period for application to remain in force

(1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing)—

(a) in subsection (2)(a)(iii), at the beginning insert “except to the extent permitted by section 20B,”, and

(b) in subsection (2)(b)(i), at the beginning insert “except to the extent permitted by section 20B,”.

(2) After section 20A of the 1987 Act (inserted by section 4(1)), insert—

Determination of minimum period for application to remain in force

(1) A social landlord may impose a requirement that an application must have remained in force for a minimum period before the applicant is eligible for the allocation of housing falling within section 20(1) if, before making that application, any of the circumstances mentioned—

(a) in subsection (5) applied in relation to the applicant, or

(b) in paragraphs (a) to (g) of subsection (5) applied in relation to a person who it is proposed will reside with the applicant.

(2) But a social landlord may not impose a requirement under subsection (1) if the landlord—

(a) in relation to the same application has previously relied on the same circumstance as it applied to an applicant or a person who it is proposed will reside with the applicant to impose a requirement under subsection (1), or

(b) is a local authority and has a duty to the applicant under section 31(2) (duty to secure accommodation where applicant is homeless).

(3) In considering whether to impose a requirement under subsection (1), a social landlord must have regard to any guidance issued by the Scottish Ministers on—

(a) the maximum period preceding the application which should be considered in relation to any circumstances mentioned in subsection (5),

(b) the maximum period for an application to have remained in force which should be imposed in relation to any circumstances mentioned in subsection (5).

(4) The Scottish Ministers may by regulations prescribe—

(a) the maximum period preceding the application which a social landlord may consider in relation to any circumstances mentioned in subsection (5),

(b) the maximum period for an application to have remained in force which a social landlord may impose in relation to any circumstances mentioned in subsection (5), and

such regulations may make different provision for different cases.

(5) The circumstances are—

(a) the person has—
(i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person,

(ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person, or

(iii) acted in an antisocial manner, or pursued a course of conduct which is antisocial conduct, in relation to an employee of the social landlord in the course of making the application,

(b) the person has been, or has resided with a person who has been, convicted of—

(i) using a house or allowing it to be used for immoral or illegal purposes, or

(ii) an offence punishable by imprisonment which was committed in, or in the locality of, a house occupied by the person,

(c) an order for recovery of possession has been made against the person in proceedings under—

(i) the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118),

(ii) the Housing Act 1985 (c.68),

(iii) this Act,

(iv) the Housing (Scotland) Act 1988 (c.43),

(v) the Housing (Scotland) Act 2001 (asp 10),

(d) the person’s tenancy has been terminated by the landlord under section 18(2) of the Housing (Scotland) Act 2001 (repossession where abandoned tenancy),

(e) the person’s interest in a tenancy has been terminated by the landlord under section 20(3) of the Housing (Scotland) Act 2001 (abandonment by joint tenant),

(f) in relation to a house where the person was a tenant, a court has ordered recovery of possession on the ground set out in paragraph 3 or 4 of schedule 2 to the Housing (Scotland) Act 2001,

(g) there is or was any outstanding liability (for payment of rent or otherwise) in relation to a house which—

(i) is attributable to the person’s tenancy of the house, and

(ii) either—

(A) section 20(2A) would not be satisfied in respect of that debt, or

(B) in the case of a debt which is no longer outstanding, section 20(2A) would not have been satisfied at any time while that debt remained outstanding,

(h) the person knowingly or recklessly made a false statement in any application for housing held by a social landlord,
(i) the person has refused one or more offers of housing falling within section 20(1) and the landlord considers the refusal of that number of offers to be unreasonable.

(6) In subsection (5)—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).

(7) The Scottish Ministers may by regulations modify subsections (5) and (6).

(8) An applicant may by summary application appeal to the sheriff against any decision of a social landlord under subsection (1).

(9) Regulations under subsection (4) and under subsection (7) are subject to the affirmative procedure.”.

Short Scottish secure tenancy

8 Creation of short Scottish secure tenancy: antisocial behaviour

(1) In section 34 of the 2001 Act (short Scottish secure tenancies), after subsection (8) insert—

“(9) A landlord must have regard to any guidance issued by the Scottish Ministers before creating a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6.”.

(2) In section 35 of the 2001 Act (conversion to a short Scottish secure tenancy)—

(a) for subsection (2) substitute—

“(2) The landlord may serve a notice under subsection (3) only where—

(a) the tenant (or any one of joint tenants) or a person residing or lodging with, or a subtenant of, the tenant is subject to an antisocial behaviour order under—

(i) section 234AA of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), or

(b) the tenant (or any one of joint tenants), a person residing or lodging with, or a subtenant of, the tenant, or a person visiting the house has, within the period of 3 years preceding the date of service of the notice—

(i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person, or

(ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.”,
(b) after subsection (6), insert—

“(7) In this section—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”.

(3) In section 37(1) of the 2001 Act (conversion to Scottish secure tenancy), in paragraph
(a) for “or 2” substitute “, 2 or 2A”.

(4) In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy)—
(a) after paragraph 2 insert—

“Other antisocial behaviour

2A (1) A person mentioned in sub-paragraph (2) has, within the period of 3 years preceding the date of service of the notice—

(a) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, or

(b) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.

(2) The persons are—

(a) the prospective tenant,

(b) any one of prospective joint tenants,

(c) a person visiting a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, and

(d) a person who it is proposed will reside with the prospective tenant.

(3) In sub-paragraph (1)—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”, and

(b) for paragraph 6 substitute—

“Accommodation for person in receipt of housing support

6 The house is to be let expressly on a temporary basis to a person—

(a) to whom no other paragraph of this schedule applies, and

(b) who is in receipt of a housing support service.”.
(5) In section 31(5) of the 1987 Act (permanent accommodation where duty to secure accommodation for persons found to be homeless), in paragraph (c) for “or 2” substitute “, 2 or 2A”.

9 Grant of short Scottish secure tenancy: homeowners

In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy), after paragraph 7 insert—

“Temporary letting where other property owned

7A(1) The house is to be let expressly on a temporary basis to a person pending the making of arrangements in relation to a property mentioned in sub-paragraph (2) which will allow the person’s housing needs to be met.

(2) The property is heritable property owned by the person or a person who it is proposed will reside with that person.”.

10 Short Scottish secure tenancy: term

(1) In section 34 of the 2001 Act (short Scottish secure tenancies), after subsection (6) insert—

“(6A) A tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 has a term of 12 months from the day on which the tenancy is granted.”.

(2) In section 35 of the 2001 Act (conversion to short Scottish secure tenancy), after subsection (3) insert—

“(3A) A short Scottish secure tenancy created by virtue of this section has a term of 12 months from the day on which the landlord serves a notice under subsection (3).”.

(3) In section 37 of the 2001 Act (conversion to Scottish secure tenancy), after subsection (4) insert—

“(5) Subsection (6) applies to a tenancy which—

(a) became a short Scottish secure tenancy by virtue of section 35, or

(b) becomes a Scottish secure tenancy by virtue of this section.

(6) The term of the tenancy is the term which applied immediately before the tenancy became a short Scottish secure tenancy.”.

11 Short Scottish secure tenancy: extension of term

(1) After section 35 of the 2001 Act, insert—

“35A Extension of term of short Scottish secure tenancy

(1) The landlord under a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 may extend the term of that tenancy by 6 months from the day which would otherwise be the day of expiry of the tenancy.

(2) Such an extension may not be made unless—

(a) the tenant is in receipt of housing support services, and...
(b) the landlord has, on or before the day which is 2 months before the day which would otherwise be the day of expiry of the tenancy, served on the tenant a notice informing the tenant of—

(i) the extension, and

(ii) the reasons for the extension.

(3) A landlord may not give a notice if the landlord has previously given a notice under subsection (2) in relation to that short Scottish secure tenancy.”.

(2) In section 37 of the 2001 Act (conversion to Scottish secure tenancy)—

(a) in subsection (1)—

(i) the words “, in the period of 12 months following the creation of the tenancy,” are repealed,

(ii) after “36(2)” insert “before the expiry of the relevant period”, and

(iii) for “that” substitute “the relevant”,

(b) after subsection (1), insert—

“(1A) In this section, the “relevant period” is—

(a) the period of 12 months following the creation of the tenancy, or

(b) if an extension notice has been served under section 35A, the period of 18 months following the creation of the tenancy.”.

(c) in subsection (2)—

(i) for “period of 12 months following the creation of the tenancy” substitute “relevant period”, and

(ii) for “that period of 12 months”, in both places where it occurs, substitute “the relevant period”.

12 Short Scottish secure tenancy: recovery of possession

In section 36 of the 2001 Act (recovery of possession)—

(a) in subsection (2), after paragraph (a) insert—

“(aa) in the case of a short Scottish secure tenancy created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, the landlord considers that any obligation of the tenancy has been broken,”,

(b) in subsection (3), after paragraph (a) insert—

“(aa) state the reason why the landlord is seeking recovery of possession (including, in a case where subsection (2)(aa) applies, the obligations which the landlord considers to have been broken),”,

(c) after subsection (4), insert—

“(4A) A tenant may, before the end of the period of 14 days beginning with the day of service of a notice under subsection (2), apply to the landlord for a review of a decision to seek recovery of possession of the house which is the subject of the tenancy.

(4B) If an application for a review under subsection (4A) is made, the landlord must, before the day specified in the notice by virtue of subsection (3)(b)—
(a) confirm its decision to seek recovery of possession or withdraw its notice under subsection (2),
(b) notify the tenant of its decision on the review, and
(c) where its decision on the review is to confirm the decision to seek recovery of possession, notify the tenant of the reasons.

(4C) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with a review following an application under subsection (4A)."

(d) in subsection (7), after “16” insert “, but subject to the modification mentioned in subsection (8)”, and
(e) after subsection (7), insert—

“(8) In relation to the recovery of possession of the house which is the subject of a short Scottish secure tenancy, section 14(4) is to be read as if for paragraph (b) there were substituted—

“(b) a date, not earlier than 4 weeks from the date of service of the notice on or after which the landlord may raise proceedings for recovery of possession,”.

Scottish secure tenancy

13 Assignation, sublet and joint tenancy of Scottish secure tenancy

(1) In section 11 of the 2001 Act (Scottish secure tenancy)—

(a) in subsection (6), the words “, or is intended to be,” are repealed, and
(b) after subsection (6) insert

“(6A) An application under subsection (5) may be made only where the house in question has been the only or principal home of the person falling within subsection (6) throughout the period of 12 months ending with the date of the application.

(6B) For the purposes of subsection (6A) a period may be considered in relation to a person only if that person notified the landlord at any time before the period that the house in question was that person’s only or principal home.”.

(2) In section 32 of the 2001 Act (assignation, subletting, etc.)—

(a) in subsection (1)—

(i) the word “and” immediately preceding paragraph (b) is repealed,
(ii) in paragraph (b), after “been” insert “the tenant’s and”,
(iii) in paragraph (b), for “6” substitute “12”, and
(iv) after paragraph (b), insert “ and

“(c) in the case of a sublet, only where the house has been the tenant’s only or principal home throughout the period of 12 months ending with the date of the application for the landlord’s consent to the sublet under paragraph 9 of schedule 5.”,

(b) after subsection (1), insert—
“(1B) For the purposes of subsection (1)(b) or (c) a period may be considered in relation to a person only if that person notified the landlord at any time before the period that the house in question was that person’s only or principal home.”, and

5 (c) in subsection (3)—

(i) the word “or” immediately preceding paragraph (e) is repealed, and

(ii) after paragraph (e), insert—

“(f) in the case of consent to an assignation by a local authority or a registered social landlord, if the proposed assignee is not a person to whom that local authority or registered social landlord would give a reasonable preference when selecting tenants under section 20(1) of the 1987 Act, or

(g) in the case of consent to an assignation, if the assignation would in the opinion of the landlord, result in the house being under-occupied.”.

14 Succession to Scottish secure tenancy

In schedule 3 to the 2001 Act (succession to Scottish secure tenancy: qualified persons)—

(a) in paragraph 2(2), for “6” insert “12”,

(b) in paragraph 3, for “at the time of” substitute “throughout the period of 12 months ending with”,

(c) in paragraph 4(b), for “at the time of” substitute “throughout the period of 12 months ending with”, and

(d) after paragraph 4, insert—

“Only or principal home

4A For the purposes of paragraph 2, 3 or 4 a period may be considered in relation to a person only if that person notified the landlord at any time before the period that the house in question was that person’s only or principal home.”.

15 Grounds for eviction: antisocial behaviour

In section 16 of the 2001 Act (powers of court in possession proceedings)—

(a) in subsection (2), after paragraph (a) insert—

“(aa) whether or not paragraph (a) applies, that—

(i) the landlord has a ground for recovery of possession set out in paragraph 2 of that schedule and so specified, and

(ii) the landlord served the notice under section 14(2) before the day which is 12 months after—

(A) the day on which the person was convicted of the offence forming the ground for recovery of possession, or

(B) where that conviction was appealed, the day on which the appeal is dismissed or abandoned,”, and

(b) after subsection (3), insert—
“(3A) Subsection (2) does not affect any other rights that the tenant may have by virtue of any other enactment or rule of law.”.

16 Recovery of possession of properties designed for special needs

In schedule 2 to the 2001 Act (grounds for recovery of possession of house)—

(a) in paragraph 11(a), the words “longer a” are repealed, and

(b) in paragraph 12(a), the words “longer a” are repealed.

PART 3

PRIVATE RENTED HOUSING

Transfer of sheriff’s jurisdiction to First-tier Tribunal

17 Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.

18 Repairing standard

(1) The 2006 Act is amended as follows.

(2) In section 18—

(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,

(b) in subsection (2)(b), for “sheriff” substitute “Tribunal”.

(3) The title of section 18 becomes “Contracting out with consent of First-tier Tribunal”.

(4) In section 57—

(a) in subsection (2), for “sheriff” substitute “relevant authority”,

(b) after subsection (2) insert—

“(2A) In subsection (2), the relevant authority is—

(a) where the requirement or thing which the person is authorised or entitled to do relates to the repairing standard, the First-tier Tribunal,

(b) in any other case, the sheriff.”.

(5) Part 2 of schedule 1 makes minor and consequential amendments.
19 Right to adapt rented houses

(1) After section 66 of the 2006 Act insert—

"66A Appeals in relation to section 52"

(1) A tenant aggrieved by a decision by a landlord—

(a) to impose any condition on a consent to carry out work in pursuance of section 52(2), or

(b) to refuse to consent to the carrying out of any such work,

may appeal to the First-tier Tribunal within 6 months of being notified of that decision.

(2) The First-tier Tribunal may, on cause shown, hear an appeal after the deadline set by subsection (1).

(3) The First-tier Tribunal must, unless the Tribunal considers the condition or, as the case may be, refusal appealed against to be reasonable, determine an appeal under subsection (1) by quashing the decision and directing the landlord to withdraw the condition (or to vary it in such manner as the Tribunal may specify) or, as the case may be, to consent to the application (with or without such conditions as the Tribunal may specify).

(4) In determining whether a condition or refusal appealed against under subsection (1) is reasonable, the First-tier Tribunal must, where the appeal relates to an application made for the purposes of section 52(2)(a), have regard to any code of practice issued by the Commission for Equality and Human Rights which relates to section 52 or 53.

(5) The First-tier Tribunal’s determination on an appeal under subsection (1) is final.”.

(2) Part 3 of schedule 1 makes minor and consequential amendments.

20 Landlord registration

(1) The 2004 Act is amended as follows.

(2) In section 92(2), for “sheriff” substitute “First-tier Tribunal”.

(3) In section 97—

(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,

(b) in subsection (2), for “sheriff” substitute “First-tier Tribunal”.

(4) Part 4 of schedule 1 makes minor and consequential amendments.

21 Houses in multiple occupation

(1) The Scottish Ministers may by regulations—

(a) provide that the First-tier Tribunal may make an order of the kind mentioned in section 153(2) of the 2006 Act instead of the sheriff,

(b) provide that the following may be made to the First-tier Tribunal instead of the sheriff—
(i) appeals against decisions of local authorities to which section 158 of that Act applies,

(ii) applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act,

(iii) applications for a warrant for the ejection of the occupant from land or premises where the occupant has not complied with a requirement under paragraph 2 of schedule 5 to that Act in relation to the land or premises.

(2) Regulations under subsection (1) may—

(a) disaply the following provisions of the 2006 Act—

(i) section 153(2),

(ii) section 159(1),

(iii) paragraph 9(2) of schedule 4,

(iv) paragraph 3(1) of schedule 5,

(b) make such other consequential modifications to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

Landlord registration: time limit for determining application

22 Landlord registration: time limit for determining application

(1) After section 85A of the 2004 Act, insert—

“85B Time limit for determining application

(1) This section applies where a relevant person makes an application to a local authority in accordance with section 83.

(2) The local authority must determine the application under section 84 within 12 months of receiving the application.

(3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the local authority, by such period as the Tribunal thinks fit.

(4) The First-tier Tribunal may not extend a period unless the local authority applies for the extension before the period expires.

(5) The relevant person is entitled to be a party to any proceedings on such an application.

(6) The decision of the First-tier Tribunal on such an application is final.

(7) If the local authority does not determine the application within the period required by this section—

(a) the authority is to be treated as having entered, on the day by which the authority was required to determine the application, the relevant person in the register maintained by the authority under section 82(1), and

(b) unless otherwise removed from the register in accordance with this Part, that person is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day.

(8) Where subsection (7) applies the authority must—
(a) enter the name of the relevant person in the register maintained by the authority under section 82(1), and
(b) state in the register a registration number in relation to that person (which is to be treated as having been given under section 84(5A)).

(9) Subject to the modifications in subsection (10), the relevant person is for all purposes to be treated as having been registered by virtue of section 84(2)(a).

(10) The modifications are—
(a) in the case of an application to which section 84(3)(a) and (b) applies, the relevant person is to be treated as having been registered by virtue of section 84(3), and
(b) in the case of an application to which section 84(4)(a) and (b) applies, the relevant person is to be treated as having been registered by virtue of section 84(4),
(c) section 84(6) does not apply, and
(d) section 89(2)(b), (3)(b) and (3A)(b) are to be read as if for the words “no longer applies” there were inserted “does not apply”.

(2) In section 86(1)(a) of the 2004 Act (entry in the register), after “section 84(2)” insert “or section 85B(8)(a)”.

Enforcement of repairing standard

23 Third party application in respect of the repairing standard

(1) In section 22 of the 2006 Act (tenant application to private rented housing panel)—
(a) after subsection (1), insert—
“(1A) A person mentioned in subsection (1B) may apply to the private rented housing panel for determination of whether a landlord has failed to comply with the duty imposed by section 14(1)(b) (a person who makes such an application being referred to as a "third party applicant").

(1B) The persons are—
(a) a local authority,
(b) a person specified by order made by the Scottish Ministers.”,

(b) in subsection (2), for “(1) must set out the tenant’s” substitute “(1) or (1A) must set out the tenant’s, or as the case may be, the third party applicant’s”,

(c) in subsection (3), for “such application may be made unless the tenant” substitute “application under this section may be made unless the person making the application”,

(d) in subsection (4), for “such application” substitute “application under this section”, and

(e) after subsection (4), insert—
“(4A) The tenant of the house concerned is entitled to be a party in the determination of any application made under subsection (1A).”.

(2) The title of section 22 of the 2006 Act becomes “Application in respect of the repairing standard”.
(3) In section 22A(1) of the 2006 Act (information to be given to a local authority), after “22(1)” insert “, or under section 22(1A) where the applicant is not a local authority”.

(4) In section 23 of the 2006 Act (referral to private rented housing committee)—
   (a) in subsection (1), after “22(1)” insert “or 22(1A)”,
   (b) in subsection (2)(b), after “tenant” insert “or third party applicant”,
   (c) in subsection (4), after “application”, where it first occurs, insert “under section 22(1)”,
   (d) after subsection (4) insert—

   “(4A) The president must, as soon as practicable after rejecting an application under section 22(1A) give notice of the rejection to—
   (a) the third party applicant, and
   (b) the tenant.”, and
   (e) in subsection (5), for “Such a notice” substitute “A notice under subsection (4) or (4A)”.  

(5) In section 24(1) of the 2006 Act (determination by private rented housing committee) for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”. 

(6) In section 181(2) of the 2006 Act (rights of entry) for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”. 

(7) In section 194(1) of the 2006 Act (interpretation), after the definition of “tenant” insert—

   “‘third party applicant’ has the meaning given by section 22(1A),”.

(8) Section 35(3) of the Private Rented Housing (Scotland) Act 2011 (asp 14) is repealed.

24 Procedure for third party applications

(1) In paragraph 1 of schedule 2 to the 2006 Act (notification)—
   (a) in sub-paragraph (1), for “a tenant’s application” substitute “an application”,
   (b) in sub-paragraph (2), for “either party” substitute “the landlord or the tenant”,
   (c) in sub-paragraph (3), for “both parties” substitute “the landlord and the tenant”, and
   (d) after sub-paragraph (3), insert—

   “(4) In the case of an application under section 22(1A), the committee must, in addition to carrying out the matters mentioned in sub-paragraphs (1) to (3)—
   (a) serve on the third party applicant a notice containing the matters mentioned in sub-paragraph (1)(a) to (c),
   (b) if the committee thinks fit following a request of the third party applicant, change the day specified for the purposes of sub-paragraph (1)(c),
   (c) notify—

   (i) the third party applicant of any change under sub-paragraph (2)(b),
(ii) the landlord and the tenant of any change under paragraph (b).”.

(2) In paragraph 2 of schedule 2 to the 2006 Act (inquiries)—
   (a) in sub-paragraph (3)(a), for “or tenant” substitute “, the tenant or, as the case may be, third party applicant”,
   (b) in sub-paragraph (3)(b), for “or tenant” substitute “, tenant or, as the case may be, third party applicant”,
   (c) in sub-paragraph (4)(a), for “in the notice served under” substitute “in accordance with”, and
   (d) in sub-paragraph (4)(b), for “in a notice served under paragraph 1(2)(b)” substitute “in accordance with paragraph 1(2)(b) or (4)(b)”.

(3) In paragraph 3(1) of schedule 2 to the 2006 Act (evidence), after “tenant” insert “, third party applicant”.

(4) In paragraph 5 of schedule 2 to the 2006 Act (expenses)—
   (a) after sub-paragraph (2)(b), insert—
       “(ba) the third party applicant,”, and
   (b) in sub-paragraph (2)(c), for “or tenant” substitute “, tenant or third party applicant”.

(5) In paragraph 6 of schedule 2 to the 2006 Act (recording and notification of decisions)—
   (a) in sub-paragraph (1)(a), for “a tenant’s” substitute “an”,
   (b) the word “and” at the end of sub-paragraph (3)(c) is repealed, and
   (c) for sub-paragraph (3)(d), substitute—
       “(d) in the case of an application under section 22(1A), the third party applicant, and
       (e) the local authority (unless the local authority is the third party applicant in relation to the decision).’’.

(6) After paragraph 7(1) of schedule 2 to the 2006 Act (withdrawal of application), insert—
   “(1A) A third party applicant may withdraw an application under section 22(1A) at any time.”.

(7) In paragraph 8(1) of schedule 2 to the 2006 Act (further provision on procedure), after “22(1)” insert “and 22(1A)’’.

25 Appeals in relation to third party applications

(1) In section 64 of the 2006 Act (Part 1 appeals)—
   (a) in subsection (4)(a), for “a tenant’s” substitute “an”,
   (b) after subsection (4), insert—
       “(4A) A third party applicant aggrieved by a decision by a private rented housing committee which—
       (a) is mentioned in subsection (4)(a) to (f),
       (b) was made following an application by the applicant under section 22(1A),
may appeal to the sheriff within 21 days of being notified of that decision.

(c) in subsection (5), after “tenant” insert “or a third party applicant”.

(2) In section 65(2) of the 2006 Act (determination of appeals), after “64(4)” insert “, (4A)”.

(3) After section 66(3) of the 2006 Act (appeals procedure), insert—

“(3A) In an appeal by a landlord under section 64(4) which relates to a decision following an application under section 22(1A)—

(a) the third party applicant is to be a party to the proceedings,

(b) the tenant is entitled to be a party to the proceedings.

(3B) In an appeal by a tenant under section 64(4) which relates to a decision following an application under section 22(1A), the landlord and the third party applicant are to be parties to the proceedings.

(3C) In an appeal by a third party applicant under section 64(4A)—

(a) the landlord is to be a party to the proceedings,

(b) the tenant is entitled to be a party to the proceedings.”.

PART 4

LETTING AGENTS

Inclusion in the register

26 Register of letting agents

(1) The Scottish Ministers must establish and maintain a register of letting agents (the “register”).

(2) The register must contain an entry for each person entered in the register setting out—

(a) the name and address of the person entered in the register, and

(b) such information relating to that person as the Scottish Ministers may by regulations prescribe.

(3) The Scottish Ministers must make the information contained in the register publicly available by such means as they consider appropriate.

27 Application for registration

(1) A person may apply to the Scottish Ministers—

(a) to be entered in the register, or

(b) to renew that person’s existing entry in the register.

(2) The application must—

(a) state the name and address of the applicant,

(b) state whether the applicant is—

(i) trading as a sole trader,

(ii) a partnership,
(iii) a company, or
(iv) a body with some other legal status,

(c) in the case where the applicant is a company registered under the Companies Act 2006 (c.46), state the company’s registered number,

(d) in the case where the applicant is not a natural person, state the name and address of the individual who holds the most senior position within the management structure of the relevant partnership, company or body,

(e) state the name and address of any other person who—

(i) owns 25% or more of an applicant which is not a natural person, or

(ii) otherwise is (or is to be) directly concerned with the control or governance of the applicant’s letting agency work (whether or not the applicant is a natural person), and

(f) include such other information as the Scottish Ministers may by regulations prescribe.

3 The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

28 Offence of providing false information in an application

(1) It is an offence for a person, in an application under section 27, to—

(a) provide information which the person knows is false in a material particular, or

(b) knowingly fail to specify information required by section 27(2).

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

29 Decision on application

(1) The Scottish Ministers must determine an application under section 27 in accordance with this section.

(2) The Scottish Ministers must enter the applicant in the register or renew an existing entry if they are satisfied that—

(a) the applicant is a fit and proper person to carry out letting agency work, and

(b) any other person who is required to be identified in an application by virtue of section 27 is a fit and proper person in relation to letting agency work.

(3) An applicant who is entered in the register, or whose entry is renewed, is to be known as a “registered letting agent”.

(4) The Scottish Ministers must refuse to enter the applicant in the register or to renew an existing entry if they are not satisfied in accordance with subsection (2).

(5) Before refusing to enter the applicant in the register or to renew an existing entry, the Scottish Ministers must give to the applicant a notice stating that—

(a) they are considering refusing the application and their reasons for doing so, and

(b) the applicant has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).
(6) In making their decision under this section the Scottish Ministers must consider the application and any representations made in accordance with subsection (5)(b).

(7) The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the applicant of—

(a) their decision,

(b) in the case of a decision to enter the applicant in the register, the date of entry in the register,

(c) in the case of a decision to renew an existing entry, the date of renewal, and

(d) in the case of a refusal to enter the applicant in the register or to renew an existing entry, the date of that refusal.

(8) If the Scottish Ministers refuse to renew an existing entry they must remove the registered letting agent from the register on the date of final refusal.

(9) For the purposes of subsection (8) the date of final refusal is the date on which—

(a) the period mentioned in section 36(2) expires without an appeal being made,

(b) where such an appeal is made, the appeal is finally determined or abandoned.

30 **Fit and proper person considerations**

(1) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers must have regard to all of the circumstances of the case, including any material falling within subsections (2) and (3).

(2) Material falls within this subsection if it shows that the person has—

(a) been convicted of an offence—

(i) involving fraud or other dishonesty,

(ii) involving violence,

(iii) involving drugs,

(iv) involving firearms,

(v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46),

(b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15),

(c) contravened any provision of—

(i) the law relating to housing,

(ii) landlord and tenant law,

(iii) the law relating to debt.

(3) Material falls within this subsection if it shows the extent to which any person mentioned in subsection (1) has—

(a) complied with any Letting Agent Code of Practice made under section 41,

(b) complied with any Letting Code issued under section 92A of the 2004 Act,

(c) failed to comply with a duty applying to that person in accordance with section 32 to use a letting agent registration number,
(d) contravened any provision of any letting agent enforcement order issued under section 43,

(e) failed to pay any costs for which the person is liable under this Part arising from an application to the First-tier Tribunal under section 43.

(4) The Scottish Ministers may by order modify this section by adding to, removing or varying any material in subsections (2) and (3).

31 Fit and proper person: criminal record certificate

(1) The Scottish Ministers may, in deciding under this Part if a person is a fit and proper person, require the person in respect of whom the decision is being made to provide the Scottish Ministers with a criminal record certificate (within the meaning of section 113A of the Police Act 1997 (c.50)).

(2) The Scottish Ministers may require a criminal record certificate to be provided under subsection (1) only if they have reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 30(2) is, or has become, inaccurate.

(3) Where, in the case of an application for entry in the register, the Scottish Ministers have required a criminal record certificate to be provided under subsection (1), a person may not be entered in the register until the certificate has been received by the Scottish Ministers.

Duties of registered letting agents

32 Letting agent registration number

(1) The Scottish Ministers must allocate a number to each registered letting agent (the “letting agent registration number”).

(2) A registered letting agent must take all reasonable steps to ensure that the agent’s letting agent registration number is included in—

(a) any document sent to a landlord, tenant, prospective landlord or prospective tenant in the course of the agent’s letting agency work,

(b) any property advertisement or communication in relation to the agent’s letting agency work, and

(c) any other document or communication of a type specified by the Scottish Ministers by order.

(3) For the purposes of this section—

(a) “advertisement” includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons, and

(b) “communication” includes electronic communications sent or placed on a web page on a website operated by or on behalf of the registered letting agent.

33 Duty to inform: change of circumstances

(1) This section applies if, in consequence of a change in circumstances, any information provided by a registered letting agent to the Scottish Ministers by virtue of section 27 or, as the case may be, this section, becomes inaccurate.
The registered letting agent must notify the Scottish Ministers in writing, as soon as practicable after the inaccuracy arises, of the change that has occurred.

The notice must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

It is an offence for a person to fail to comply with subsection (2) without reasonable excuse.

A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Removal from the register**

**Duration of registration**

(1) The Scottish Ministers must remove a registered letting agent from the register if, on the expiry of the registration period, the registered letting agent has not made an application in accordance with section 27.

(2) The registration period is—

(a) in the case of a letting agent whose registration has not previously been renewed, the period of 3 years beginning with the date on which the entry was made,

(b) in any other case, the period of 3 years beginning the day after the end of the previous registration period.

**Revocation of registration**

(1) The Scottish Ministers may remove a registered letting agent from the register if they are satisfied that—

(a) the person is no longer a fit and proper person to carry out letting agency work, or

(b) any other person who is required to be identified in an application by virtue of section 27 is no longer a fit and proper person in relation to letting agency work.

(2) Before removing a registered letting agent from the register under this section the Scottish Ministers must give to the agent a notice stating that—

(a) they are considering removing the agent from the register and their reasons for doing so, and

(b) the applicant has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(3) In making their decision under this section the Scottish Ministers must consider any representations made in accordance with subsection (2)(b).

(4) The Scottish Ministers must, as soon as practicable after making a decision to remove a registered letting agent from the register, notify the agent of—

(a) their decision,

(b) the date of removal from the register.
Appeals

(1) A person may appeal to the First-tier Tribunal against a decision by the Scottish Ministers—
   (a) under section 29 to refuse to enter that person in the register or to renew that person’s existing entry in the register,
   (b) under section 35 to remove that person from the register.

(2) An appeal must be made before the end of the period of 21 days beginning with the date of notification of the decision.

(3) In determining an appeal the Tribunal may make an order requiring the Scottish Ministers to enter the person in the register.

Consequences of refusal or removal

(1) Where the Scottish Ministers refuse to enter a person in the register or to renew a person’s existing entry in the register under section 29, they must, after the date of final refusal, note that fact in the register.

(2) Where the Scottish Ministers remove a person from the register under section 35 they must, after the date of final refusal, note that fact in the register.

(3) For the purposes of this section the date of final refusal is the later of the date on which—
   (a) the period mentioned in section 36(2) expires without an appeal being made,
   (b) where such an appeal has been made, the appeal is finally determined or abandoned.

(4) Where a fact is noted by virtue of subsection (1) or (2) it must—
   (a) remain on the register for the period of 12 months beginning with the date on which the Scottish Ministers are required to note it in the register, and
   (b) be removed from the register at the end of that period.

(5) But where a person in respect of whom the Scottish Ministers note a fact by virtue of subsection (1) or (2) is subsequently entered in the register before the end of the period mentioned in subsection (4)(a), the Scottish Ministers must remove the fact from the register.

No payment for letting agency work where refusal or removal

(1) This section applies where the Scottish Ministers—
   (a) refuse to enter a person in the register or to renew the person’s existing entry in the register under section 29,
   (b) remove a person from the register under section 34,
   (c) remove a person from the register under section 35.

(2) After the relevant date—
   (a) no costs incurred by the person in respect of letting agency work are recoverable,
Part 4—Letting agents

(b) no charge imposed by the person which relates to letting agency work in a period after the relevant date is recoverable.

(3) The Scottish Ministers must, as soon as practicable after the relevant date, publish in such manner as they think fit a notice of—

(a) the refusal or removal mentioned in subsection (1),
(b) the relevant date, and
(c) the effect of subsection (2).

(4) For the purposes of this section, the relevant date—

(a) in the case of a refusal or removal mentioned in subsection (1)(a) or (c), is the later of the date on which—

(i) the period mentioned in section 36(2) expires without an appeal being made,

(ii) where such an appeal has been made, the appeal is finally determined or abandoned, and

(b) in the case of a removal mentioned in subsection (1)(b), is the day after the day on which the person is removed from the register under section 34.

Offences where no registration

39 Offence of operating as a letting agent without registration

(1) It is an offence for a person who is not a registered letting agent to carry out letting agency work, unless subsection (2) applies to that person.

(2) This subsection applies to a person from the day on which the person is removed from the register under section 35 until—

(a) where the period mentioned in section 36(2) expires without an appeal being made, the expiry of that period,

(b) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for acting in the way charged.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale, or to both.

40 Offence of using a registration number where no registration

(1) It is an offence for a person who is not entered in the register, without reasonable excuse, to use a number purporting to be a letting agent registration number in any document or communication.

(2) Subsection (1) does not apply to a person who is removed from the register under section 35 until—

(a) where the period mentioned in section 36(2) expires without an appeal being made, the expiry of that period,
(b) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Code of practice**

41 Letting Agent Code of Practice

(1) The Scottish Ministers may, by regulations, set out a code of practice which makes provision about the standards of practice of persons who carry out letting agency work.

(2) The code of practice is to be known as the Letting Agent Code of Practice.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate on a draft of the code of practice.

42 Prohibition on contracting out

(1) The terms of any agreement of a kind mentioned in subsection (2) are of no effect in so far as they purport to—

   (a) exclude or limit any duty a letting agent has under the Letting Agent Code of Practice, or

   (b) impose any penalty, disability or obligation in the event of a person enforcing compliance by the letting agent with such a duty.

(2) The agreements are—

   (a) an agreement between a landlord and a letting agent,

   (b) an agreement between a tenant and a letting agent,

   (c) an agreement (including a lease) between a landlord and a tenant.

**Letting agent enforcement orders**

43 Applications to First-tier Tribunal to enforce code of practice

(1) A tenant or landlord may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is—

   (a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,

   (b) in relation to an application by a landlord, a letting agent appointed by the landlord.

(3) An application under subsection (1) must set out the applicant’s reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.
Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.

A letting agent enforcement order—

(a) must specify the period within which each step must be taken,

(b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.

References in this section to—

(a) a tenant include—

(i) a person who has entered into an agreement to let a house, and

(ii) a former tenant,

(b) a landlord include a former landlord.

Variation and revocation of enforcement orders

The First-tier Tribunal may, at any time—

(a) vary a letting agent enforcement order, or

(b) where it considers that the steps required by the order are no longer necessary, revoke it.

References in this Part (including this section) to a letting agent enforcement order are to be treated as references to the order as so varied.

Failure to comply with enforcement order

The First-tier Tribunal may, after the period within which a letting agent enforcement order requires steps to be taken, review whether the letting agent has complied with the order.

If the Tribunal decides that the letting agent has failed to comply with the letting agent enforcement order it must notify the Scottish Ministers of that failure.

But the Tribunal may not make such a decision if it is satisfied that the letting agent has a reasonable excuse for failing to comply.

A letting agent who, without reasonable excuse, fails to comply with a letting agent enforcement order commits an offence.

A letting agent cannot be guilty of an offence under subsection (1) unless the First-tier Tribunal has decided that the letting agent has failed to comply with the order (but such a decision does not establish a presumption that the letting agent has committed an offence under subsection (1)).

A letting agent who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
General

47 Transfer of jurisdiction of actions involving letting agents

(1) The Scottish Ministers may by regulations provide that the functions and jurisdiction of the sheriff in relation to the actions between the following persons relating to the carrying out of letting agency work are transferred to the First-tier Tribunal—

(a) a tenant and a relevant letting agent,
(b) a landlord and a relevant letting agent.

(2) A relevant letting agent is—

(a) in relation to a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
(b) in relation to a landlord, a letting agent appointed by the landlord.

(3) References in this section to—

(a) a tenant include—
(i) a person who has entered into an agreement to let a house, and
(ii) a former tenant,
(b) a landlord include a former landlord.

48 Offences by bodies corporate etc.

(1) Where—

(a) an offence under this Part has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or
(ii) an individual purporting to act in the capacity of a relevant individual,

the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—
(i) a director, manager, secretary or other similar officer of the body,
(ii) where the affairs of the body are managed by its members, the members,
(b) in relation to a Scottish partnership, a partner,
(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

49 Delegation of functions relating to the register

(1) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than a function relating to the making of an order or regulations) to such person as they may determine.
(2) A delegation under subsection (1) may be varied or revoked at any time.

50 **Landlord registration where agent is a registered letting agent**

(1) In section 84(4) of the 2004 Act (registration), for paragraph (d) substitute—

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(d) either—

(i) the person is a registered letting agent, or

(ii) in the case of a person who is not a registered letting agent, the person is a fit and proper person to act for the landlord such as is mentioned in subsection (3)(c) in relation to the lease or, as the case may be, arrangement.”.
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(2) In section 88 of the 2004 Act (registered person: appointment of agent)—

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(a) in subsection (2B)—

(i) the word “or” at the end of paragraph (a) is repealed, and

(ii) after subsection (b), insert “, or

(c) the person appointed is a registered letting agent.”,
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(b) for subsection (4), substitute—

“(4) The condition is that either—

(a) the person is a registered letting agent, or

(b) in the case of a person who is not a registered letting agent, the person is a fit and proper person to act for the registered person in relation to a lease or occupancy arrangement such as is mentioned in subsection (1)(b).”,
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(3) In section 89 of the 2004 Act (removal from the register)—

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(a) in subsection (3)(b) for “(d)” substitute “(d)(ii)”,

(b) after subsection (3), insert—

“(3A) Where—

(a) a person is registered by the local authority by virtue of section 84(4), and

(b) paragraph (d)(i) of that section no longer applies,

the authority may remove the person from the register.”.
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(4) In section 90(1) of the 2004 Act (notification of removal from register: registered person), after “89(1)” insert “, (3A)”.

(5) In section 91(1) of the 2004 Act (notification of removal from register: other persons), after “89(1)” insert “, (3A)”.

(6) In section 92(1)(b) of the 2004 Act (appeal), after “89(1)” insert “, (3A)”.

(7) In section 92ZA(1)(a)(ii) of the 2004 Act (duty to note refusals and removals), after “89(1)” insert “, (3A)”.

(8) In section 92A(1)(b) of the 2004 Act (the Letting Code), after “person” where it first occurs insert “(other than a registered letting agent)”.
(9) In section 101 of the 2004 Act (interpretation of Part 8), after the definition of “registered” insert—

“‘registered letting agent’ has the meaning given by section 29(3) of the Housing (Scotland) Act 2014 (asp 00),”.

51 Meaning of letting agency work

(1) For the purposes of this Part, “letting agency work” means things done by a person in the course of that person’s business in response to relevant instructions which are—

(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord’s house as a dwelling, or

(b) for the purpose of repairing, maintaining, improving, insuring or otherwise managing a house which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).

(2) In subsection (1)—

(a) “relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and

(b) “house”, “landlord”, “occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the 2004 Act.

(3) The Scottish Ministers may by order modify the meaning of “letting agency work” for the time being in this section.

52 Interpretation of Part 4

In this Part—

“letting agent registration number” has the meaning given by section 32(1),

“letting agent” means a person who carries out letting agency work,

“letting agent enforcement order” has the meaning given by section 43(7),

“register” has the meaning given by section 26(1),

“registered letting agent” has the meaning given by section 29(3).

PART 5

MOBILE HOME SITES WITH PERMANENT RESIDENTS

General application

53 Licensing of sites for permanent residents

(1) In section 32(1) of the 1960 Act (application of Part 1 to Scotland), after paragraph (l) insert—

“(m) the modifications in Part 1A.”.

(2) After section 32 of the 1960 Act, insert—
“PART 1A

 LICENSING OF RELEVANT PERMANENT SITES IN SCOTLAND

 General application

32A Licences under Part 1A

(1) Subject to the modifications mentioned in subsection (2), Part 1 applies in relation to—

(a) a relevant permanent site as it applies to a caravan site within the meaning of section 1(4),

(b) a relevant permanent site application as it applies in relation to an application for a site licence under Part 1, and

(c) a site licence issued or renewed under this Part (a “Part 1A site licence”) as it applies to a site licence within the meaning of section 1(1).

(2) The modifications are—

(a) the offence in section 1 does not apply to the holder of a Part 1A site licence in relation to that person’s use of the relevant permanent site which is the subject of the licence,

(b) sections 3 and 6 do not apply in relation to a relevant permanent site application,

(c) sections 4 and 9 do not apply in relation to a Part 1A site licence, and

(d) the further modifications in this Part.”.

Part 1A site licence

54 Relevant permanent site application

After section 32A of the 1960 Act (inserted by section 53(2)), insert—

“Part 1A site licence

32B Relevant permanent site application

(1) A relevant permanent site application may be made by the occupier of land to the local authority in whose area the land is situated.

(2) A relevant permanent site application must—

(a) be in writing and in such format as is determined by the local authority,

(b) specify the land in respect of which the application is made,

(c) include information specified in regulations made under section 32N, and

(d) include any information relevant to the material falling within section 32O(2) in relation to—

(i) the applicant,

(ii) any person to be appointed by the applicant to manage the site, and

(iii) any other person whom the local authority is required to be satisfied is a fit and proper person in accordance with section 32D(1)(b) or (2)(b).
(3) An applicant must, either at the time of making the application or subsequently, give to the local authority such other information as the authority may reasonably require.

32C Fee for relevant permanent site application

(1) A relevant permanent site application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.

(2) An authority may fix different fees for different applications or types of application.

(3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding a relevant permanent site application.

(4) The Scottish Ministers may by regulations subject to the negative procedure make provision about the charging of fees under subsection (1).

(5) Regulations made under subsection (4) may in particular—

\begin{itemize}
  \item provide for the fee not to exceed such amount as may be prescribed by the regulations,
  \item specify matters to be taken into account by an authority when fixing a fee.
\end{itemize}

55 Issue, renewal, transfer and transmission of a Part 1A site licence

After section 32C of the 1960 Act (inserted by section 54), insert—

“32D Issue and renewal of a Part 1A site licence

(1) A local authority may issue a Part 1A site licence if—

\begin{itemize}
  \item the applicant is, when the Part 1A site licence is issued, entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order, and
  \item the authority is satisfied—
    \begin{itemize}
      \item that the applicant is a fit and proper person to hold a site licence,
      \item in the case where an applicant is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,
      \item that any person to be appointed by the applicant to manage the site is a fit and proper person to do so, and
      \item in the case where a person to be appointed by the applicant to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.
    \end{itemize}
\end{itemize}

(2) A local authority must renew a Part 1A site licence if—

\begin{itemize}
  \item the applicant is, when the Part 1A site licence is renewed, entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order, and
(b) the authority is satisfied—

(i) that the applicant is a fit and proper person to hold a site licence,

(ii) in the case where an applicant is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

(iii) that any person appointed, or to be appointed, by the applicant to manage the site is a fit and proper person to do so, and

(iv) in the case where a person appointed, or to be appointed, by the applicant to manage the site is not a natural person, that any individual who is, or is to be, directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.

(3) The local authority must not issue a Part 1A site licence to a person whom the local authority knows has held a site licence which has been revoked under this Act less than 3 years before that time.

(4) Before refusing to issue or renew a Part 1A site licence, the authority must give to the applicant a notice stating that—

(a) it is considering refusing the application and its reasons for doing so, and

(b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(5) In making its decision under this section the local authority must consider the application and any representations made in accordance with subsection (4)(b).

32E Application to transfer a Part 1A site licence

(1) This section applies where, under section 10(1), the holder of a Part 1A site licence seeks the consent of the local authority for the transfer of the licence to a person who is to become the occupier of the relevant permanent site (in this section the “transferee”).

(2) The local authority may refuse consent to the transfer on the ground that the authority is not satisfied—

(a) that the transferee is a fit and proper person to hold a site licence,

(b) in the case where the transferee is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

(c) that any person to be appointed by the transferee to manage the site is a fit and proper person to do so, and

(d) in the case where a person to be appointed by the transferee to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.
32F Time limit for determining application

(1) This section applies where a person—

(a) makes a relevant permanent site application to a local authority in accordance with section 32B, or

(b) makes an application for consent to transfer a licence mentioned in section 32E.

(2) The local authority must determine the application under section 32D or, as the case may be, sections 10 and 32E within 12 months of receiving the application.

(3) The period mentioned in subsection (2) may be extended by the sheriff, on summary application by the local authority, by such period as the sheriff thinks fit.

(4) The sheriff may not extend a period unless the local authority applies for the extension before the period expires.

(5) The applicant is entitled to be a party to any proceedings on such summary application.

(6) The sheriff’s decision on such summary application is final.

(7) If the local authority does not determine a relevant permanent site application within the period required by this section—

(a) the authority is to be treated as having issued a Part 1A site licence, on the day by which the authority was required to determine the application, and

(b) the relevant person is for all purposes to be treated as having been issued a Part 1A site licence by the local authority under section 32D.

(8) If the local authority does not determine an application for consent to transfer a licence mentioned in section 32E within the period required by this section, the authority is to be treated as having given its consent to the transfer on the day on which the application was made.

32G Local authority power to transfer licence where no application

(1) This section applies where—

(a) the holder of a Part 1A site licence does not seek the consent of the local authority for the transfer of the licence under section 10(1), and

(b) it appears to the authority that the licence holder is no longer the occupier of the relevant permanent site.

(2) The local authority may transfer the licence to a person whom the authority considers to be the occupier of the relevant permanent site (in this section the “transferee”).
(3) Before deciding to transfer the licence under subsection (2), the authority must give to the licence holder and the transferee a notice stating that—

(a) it is considering transferring the licence to the transferee under this section and its reasons for doing so, and

(b) the licence holder and the transferee each have the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(4) In making its decision under this section the local authority must consider any representations made in accordance with subsection (3)(b).

(5) The licence holder and the transferee must give to the local authority such information as the authority may reasonably require in order to make a decision under this section.

(6) It is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with a request under subsection (5).

(7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

32H Transfer of Part 1A site licences on death: relevant permanent sites

Where a Part 1A site licence is transferred to a person in accordance with section 10(4), that person must give to the local authority such information as the authority may reasonably require in order to make a determination under section 32L.

32I Notification of decision on Part 1A site licence

(1) A local authority must, as soon as practicable after making a decision mentioned in subsection (2), notify the persons mentioned in subsection (3) of—

(a) the making of the decision, and

(b) the right to appeal under section 32M.

(2) The decisions are—

(a) the determination of a relevant permanent site application,

(b) the determination of an application for consent to transfer a licence mentioned in section 32E,

(c) the decision to transfer a licence mentioned in section 32G.

(3) The persons are—

(a) in the case of a determination of a relevant permanent site application, the applicant,

(b) in the case of a determination of an application for consent to transfer a licence mentioned in section 32E, the applicant and the transferee,
(c) in the case of a decision of the local authority to transfer a licence under section 32G, the previous holder of the Part 1A site licence and the transferee.”.

56 Duration of a Part 1A site licence

After section 32I of the 1960 Act (inserted by section 55), insert—

“32J Duration of a Part 1A site licence

(1) A Part 1A site licence—

(a) comes into operation at the time specified in or determined under the licence, and

(b) unless terminated by its revocation, continues in force until—

(i) the licence holder is not entitled to the benefit of planning permission for the use of the land as a caravan site, or any planning permission for the use of the relevant permanent site as a caravan site expires, or

(ii) if earlier, the day which is 3 years after the day on which the licence comes into operation.

(2) The Scottish Ministers may, by order subject to the affirmative procedure, amend subsection (1)(b)(ii) so as to substitute for the figure for the time being specified there a different figure.”.

57 Duty to inform local authority where change

After section 32J of the 1960 Act (inserted by section 56), insert—

“32K Duty to inform local authority where change

(1) The holder of a Part 1A site licence must notify the local authority which issued the licence—

(a) of the appointment of any new person to manage the site, and

(b) if, in consequence of a change of circumstances, any information provided by the licence holder to the local authority by virtue of this Part becomes inaccurate.

(2) The notification must be made—

(a) in the case of an appointment mentioned in subsection (1)(a), no later than the day on which the appointment takes effect, and

(b) in any other case, as soon as practicable after the inaccuracy arises.

(3) The licence holder must, either at the time of notifying the local authority or subsequently, give to the authority such other information in relation to the appointment as the authority may reasonably require.”.

58 Revocation of a Part 1A site licence: fit and proper person

After section 32K of the 1960 Act (inserted by section 57), insert—

“32L Revocation of a Part 1A site licence: fit and proper person
(1) A local authority which issued a Part 1A site licence may revoke the licence if the authority is satisfied—

(a) that the licence holder is not, or is no longer, a fit and proper person to hold a site licence,

(b) in the case where the licence holder is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is not, or is no longer, a fit and proper person in relation to a site licence,

(c) that any person appointed by the licence holder to manage the site is not, or is no longer, a fit and proper person to do so, or

(d) in the case where a person appointed by the licence holder to manage the site is not a natural person, that any individual who is directly concerned with the management of the site on behalf of that manager is not, or is no longer, a fit and proper person to do so.

(2) Where a local authority proposes to revoke a Part 1A site licence under this section, the authority must serve on the licence holder a notice stating that—

(a) it is considering revoking the licence under this section and its reasons for doing so, and

(b) the licence holder has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(3) In making its decision under this section the local authority must consider any representations made in accordance with subsection (2)(b).

(4) Where a local authority revokes a licence under this section, the authority must serve on the person who held the licence a notice which—

(a) states that the authority has revoked the licence and its reasons for doing so,

(b) explains the right of appeal conferred by section 32M.”.

Appeals relating to a Part 1A site licence

After section 32L of the 1960 Act (inserted by section 58), insert—

“32M Appeals relating to a Part 1A site licence

(1) A person mentioned in subsection (2) may by summary application appeal to the sheriff against—

(a) the refusal by the local authority to issue or renew a Part 1A site licence following a relevant permanent site application,

(b) the determination by the local authority of an application for consent to transfer a licence mentioned in section 32E,

(c) the decision by the local authority to transfer a licence mentioned in section 32G,

(d) the decision by the local authority to revoke a Part 1A site licence under section 32L.

(2) The persons are—
(a) in the case of a determination of a relevant permanent site application, the applicant,
(b) in the case of a determination of an application for consent to transfer a licence mentioned in section 32E—
   (i) the applicant,
   (ii) the transferee,
(c) in the case of a decision by the local authority to transfer a licence mentioned in section 32G—
   (i) the previous holder of the Part 1A site licence,
   (ii) the transferee,
(d) in the case of a decision of the local authority to revoke a Part 1A site licence under section 32L, the person who held the licence.”.

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

After section 32M of the 1960 Act (inserted by section 59), insert—

“32N  *Power to make provision in relation to procedure*

(1) The Scottish Ministers may, by regulations subject to the negative procedure, make provision in relation to—

(a) the procedure to be followed for a relevant permanent site application,
(b) the procedure to be followed for the seeking of consent to transfer a licence mentioned in section 32E,
(c) the procedure to be followed for the transfer of a licence mentioned in section 32H,
(d) appeals under section 32M.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) the procedure to be followed by the person making an application for—
   (i) a new Part 1A site licence,
   (ii) the renewal of an existing Part 1A site licence which is due to expire,
   (iii) consent to transfer a Part 1A site licence,
(b) the procedure to be followed by a person following the transfer of a licence,
(c) the information to be provided in relation to an application mentioned in paragraph (a) or a transfer mentioned in section 32H,
(d) the procedure to be followed in determining an application mentioned in paragraph (a) or in considering a transfer mentioned in section 32H,
(e) the procedure to be followed after an application mentioned in paragraph (a) is determined or a transfer mentioned in section 32H is considered, and
(f) the circumstances in which a notification under section 32I must include
the reasons for making the decision,

(g) the time limits applying in relation to—
   (i) an application,
   (ii) a transfer,
   (iii) the determination or consideration by the authority, and
   (iv) appeals,

(h) the procedure to be followed by the person making an appeal,

(i) the determination and consequences of an appeal.”.

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**Fit and proper persons**

### 61 Fit and proper person considerations

After section 32N of the 1960 Act (inserted by section 60), insert—

“**Fit and proper persons**

### 32O Fit and proper person considerations

(1) In deciding under this Part if a person is a fit and proper person, the local
authority must have regard to all of the circumstances of the case, including
any material falling within subsections (2) to (5).

(2) Material falls within this subsection if it shows that the person has—

   (a) been convicted of an offence—
      (i) involving fraud or other dishonesty,
      (ii) involving violence,
      (iii) involving drugs,
      (iv) involving firearms,
      (v) which is a sexual offence within the meaning of section 210A(10)
          of the Criminal Procedure (Scotland) Act 1995 (c.46),

   (b) practised unlawful discrimination on the grounds of any of the protected
       characteristics in Part 2 of the Equality Act 2010 (c.15),

   (c) contravened any provision of—
      (i) the law relating to caravans,
      (ii) the law relating to housing,
      (iii) landlord and tenant law,

   (d) engaged in antisocial behaviour within the meaning of section 143 of the
       Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

   (e) breached the conditions of a site licence issued under Part 1 or Part 1A of
       this Act.

(3) Material falls within this subsection if it relates to the failure by a person to
provide information which that person is required to give to the local authority
in accordance with this Part.
(4) Material falls within this subsection if it relates to a complaint made by a person of which the local authority is aware about antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) on the relevant permanent site.

(5) Material falls within this subsection if it is material of which the local authority is aware as a result of any other function carried out by the authority and it appears to the authority to be relevant to the question of whether the person is a fit and proper person.

(6) The Scottish Ministers may, by order subject to the affirmative procedure, modify this section by adding to, removing or varying any material in subsections (2) to (5).”.

62 Fit and proper person: criminal conviction certificate

After section 32O of the 1960 Act (inserted by section 61), insert—

“32P Fit and proper person: criminal conviction certificate

(1) A local authority may, in deciding under this Part if a person is a fit and proper person, require the person in respect of whom the decision is being made to provide the local authority with a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)).

(2) A local authority may require a criminal conviction certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 32O(2) is, or has become, inaccurate.”.

Offences relating to relevant permanent sites

63 Offences relating to relevant permanent sites

After section 32P of the 1960 Act (inserted by section 62), insert—

“32Q Offences relating to relevant permanent sites

False or misleading information provided to an authority

(1) It is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with—

(a) a requirement under section 32B,
(b) a requirement under section 32E(3),
(c) a requirement under section 32H,
(d) a requirement under section 32K.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

32R Relevant permanent sites: use without a licence

(1) It is an offence for the occupier of land to cause or permit that land to be used as a relevant permanent site unless—
(a) the occupier is the holder of a Part 1A site licence in relation to the site, or
(b) subsection (2) or (3) applies to that person.

(2) This subsection applies to a person from the day on which the person makes a relevant permanent site application to a local authority in accordance with section 32B until—

(a) that application is determined under section 32D,
(b) in the case of a refusal by the authority to issue or renew a Part 1A site licence under that section, the day on which the period during which the applicant may make an appeal under section 32M(1)(a) expires without an appeal being made, or
(c) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) This subsection applies to a person from the day on which the person’s Part 1A site licence is revoked under section 32L until—

(a) the day on which the period during which the person can make an appeal under section 32M(1)(d) expires without an appeal being made, or
(b) where such an appeal is made, the day on which it is finally determined or abandoned.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £50,000.

32S Relevant permanent sites: breach of licence conditions

(1) It is an offence for the holder of a Part 1A site licence to fail to comply with any condition of a Part 1A site licence issued in relation to the site.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.

32T Power to vary maximum fine

(1) The Scottish Ministers may by order substitute a new amount for the amount in—

(a) section 32R(4),
(b) section 32S(2),
(c) section 32V(3).

(2) An order under subsection (1) is subject to the affirmative procedure.”.

Local authority enforcement at relevant permanent sites

35 64 Improvement notices

After section 32T of the 1960 Act (inserted by section 63), insert—
32U  Breach of licence condition: improvement notice

(1) If it appears to a local authority which issued a Part 1A site licence that the licence holder is failing or has failed to comply with a condition of the Part 1A site licence, the authority may serve an improvement notice on the licence holder.

(2) An improvement notice is a notice which—
   (a) sets out the condition in question and details of the failure to comply with it,
   (b) requires the licence holder to take such steps as the local authority considers appropriate and as are specified in the notice in order to ensure that that condition is complied with,
   (c) specifies the period within which those steps must be taken,
   (d) explains the right of appeal conferred by subsection (3).

(3) The holder of a Part 1A site licence who has been served with an improvement notice may by summary application appeal to the sheriff against—
   (a) the issue of that notice,
   (b) the terms of that notice.

(4) A local authority may—
   (a) suspend an improvement notice,
   (b) revoke an improvement notice,
   (c) vary an improvement notice by extending the period specified in the notice under subsection (2)(c).

(5) The power to suspend, revoke or vary an improvement notice is exercisable by the local authority—
   (a) on an application made by the licence holder, or
   (b) on the authority's own initiative.

(6) Where a local authority suspends, revokes or varies an improvement notice, the authority must notify the licence holder to whom the notice relates of the decision as soon as is reasonably practicable.

32V  Improvement notice: offence

(1) It an offence for a licence holder who has been served with an improvement notice to fail to take the steps specified in the notice within the period so specified, unless subsection (2) applies to that person.

(2) This subsection applies to a person from the day on which the person is served with an improvement notice until—
   (a) the day on which the period during which the person may make an appeal under section 32U(3) expires without an appeal being made, or
   (b) where such an appeal is made, the day on which it is finally determined or abandoned.
(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.

(4) In proceedings against a licence holder for an offence under subsection (1), it is a defence that the licence holder had a reasonable excuse for failing to take the steps referred to in subsection (1) within the period referred to in that subsection.

32W Local authority power to carry out steps in an improvement notice

(1) This section applies where—

(a) an improvement notice has been served in relation to a relevant permanent site, and

(b) the licence holder fails to take the steps specified in the notice within the period so specified.

(2) The local authority which issued the improvement notice may—

(a) take any steps required by the improvement notice to be taken by the occupier, but which have not been so taken, and

(b) take such further action as the authority considers appropriate for ensuring that the condition specified in the improvement notice is complied with.

(3) Where a local authority proposes to take action under subsection (2), the authority must serve on the occupier of the relevant permanent site a notice which—

(a) identifies the land and the improvement notice to which it relates,

(b) states that the authority intends to enter onto the land,

(c) describes the action the authority intends to take on the land,

(d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and

(e) sets out the dates and times on which it is intended that the action will be taken (in particular, when the authority intends to start taking the action and when it expects the action to be completed).

(4) The notice must be served sufficiently in advance of when the local authority intends to enter onto the land as to give the occupier of the relevant permanent site reasonable notice of the intended entry.”.

65 Penalty notices

After section 32W of the 1960 Act (inserted by section 64), insert—

“32X Penalty notice where no licence or breach of licence

(1) A local authority may serve a penalty notice on the occupier of a relevant permanent site if it appears to the local authority that the occupier—

(a) has caused or permitted the relevant permanent site to be used as a caravan site without being the holder of a Part 1A site licence in relation to the site, or
has been served with an improvement notice and has failed to take the steps specified in the notice within the period so specified.

(2) A penalty notice is a notice which—

(a) sets out the condition in question and details of the failure to comply with it,

(b) explains the effect of subsection (3),

(c) specifies the period within which the penalty applies,

(d) explains the right of appeal conferred by subsection (6).

(3) Where a penalty notice is served under this section—

(a) no amount which a person is required to pay to the occupier of the relevant permanent site in respect of—

(i) the right to station a caravan on the site,

(ii) rent for the occupation of a caravan on the site,

(iii) the use of the common areas of the site and their maintenance, or

(iv) the use of gas, electricity, water and sewerage or other services on the site,

is payable for the period specified in the notice under subsection (2)(c), and

(b) no commission on sale payable in accordance with paragraph 8 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (c.34) is payable to the occupier of the relevant permanent site in respect of a caravan on the site for the period specified in the notice under subsection (2)(c).

(4) The local authority must, as soon as practicable after serving a notice under this section and in such manner as it thinks fit, notify the occupiers of caravans on the site of the existence of the notice.

(5) The ways in which a notification under subsection (4) may be carried out include by fixing a notice in a prominent place at or near the main entrance to the relevant permanent site.

(6) The occupier of a relevant permanent site in respect of which a local authority has served a penalty notice may, within the period of 28 days beginning with the day on which the notice was served, by summary application appeal to the sheriff against the decision.”.

66 Appointment of interim manager

After section 32X of the 1960 Act (inserted by section 65), insert—

“32Y Power to appoint interim manager

(1) A local authority which has issued a Part 1A site licence may apply to the sheriff for an order appointing an interim manager of the site.

(2) An order may be granted by the sheriff if—

(a) the authority has refused to renew a Part 1A site licence under section 32D,

(b) the authority has revoked a Part 1A site licence under section 32L, or
(e) the sheriff is satisfied that—
   (i) the licence holder is failing or has failed, either seriously or
       repeatedly, to comply with a condition of the Part 1A site licence,
   (ii) the site is not being managed by a person who is a fit and proper
       person to manage the site, or
   (iii) there is no one managing the site.

(3) The appointment of an interim manager is to be on terms (including as to
     remuneration and expenses) specified in, or determined in accordance with, the
     appointment.

(4) The interim manager has—
   (a) any power specified in the appointment, and
   (b) any other power in relation to the management of the site required by the
       interim manager for the purposes specified in the appointment (including
       the power to enter into agreements and take other action on behalf of the
       occupier of the site).

(5) The Scottish Ministers may by regulations subject to the negative procedure
    make further provision about the appointment of an interim manager.

(6) Regulations under subsection (5) may, in particular, make provision in relation
    to—
    (a) the procedure to be followed in making an application,
    (b) the powers of an interim manager,
    (c) property which vests in the interim manager on the interim manager’s
        appointment,
    (d) the qualifications that must be held by any person appointed as interim
        manager,
    (e) the actions that must be carried out by an interim manager during and
        after the manager’s appointment,
    (f) the payment and recovery of the remuneration and expenses of the
        interim manager,
    (g) the assistance to be provided to the interim manager by the licence
        holder and other persons,
    (h) powers of entry to the relevant permanent site,
    (i) criminal offences which are to apply to failures to comply with the
        regulations,
    (j) the procedure for and consequences of the termination of the interim
        manager’s appointment.”.

67 Emergency action

After section 32Y of the 1960 Act (inserted by section 66), insert—

“32Z Power to take emergency action

(1) A local authority which has issued a Part 1A site licence may take emergency
    action in relation to the site concerned if it appears to the authority that—
Part 5—Mobile home sites with permanent residents

(a) the licence holder is failing or has failed to comply with a condition for the time being attached to the Part 1A site licence, and

(b) as a result of that failure there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

(2) A local authority in whose area land is being used as a relevant permanent site may take emergency action in relation to the land concerned if it appears to the authority that—

(a) the occupier is causing or permitting that land to be used as a relevant permanent site,

(b) the occupier does not hold a Part 1A site licence in relation to the land, and

(c) there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

(3) The emergency action a local authority may take is such action as appears to the authority to be necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c).

(4) Where a local authority proposes to take emergency action, the authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action notice.

(5) An emergency action notice is a notice which—

(a) identifies the land to which it relates,

(b) states that the authority intends to enter onto the land,

(c) describes the emergency action the authority intends to take on the land,

(d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and

(e) specifies the powers under this section and section 26 as the powers under which the authority intends to enter onto the land.

(6) An emergency action notice may state that, if entry onto the land were to be refused, the authority would propose to apply for a warrant under section 26(2).

(7) The local authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action report within the period of 7 days beginning with the date when the authority starts taking the emergency action.

(8) An emergency action report is a notice which—

(a) describes the imminent risk of serious harm to the health or safety of persons who are or may be on the land,

(b) describes the emergency action which has been, and any emergency action which is to be, taken by the authority on the land,

(c) sets out when the authority started taking the emergency action and when the authority expects it to be completed,
(d) if the person whom the authority has authorised to take the action on its behalf is not an officer of the authority, states the name of that person, and

(e) explains the right of appeal conferred by subsection (10).

(9) The ways in which an emergency action notice and an emergency action report may be served include by fixing it in a prominent place at or near the main entrance to the relevant permanent site.

(10) A licence holder or, as the case may be, an occupier of land in respect of which a local authority has taken or is taking emergency action may by summary application appeal to the sheriff against the taking of the action by the authority.

(11) The grounds on which the appeal may be brought are—

(a) that there was no imminent risk of serious harm as mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c) (or, where the action is still being taken, that there is no such risk),

(b) that the action the authority has taken was not necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c) (or, where the action is still being taken, that it is not necessary to remove the risk).”.

68 Powers of entry

After section 32Z of the 1960 Act (inserted by section 67), insert—

“32Z1 Powers of entry in relation to relevant permanent site

(1) Section 26 (as modified by section 32) applies in relation to a relevant permanent site—

(a) as if after every reference to “this Part” there were inserted “or Part 1A”,

(b) as if after paragraph (a) of subsection (1) there were inserted—

“(aa) for the purpose of inspecting a relevant permanent site,”, and

(c) subject to the further modifications in this section.

(2) If, under an improvement notice or an emergency action notice, a local authority authorises a person other than an officer of the authority to take the action on its behalf, the reference in section 26(1) to an authorised officer of the local authority is to be read as including that person.

(3) In its application to an improvement notice, the requirement in section 26(1) to give 24 hours’ notice of the intended entry applies only in relation to the day on which the local authority intends to start taking the action on the relevant permanent site.

(4) In its application to an emergency action notice, section 26(1) has effect as if—

(a) the words “at all reasonable hours” were omitted, and

(b) the words from “Provided that” to the end were omitted.”.
69 **Recovery of inspection and enforcement expenses**

After section 32Z1 of the 1960 Act (inserted by section 68), insert—

"**32Z2 Expenses of issuing notices**

(1) This section applies where a local authority has served—

(a) an improvement notice,

(b) a penalty notice,

(c) an emergency action notice, or

(d) an emergency action report.

(2) The local authority may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—

(a) expenses incurred by the authority in deciding whether to serve the notice or report,

(b) expenses incurred by the authority in preparing and serving the notice or report, and

(c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(3) The expenses referred to in subsection (2) include in particular the costs of obtaining expert advice (including legal advice).

**32Z3 Expenses of taking action under improvement notice or emergency action notice**

(1) A local authority which has taken action in accordance with an improvement notice or an emergency action notice may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—

(a) expenses incurred by the authority in deciding whether to take the action,

(b) expenses incurred by the authority in taking the action, and

(c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(2) The expenses referred to in subsection (1) include in particular the costs of obtaining expert advice (including legal advice).

**32Z4 Expenses of local authority in relation to Part 1A licences**

The local authority which issued a Part 1A site licence may require the licence holder to pay the amount of any expenses incurred by the authority in relation to—

(a) inspecting a relevant permanent site for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this Act,

(b) assessing or investigating compliance by the licence holder with the provisions of this Act following an inspection."
**Miscellaneous**

**70**  
**Part 1A of the 1960 Act: miscellaneous provision**

After section 32Z4 of the 1960 Act (inserted by section 69), insert—

“Miscellaneous

**32Z5 Interpretation of Part 1A**

(1) In this Part—

“emergency action notice” has the meaning given by section 32Z(5),

“emergency action report” has the meaning given by section 32Z(8),

“excepted permission” means a permission (by virtue of planning permission or a site licence under Part 1) to station a caravan on the land for human habitation all year round, if the caravan is, or is to be, authorised to be occupied by—

(a) the occupier,

(b) a person employed by the occupier but who does not occupy the caravan under an agreement to which section 1(1) of the Mobile Homes Act 1983 (c.34) applies,

“improvement notice” has the meaning given by section 32U(2),

“licence holder” means the person holding the Part 1A site licence,

“Part 1A site licence” has the meaning given by section 32A(1)(c),

“penalty notice” has the meaning given by section 32X(2),

“planning permission” means planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997 (c.8),

“relevant permanent site” means land in respect of which a site licence is required under Part 1, other than land for which the relevant planning permission or the site licence—

(a) is expressed to be granted for holiday use only,

(b) is otherwise so expressed or subject to conditions that there are times of the year when no caravan may be stationed on the land for human habitation, or

(c) would meet the conditions in paragraph (a) or (b) if any excepted permission is disregarded,

“relevant permanent site application” means, irrespective of the conditions in the relevant planning permission, an application for the issue or renewal of a Part 1A site licence authorising the use of land as a caravan site, other than an application for a licence—

(a) to be expressed to be granted for holiday use only,

(b) to be otherwise so expressed or subject to conditions that there will be times of the year when no caravan may be stationed on the land for human habitation, or
(c) which would meet the conditions in paragraph (a) or (b) if any part of the application for excepted permission were disregarded.

(2) Any reference in this Part to the sheriff is to the sheriff having jurisdiction in the place where the relevant permanent site is situated.

(3) Otherwise, words and expressions (as modified by section 32) have the same meaning in this Part as in Part 1.

32Z6 Agreements to which Mobile Homes Act 1983 applies

(1) A decision of a local authority mentioned in subsection (2) has no effect on an agreement to which the Mobile Homes Act 1983 (c.34) applies.

(2) The decisions are—

(a) a refusal to issue or renew a Part 1A site licence under section 32D,

(b) a revocation of a Part 1A site licence under section 32L.”.

71 Transitional provision for existing site licences

(1) This section applies to a site licence issued under the 1960 Act which—

(a) was issued before the day on which section 56 comes into force in respect of land which is a relevant permanent site,

(b) is in force on that day.

(2) The site licence continues in force until the earliest of—

(a) the end of the period of 2 years beginning with the day on which section 56 comes into force,

(b) the day on which the licence is revoked under, or expires in accordance with, the provisions of the 1960 Act, or

(c) the day on which a Part 1A site licence is issued in relation to the site.

(3) During the period for which a site licence continues in force under this section, the provisions of Part 1A of the 1960 Act do not apply to the site licence or in respect of the land which is a relevant permanent site.

(4) In this section, “Part 1A site licence” and “relevant permanent site” have the same meanings as in section 32Z5 of the 1960 Act (as inserted by section 70).

PART 6

PRIVATE HOUSING CONDITIONS

72 Tenement management scheme

(1) In the Tenements (Scotland) Act 2004 (asp 11)—

(a) in section 4(14) (defined terms), after “section” insert “and section 4A”,

(b) after section 4, insert—

“4A Power of local authority to pay share of scheme costs

(1) The local authority for the area in which a tenement is situated may pay a sum representing an owner’s share of scheme costs if that owner—
(a) is unable or unwilling to do so, or
(b) cannot, by reasonable inquiry, be identified or found.

(2) But a local authority may not pay a sum representing an owner’s share of scheme costs which are attributable to a scheme decision mentioned in rule 3.1(e) of the Tenement Management Scheme.

(3) For the purposes of this section an owner’s share of any scheme costs is to be determined in accordance with—
(a) the Tenement Management Scheme as it applies to the owner’s tenement, or
(b) where a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners, that burden.

(4) Before making a payment under this section, the local authority must notify the owner who has failed to pay a share of any scheme costs.

(5) The local authority may recover from the owner who failed to pay a share of any scheme costs any—
(a) payments made under this section, and
(b) administrative expenses incurred by it in connection with the making of the payment.

(6) This section is without prejudice to any entitlement to recover sums in accordance with section 11 or 12.”,

(c) in section 13(1)(a) (persons who may register a notice of potential liability for costs), after paragraph (ii) insert—
“(iii) a local authority entitled to recover costs under section 4A(5),”,

(d) in rule 5 of schedule 1 (redistribution of share of costs), after “then” insert “(unless that share has been paid by the local authority under section 4A)”, and

(e) in rule 8.4 of schedule 1 (enforcement by third party), after “concerned” insert “and a local authority entitled to recover costs under section 4A(5)”.

(2) In section 172 of the 2006 Act (repayment charges)—
(a) in subsection (1), for “or paragraph 6(1) of schedule 5” substitute “, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11)”,

(b) in subsection (2)(a), for “or paragraph 6(1) of schedule 5” substitute “, section 61(3A), subsection (6A) below, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004”, and

(c) after subsection (6A), insert—
“(6B) Subsection (6A)(c) does not apply where the recoverable amount relates to a sum the local authority is entitled to recover under section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11)”.
73  **Work notices**

In section 30(1) of the 2006 Act (work which may be required under a work notice)—

(a) the word “or” at the end of paragraph (a) is repealed, and

(b) at the end of paragraph (b), insert “, or

(c) otherwise improving the security or safety of any house (whether or not situated in an HRA).”.

74  **Maintenance orders**

In section 42(2) of the 2006 Act (circumstances in which a maintenance order may be made)—

(a) the words “the local authority considers” are repealed,

(b) before paragraph (a), insert—

“(za) a work notice has been served in relation to the house and no certificate has been granted under section 60 in relation to the work required by that notice,”, and

(c) at the beginning of each of paragraphs (a) and (b), insert “the local authority considers”.

75  **Maintenance plans**

(1) In section 24 of the Building (Scotland) Act 2003 (asp 8) (information in the building standards register)—

(a) in subsection (1)—

(i) the word “and” at the end of paragraph (c) is repealed, and

(ii) after paragraph (d), insert “, and

(e) decisions to approve, devise, vary or revoke maintenance plans under Part 1 of the Housing (Scotland) Act 2006.”,

(b) in subsection (2)(a), for “(d)” substitute “(e)”.

(2) In section 47 of the 2006 Act (variation and revocation of maintenance plans)—

(a) in subsection (3), after “if” insert “subsection (3A) applies or if”, and

(b) after subsection (3), insert—

“(3A) This subsection applies where the local authority is satisfied that a property factor (within the meaning of section 2(1) of the Property Factors (Scotland) Act 2011 (asp 8)) has been appointed to manage or maintain the premises to which the plan relates.”.

(3) In section 61(1) of the 2006 Act (registration in the appropriate land register), paragraphs (e) and (f) are repealed.

76  **Non-residential premises: repayment charges**

(1) In section 172 of the 2006 Act (repayment charges)—

(a) in subsection (1), for “living accommodation” in both places where it occurs substitute “property”,
(b) in subsection (5), for “living accommodation” substitute “property”,

(c) in subsection (6A), for “living accommodation” substitute “property”,

(d) in subsection (7), for “living accommodation” substitute “property”,

(e) in subsection (8), for “living accommodation” in both places where it occurs substitute “property”,

(f) after subsection (8), insert—

“(9) In this section and in section 173, “property” means a place which is—

(a) living accommodation, or

(b) non-residential premises within the meaning of section 69(3)”.

(2) In section 173 of the 2006 Act (effect of registering repayment charges etc.)—

(a) in subsection (1), for “living accommodation” substitute “property”,

(b) in subsection (2), for “living accommodation” in each place where it occurs substitute “property”,

(c) in subsection (3), for “living accommodation” substitute “property”, and

(d) in subsection (4), for “living accommodation” substitute “property”.

77  **Right to redeem heritable security after 20 years: power to exempt**

(1) In section 11 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling), after subsection (3C) insert—

“(3D) The right to redeem a heritable security conferred by this section does not apply to a heritable security which is in security of a debt of a description specified in an order made by the Scottish Ministers.

(3E) An order under subsection (3D) may—

(a) disapply the right to redeem conferred by this section subject to conditions or restrictions,

(b) restrict the disapplication of the right to redeem conferred by this section to—

(i) specified descriptions of debt,

(ii) specified creditors, or creditors of specified descriptions,

(iii) specified heritable securities, or heritable securities of specified descriptions,

(c) prescribe circumstances in which the disapplication of the right to redeem conferred by this section is to apply or cease to apply.

(3F) An order under subsection (3D) is subject to the negative procedure.”.

(2) In section 21 of the Land Tenure Reform (Scotland) Act 1974 (provisions for contracting out to be void), for “and 11(3A)” substitute “, 11(3A) and 11(3D)”.
Delegation of certain functions

(1) In section 21 of the 2006 Act (panel and committees), after subsection (8) insert—

“(8A) The president may delegate the president’s functions under section 23 to—

(a) the vice-president of the panel, or
(b) such other member of the panel as the president thinks fit.

(8B) A delegation under subsection (8A) does not affect the president’s—

(a) responsibility for the carrying out of delegated functions, or
(b) ability to carry out delegated functions.”.

(2) In section 16 of the Property Factors (Scotland) Act 2011 (asp 8) (panel and committees), after subsection (7) insert—

“(8) The president may delegate the president’s functions under section 18 to—

(a) the vice-president of the panel, or
(b) such other member of the panel as the president thinks fit.

(9) A delegation under subsection (8) does not affect the president’s—

(a) responsibility for the carrying out of delegated functions, or
(b) ability to carry out delegated functions.”.

Scottish Housing Regulator: transfer of assets following inquiries

In section 67 of the 2010 Act (transfer of assets following inquiries)—

(a) after subsection (4), insert—

“(4A) Subsection (4) does not apply where the Regulator considers that—

(a) the registered social landlord’s viability is in jeopardy for financial reasons,
(b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73,
(c) the direction would substantially reduce the likelihood of a person taking such a step, and
(d) there is insufficient time to comply with the duties under subsection (4) and make a direction which would substantially reduce that likelihood.”,

(b) in subsection (6), paragraph (a) and the word “and” immediately following it are repealed.

Repeal of defective designation provisions

(1) Part 14 of the 1987 Act (assistance for owners of defective housing) is repealed.
(2) Schedule 20 to the 1987 Act (assistance by way of repurchase) is repealed.
(3) Schedule 21 to the 1987 Act (dwellings included in more than one designation) is repealed.
PART 8

GENERAL

81 Interpretation

In this Act—

“the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62),

“the 1987 Act” means the Housing (Scotland) Act 1987 (c.26),

“the 2001 Act” means the Housing (Scotland) Act 2001 (asp 10),

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

“the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1),

“the 2010 Act” means the Housing (Scotland) Act 2010 (asp 17),

“First-tier Tribunal” means the First-tier Tribunal for Scotland.

82 Subordinate legislation

(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—

(a) different provision for different purposes or different areas,

(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) Orders or regulations—

(a) under section 21(1),

(b) under section 30(4),

(c) under section 51(3),

(d) under section 83(1) containing provisions which add to, replace, or omit any part of the text of an Act,

are subject to the affirmative procedure.

(3) All other orders and regulations under this Act are subject to the negative procedure.

(4) This section does not apply to an order under section 85(3).

83 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

84 Minor and consequential amendments

Schedule 2 contains minor amendments and amendments consequential on the provisions of this Act.
85 Commencement

(1) This section and sections 81, 82, 83 and 86 come into force on the day of Royal Assent.

(2) Section 77 comes into force at the end of the period of 2 months beginning with the day of Royal Assent.

(3) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(4) The Scottish Ministers may not appoint a day for section 1(1) to come into force which is before the end of the period of 3 years beginning with the day of Royal Assent.

(5) An order under subsection (3) may include transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

86 Short title

The short title of this Act is the Housing (Scotland) Act 2014.
The Rent (Scotland) Act 1984 is amended as follows.

1. In section 7(2), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

2. In section 11—
   (a) in subsection (1)—
      (i) for “a court” substitute “the First-tier Tribunal”,
      (ii) for “the court”, in each place it occurs, substitute “the Tribunal”,
   (b) in subsection (2), for “court” substitute “First-tier Tribunal”.

3. In section 12—
   (a) in subsection (1), for “a court” substitute “the First-tier Tribunal”,
   (b) in subsection (2), for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
   (c) in subsection (3), for “court” substitute “First-tier Tribunal”,
   (d) in subsection (4), for “court” substitute “First-tier Tribunal”.

4. In section 19(1), for “a court” substitute “the First-tier Tribunal”.

5. In section 21, for “court”, where it first occurs substitute, “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

6. In section 23(1), for “court” substitute “First-tier Tribunal”.

7. In section 24—
   (a) in subsection (3), for “court”, where it first occurs, substitute “First-tier Tribunal” and, in every other place it occurs, substitute “Tribunal”,
   (b) in subsection (4), for “court”, where it first occurs, substitute “First-tier Tribunal” and, in every other place it occurs, substitute “Tribunal”,
   (c) in subsection (5), for “court” substitute “First-tier Tribunal”,
   (d) in subsection (6), for “court” substitute “First-tier Tribunal”,
   (e) in subsection (7), for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
   (f) in subsection (8), for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

8. In section 25(1), the definition of “the court” is repealed.
10 In section 26, for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

11 Section 27 is repealed.

12 In section 31(2)—
5 (a) for “sheriff” substitute “First-tier Tribunal”,
(b) in paragraph (b), for “sheriff” substitute “First-tier Tribunal”.

13 In section 32—
(a) in subsection (4), for “sheriff”, in each place it occurs, substitute “First-tier Tribunal”,
10 (b) in subsection (5), for “sheriff” substitute “First-tier Tribunal”.

14 In section 35(12), after “court” insert “or tribunal”.

15 In section 39—
(a) for “a court” substitute “the First-tier Tribunal”,
(b) for “the court”, in both places it occurs, substitute “the Tribunal”,
15 (c) for “direct the clerk of court to correct” substitute “order the correction of”.

16 In section 43B(4)(b), after “court” insert “or tribunal”.

17 In section 45(3), after “court” insert “or tribunal”.

18 In section 60(3)—
(a) for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
20 (b) the words from “and” to the end are repealed.

19 In section 64(6)(b), for “sheriff, on a summary application” substitute “First-tier Tribunal, on an application”.

20 In section 75—
(a) for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, in each subsequent place it occurs, substitute “Tribunal”,
25 (b) the title becomes “Power of First-tier Tribunal, in action for possession, to reduce period of notice to quit”.

21 In section 76—
(a) in subsection (2), for “sheriff may, if he thinks fit,” substitute “First-tier Tribunal may”,
(b) in subsection (3), for “sheriff” substitute “Tribunal”.

22 In section 77, for “sheriff court” substitute “First-tier Tribunal”.

23 In section 97—
(a) in subsection (8), for “sheriff” in both places it occurs substitute “First-tier Tribunal”,
(b) in subsection (9), for “sheriff” substitute “First-tier tribunal”.

24 In section 102—
(a) before subsection (1) insert—

“(A1) The First-tier Tribunal has jurisdiction, either in the course of any proceedings relating to a dwelling-house or on an application made for the purpose by the landlord or the tenant, to determine any question as to the application of this Act (other than Part IX) or as to any matter which is or may become material for determining any such question.”,

(b) in subsection (1), before “this Act” insert “Part IX of”,

(c) subsection (2) is repealed,

(d) in subsection (3), for “sheriff” substitute “First-tier Tribunal”.

25 In section 103, leave out subsections (1) and (2) and insert—

“An application to the sheriff under section 93(1) is to be made by way of summary application.”.

26 In section 104, before “this Act” insert “Part IX of”.

27 In section 115(1), after the definition of “converted tenancy” insert—

“First-tier Tribunal” means the First-tier Tribunal for Scotland;”.

28 In Schedule 1—

(a) in paragraph 3, for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph 7, for “sheriff” substitute “First-tier Tribunal”.

29 In Schedule 1A—

(a) in paragraph 3, for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph 6, for “sheriff” substitute “First-tier Tribunal”.

30 In paragraph 3 of Schedule 1B, for “sheriff” substitute “First-tier Tribunal”.

31 In Schedule 2—

(a) in Cases 3, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20 and 21, for “court”, in each place it occurs, substitute “First-tier Tribunal”,

(b) in paragraph 1 of Part III—

(i) for “a court” substitute “the First-tier Tribunal”,

(ii) for “the court” substitute “the Tribunal”,

(c) in Part IV—

(i) in paragraph 2, for “court”, in the first place it occurs, substitute “First-tier Tribunal” and, in each subsequent place it occurs, substitute “Tribunal”,

(ii) in paragraph 3(1)(a), for “court” substitute “First-tier Tribunal”,

(d) the title to Part I becomes “Cases in which First-tier Tribunal may order possession”,

(e) the title to Part II becomes “Cases in which First-tier Tribunal must order possession where dwelling-house subject to regulated tenancy”.

35
The Housing (Scotland) Act 1988 is amended as follows.

In section 16(2), for “sheriff” substitute “First-tier Tribunal”.

In section 17(8), for “sheriff” substitute “First-tier Tribunal”.

In section 18—

(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,

(b) in subsection (3)—

(i) for “sheriff” substitute “First-tier Tribunal”,

(ii) for “he” substitute “the Tribunal”,

(c) in subsection (3A)—

(i) for “sheriff” substitute “First-tier Tribunal”,

(ii) for “he” substitute “the Tribunal”,

(d) in subsection (4)—

(i) for “sheriff” substitute “First-tier Tribunal”,

(ii) for “he”, in both places it occurs, substitute “the Tribunal”,

(e) in subsection (4A), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,

(f) in subsection (6), for “sheriff” substitute “First-tier Tribunal”,

(g) in subsection (6A), for “sheriff” substitute “First-tier Tribunal”,

(h) in subsection (7), for “sheriff” substitute “First-tier Tribunal”.

In section 19—

(a) in subsection (1)—

(i) for “sheriff” substitute “First-tier Tribunal”,

(ii) in paragraph (b), for “he” substitute “the Tribunal”,

(b) in subsection (2), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,

(c) in subsection (5), for “sheriff” substitute “First-tier Tribunal”.

In section 20—

(a) in subsection (1)—

(i) for “sheriff” substitute “First-tier Tribunal”,

(ii) for “he” substitute “the Tribunal”,

(b) in subsection (2)—

(i) for “sheriff” substitute “First-tier Tribunal”,

(ii) for “he” substitute “the Tribunal”,

(c) in subsection (3)—

(i) for “sheriff” substitute “First-tier Tribunal”,

(ii) for “he” substitute “the Tribunal”,
(ii) for “he”, in both places it occurs, substitute “the Tribunal”,

(d) in subsection (4)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he” substitute “the Tribunal”,

(e) in subsection (6), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,

(f) the title becomes “Extended discretion of First-tier Tribunal in possession claims”.

38 In section 21(3)—
(a) for “sheriff” substitute “First-tier Tribunal”,
(b) for “he” substitute “Tribunal”.

39 In section 22—
(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,
(b) in subsection (2), for “sheriff” substitute “First-tier Tribunal”.

40 In section 25(7), for “sheriff” substitute “First-tier Tribunal”.

41 In section 28(1), for “sheriff” substitute “First-tier Tribunal”.

42 In section 29, for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

43 In section 30(2)—
(a) the word “summary” is repealed,
(b) in the opening words, for “sheriff” substitute “First-tier Tribunal”,
(c) in paragraph (a), for “him” substitute “the Tribunal”,
(d) in paragraph (b), for “he” substitute “the Tribunal”,
(e) in the closing words—
   (i) for “sheriff” substitute “Tribunal”,
   (ii) for “he” substitute “the Tribunal”.

44 In section 33—
(a) in subsection (1)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he” substitute “the Tribunal”,

45 In section 36—
(a) after subsection (4) insert—
“(4A) Any action to enforce liability arising from this section must be raised in the First-tier Tribunal unless the residential occupant’s claim is founded on the premises in question being subject to a Scottish secure tenancy or to a short Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001 (asp 10)).”;

(b) in subsection (6)(b), after “sheriff” insert “or First-tier Tribunal”,

(c) in subsection (6B), after “court”, in both places it occurs, insert “or, as the case may be, the First-tier Tribunal”.

In section 42(1)(c)—

(a) in sub-paragraph (i), for “court”, where it first occurs substitute “First-tier Tribunal”,

(b) in sub-paragraph (ii), for “court”, where it first occurs, substitute “First-tier Tribunal”,

(c) in sub-paragraph (iii), after “possession” insert “the First-tier Tribunal or, as the case may be,”.

In section 55(1), after the definition of “council tax” insert—

“First-tier Tribunal” means the First-tier Tribunal for Scotland;”.

In Schedule 5—

(a) in grounds 1, 2, 5 and 7, for “sheriff”, in each place it occurs, substitute “First-tier Tribunal”,

(b) the title of Part I becomes “Grounds on which First-tier Tribunal must order possession”,

(c) the title of Part II becomes “Grounds on which First-tier Tribunal may order possession”,

(d) in paragraph 2 of Part III—

(i) for “sheriff”, where it first occurs, substitute “First-tier Tribunal”,

(ii) in paragraph (b), for “sheriff” substitute “Tribunal”,

(iii) in the closing words, for “sheriff” substitute “Tribunal”,

(e) in paragraph 3(1)(a) of that Part, for “sheriff” substitute “First-tier Tribunal”.

PART 2

REPAIRING STANDARD

The 2006 Act is amended as follows.

In section 24(7)—

(a) for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph (a), for “sheriff’s” substitute “Tribunal’s”.

In section 194, after the definition of “disabled person” insert—

“First-tier Tribunal” means the First-tier Tribunal for Scotland,”.
PART 3

RIGHT TO ADAPT RENTED HOUSES

Housing (Scotland) Act 2006 (asp 1)

52 The 2006 Act is amended as follows.

53 In section 64—
   (a) subsection (6) is repealed,
   (b) in subsection (7), for “(5) or, as the case may be, (6)” substitute “or (5)”.

54 Subsections (3) and (4) of section 65 are repealed.

55 Section 67 is repealed.

PART 4

LANDLORD REGISTRATION

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

56 The 2004 Act is amended as follows.

57 In section 92—
   (a) subsection (4) is repealed,
   (b) in subsection (5)—
       (i) for “sheriff”, where it first occurs, substitute “First-tier Tribunal”,
       (ii) for “sheriff principal” substitute “Upper Tribunal”,
   (c) in subsection (6), for “sheriff principal” substitute “Upper Tribunal”.

58 In section 92ZA—
   (a) in subsection (1)(b)—
       (i) in sub-paragraph (i), for “sheriff” substitute “First-tier Tribunal”,
       (ii) in sub-paragraph (ii), for “sheriff” substitute “First-tier Tribunal”,
       (iii) in sub-paragraph (ii)(A), for “sheriff’s” substitute “First-tier Tribunal’s”,
       (iv) in sub-paragraph (ii)(B), for “sheriff principal” substitute “Upper Tribunal”,
   (b) in subsection (2)(b)—
       (i) in sub-paragraph (i), for “sheriff” substitute “First-tier Tribunal”,
       (ii) in sub-paragraph (ii), for “sheriff” substitute “First-tier Tribunal”,
       (iii) in sub-paragraph (ii)(A), for “sheriff’s” substitute “First-tier Tribunal’s”,
       (iv) in sub-paragraph (ii)(B), for “sheriff principal” substitute “Upper Tribunal”.

59 In section 97—
   (a) in subsection (6), for “court” substitute “tribunal”,


60 In section 101(1)—
   (a) before the definition of “house”, insert—
   ““First-tier Tribunal” means the First-tier Tribunal for Scotland,”,
   (b) after the definition of “unconnected person”, insert—
   ““Upper Tribunal” means the Upper Tribunal for Scotland,”.

SCHEDULE 2
(introduced by section 84)
MINOR AND CONSEQUENTIAL AMENDMENTS

Local Government, Planning and Land Act 1980 (c.65)
10
1 Section 156(4) of the Local Government, Planning and Land Act 1980 is repealed.

Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)
2 Section 13(11) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 is repealed.

Rent (Scotland) Act 1984 (c.58)
3 In Case 7 of Part 1 of Schedule 2 to the Rent (Scotland) Act 1984—
   (a) the word “either” is repealed,
   (b) paragraph (b) and the word “or” immediately preceding it are repealed.

Housing (Scotland) Act 1987 (c.26)
4 (1) The 1987 Act is amended as follows.
    (2) In section 19 of the 1987 Act—
       (a) in subsection (1), for “local authority or a registered social landlord” substitute “social landlord”,
       (b) in subsection (2)—
          (i) for “housing provider” substitute “social landlord”,
          (ii) for “housing providers” substitute “social landlords”,
       (c) for subsection (3) substitute—
          “(3) In this Part, “social landlord” means any local authority or any registered social landlord.”.
    (3) In section 20(2)—
       (a) for “local authority and a registered social landlord” substitute “social landlord”,
       (b) in paragraph (b), after sub-paragraph (ii) insert—
          “(iia)that a dissolution of a civil partnership or a decree of separation of civil partners be obtained, or”.
(4) In section 21(3), paragraph (ia) and the word “and” at the end of that paragraph are repealed.

(5) In section 82—
   (a) the words “this Part and in” are repealed, and
   (b) the definitions of “application to purchase”, “heritable proprietor”, “housing co-operative”, “offer to sell”, “police authority” and “secure tenancy” are repealed.

(6) The title to section 82 becomes “Interpretation of sections 14, 19 and 20”.

(7) In section 338(1)—
   (a) in the definition of “house”, the words “(except in relation to Part XIV)” are repealed,
   (b) the definition of “secure tenancy” is repealed.

Housing (Scotland) Act 1988 (c.43)

5 (1) The Housing (Scotland) Act 1988 is amended as follows.
   (2) In section 42(1)(d), the words “or in pursuance of section 282(3)(b) of that Act (grant of a tenancy upon acquisition by public sector authority of defective dwelling)” are repealed.
   (3) Paragraph 7 of Schedule 2 is repealed.
   (4) Paragraphs 19 to 26 of Schedule 17 are repealed.

Local Government and Housing Act 1989 (c.42)

6 Section 166(1) to (5) of the Local Government and Housing Act 1989 is repealed.

Leasehold Reform, Housing and Urban Development Act 1993 (c.28)

7 Section 156 of the Leasehold Reform, Housing and Urban Development Act 1993 is repealed.

Local Government etc. (Scotland) Act 1994 (c.39)

8 Paragraph 152(6) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 is repealed.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

9 Paragraph 48(3) of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is repealed.

Housing (Scotland) Act 2001 (asp 10)

10 (1) The 2001 Act is amended as follows.
   (2) Section 23(6)(d) is repealed.
   (3) Sections 42 to 51 are repealed.
   (4) In schedule 10—
(a) paragraph 13(3)(c)(ii) is repealed,
(b) paragraph 13(6) to (20) is repealed,
(c) paragraph 13(36) to (40) is repealed.

**Water Industry (Scotland) Act 2002 (asp 3)**

5 Paragraph 18(5) of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.

**Scottish Public Services Ombudsman Act 2002 (asp 11)**

12 Paragraph 44 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 is repealed.

**Freedom of Information (Scotland) Act 2002 (asp 13)**

10 The Freedom of Information (Scotland) Act 2002 is amended as follows.
   (2) In schedule 1, after paragraph 18A insert—
   “18B The Scottish Housing Regulator.”.
   (3) Paragraph 85B of schedule 1 is repealed.

**Land Reform (Scotland) Act 2003 (asp 2)**

15 The Land Reform (Scotland) Act 2003 is amended as follows.
   (2) Section 40(4)(g)(v) is repealed.
   (3) Section 65(2)(d) is repealed.
   (4) Section 84(2)(c) is repealed.

**Agricultural Holdings (Scotland) Act 2003 (asp 11)**

20 Section 27(1)(g)(vi) of the Agricultural Holdings (Scotland) Act 2003 is repealed.

**Fire (Scotland) Act 2005 (asp 5)**

16 Paragraph 13 of schedule 3 to the Fire (Scotland) Act 2005 is repealed.

**Housing (Scotland) Act 2010 (asp 17)**

17 The 2010 Act is amended as follows.
   (2) In section 58(1), for “the” where it secondly occurs substitute “a”.
   (3) Section 108(1)(f) is repealed.
   (4) In section 110(1), after paragraph (a) insert—
   “(aa) the proposed disposal is not by way of granting security over the land or
   any interest in it,”.
   (5) Sections 140 to 144 are repealed.
   (6) In schedule 2—
(a) paragraph 3(4) is repealed,
(b) paragraph 9 is repealed.

*Police and Fire Reform (Scotland) Act 2012 (asp 8)*

18 Paragraph 56 of schedule 7 to the Police and Fire Reform (Scotland) Act 2012 is repealed.
Housing (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about housing, including provision about the abolition of the right to buy, social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes.

Introduced by: Nicola Sturgeon
Supported by: Margaret Burgess
On: 21 November 2013
Bill type: Government Bill
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

HOUSING (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Housing (Scotland) Bill introduced in the Scottish Parliament on 21 November 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 41–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

3. In these notes:
   - “the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62)
   - “the 1974 Act” means the Land Tenure Reform (Scotland) Act 1974 (c.38)
   - “the 1983 Act” means the Mobile Homes Act 1983 (c.34)
   - “the 1984 Act” means the Rent (Scotland) Act 1984 (c.58)
   - “the Defects Act” means the Housing Defects Act 1984 (c.50)
   - “the 1987 Act” means the Housing (Scotland) Act 1987 (c.26)
   - “the 1988 Act” means the Housing (Scotland) Act 1988 (c.43)
   - “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46)
   - “the 2001 Act” means the Housing (Scotland) Act 2001 (asp 10)
   - “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)
   - “the Tenements Act” means the Tenements (Scotland) Act 2004 (asp 11)
   - “the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1)
   - “the 2010 Act” means the Housing (Scotland) Act 2010 (asp 17)
   - “the 2011 Act” means the Property Factors (Scotland) Act 2011 (asp 8)
   - “the Tribunals Bill” means the Tribunals (Scotland) Bill, introduced on 9th May 2013.

THE BILL

4. The purpose of the Housing (Scotland) Bill (“the Bill”) is to provide additional protection for tenants in the private rented sector and permanent residents of mobile home sites; to support improvements in housing quality in the private rented and privately-owned sectors; to make better use of the existing stock of social rented homes; and to provide more efficient access to justice for landlords and tenants in the private rented sector.
5. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

THE STRUCTURE AND A SUMMARY OF THE BILL

6. The Bill is in eight Parts.
   - Part 1 contains provisions which will abolish the right to buy.
   - Part 2 makes provision in relation to social housing allocations; the extension of the term of the short Scottish secure tenancy; the right to assign or sublet a tenancy, to establish a joint tenancy and to succeed to a secure tenancy.
   - Part 3 transfers jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal; makes provisions which deem a landlord as being registered on the landlord register where an application has not been determined by a local authority within 12 months; and provides third party reporting rights to the private rented housing panel for enforcement of the landlords’ repairing standard.
   - Part 4 makes provision for the registration of letting agents (including a fit and proper person test); creates an offence of operating as a letting agent without being registered; sets out the process for handling disputes between letting agents and landlords or tenants; and allows the Scottish Ministers to provide for a letting agent code of practice by regulations.
   - Part 5 makes provision for the licencing of relevant permanent sites in Scotland; (including a fit and proper person test); for offences relating to permanent sites and for local authority enforcement of statutory requirements, including powers of entry and recovery of expenses in relation to enforcement action.
   - Part 6 amends local authority powers to enforce repairs and maintenance in private homes.
   - Part 7 makes a number of miscellaneous amendments: granting the Scottish Ministers powers to exempt certain schemes, such as shared equity schemes, from the right to redeem a heritable security after 20 years in relation to private dwellings; amends the Scottish Housing Regulator’s powers to transfer assets following inquiries; and repeals provisions in the Housing (Scotland) Act 1987 that designate pre-cast reinforced concrete houses as defective.
   - Part 8 sets out various supplementary and final provisions.

PART ONE – RIGHT TO BUY

7. This Part repeals existing provisions on right to buy in the Housing (Scotland) Act 1987 (the “1987 Act”), so that right to buy is abolished for all tenants who have a Scottish secure tenancy with a relevant social landlord. Consequently, no tenant of social housing in Scotland will have the right to buy from the date of the coming into force of section 1. It also repeals provisions in the 1987 Act, the Housing (Scotland) Act 2001 (“the 2001 Act”) and the Housing (Scotland) Act 2010 (“the 2010 Act”), which are no longer required following the abolition of
right to buy. In addition, it makes two amendments to the 1987 Act to ensure that changes to that Act made by the 2010 Act operate as intended until right to buy ends.

8. Section 1(1) repeals sections 61 to 81, 84 and 84A of the 1987 Act (the right to buy and associated provisions). These sections of the 1987 Act concern secure tenants’ right to buy; the procedure to follow when an application to purchase is made; circumstances in which houses provided for special purposes or liable for demolition are exempt from the right to buy; reference to the Lands Tribunal in cases of dispute; recoverability of discount; the rent to loan scheme; the powers of the Scottish Ministers in relation to right to buy; and the preservation of a tenant’s right to buy where a relevant landlord disposes of the home to a private sector landlord.

9. Section 1(2) repeals section 52 of the 2001 Act. Section 52 obliges the Scottish Ministers to report within four years of the provision coming into force on the extent to which tenants had exercised their right to buy and the effect of this on housing stock, the needs of people for, the demand for and availability of housing accommodation.

10. Section 1(3) repeals sections 145 to 147 of the 2010 Act. These sections require the Scottish Ministers to collect and publish information about right to buy sales in relation to each local authority and registered social landlord and about the number of tenants with the right to buy their house in relation to each local authority.

11. Section 2(a) amends section 61ZA(1) of the 1987 Act. Section 61ZA, inserted by section 141 of the 2010 Act, extends the range of circumstances under which the right to buy cannot be exercised to include new tenants to the social housing sector. This was intended to ensure that tenants taking up a Scottish secure tenancy for the first time (following commencement of section 141) and those returning to the social rented sector after a break would not have the right to buy the property they rent from a social landlord. This amendment to section 61ZA(1) is intended to ensure that occupation other than as a tenant before that date does not exempt a person from the new tenant provisions.

12. Section 2(b) amends section 61F of the 1987 Act. Section 61F, inserted by section 143 of the 2010 Act, extends the range of circumstances set out in sections 61A to 61E of the 1987 Act under which the right to buy cannot be exercised, to include new supply social housing (therefore exempting it from the right to buy, with some exceptions where a tenant with a Scottish secure tenancy moves to new supply social housing in circumstances outwith their control). This amendment is intended to ensure that tenants in this position have their right to buy protected, irrespective of when their tenancy was created.

13. Section 85(4) provides that the Scottish Ministers cannot appoint a date on which the right to buy will end which is less than three years from the date the Bill receives Royal Assent (in other words the Scottish Ministers cannot commence section 1(1) before the end of a three-year period from the date of Royal Assent).
PART TWO – SOCIAL HOUSING

14. Part 2 amends the Housing (Scotland) Act 1987 ("the 1987 Act") and the Housing (Scotland) Act 2001 ("the 2001 Act"). The changes relate to social landlords’ powers to allocate social housing and grant Scottish secure tenancies and short Scottish secure tenancies.

Allocation of social housing

Reasonable preference in allocation of social housing

15. Section 3 amends section 20 of the 1987 Act to replace the existing categories of persons to whom social landlords must give reasonable preference when allocating social housing. It states that reasonable preference in allocations must be given to persons who are homeless or threatened with homelessness and persons who are living under unsatisfactory housing conditions, in each case where that person’s housing needs are not capable of being met by other housing options which are available.

Rules on priority of allocation of housing: consultation

16. Section 4 inserts new section 20A into the 1987 Act. New section 20A requires social landlords to consult those mentioned in subsection 20A(2) and prepare and publish a report on the consultation, before determining the priority of allocation of houses held by it for housing purposes. When making or amending the allocation policy, subsection (2) amends section 21 of the 1987 Act to require social landlords to take account of any local housing strategy and any guidance issued by the Scottish Ministers. Subsection (2) also enables the Scottish Ministers to make regulations subject to the affirmative procedure, which prescribe the type or description of persons whom social landlords must include in their rules governing the priority of allocation of houses. This is intended as a safeguard to ensure that categories of persons are not routinely omitted from an individual landlord’s allocation policies.

17. Section 5 amends section 20 of the 1987 Act to allow social landlords to take account of the age of the applicant in the allocation of housing. New subsection (2B) provides that social landlords must nevertheless treat the applicant as protected against age discrimination in terms of Part 2 of the Equality Act 2010.

18. Section 6 amends section 20 of the 1987 Act to ensure that social landlords take no account of the ownership of or value of heritable property owned by the applicant or by a person who lives with or who it is proposed will live with the applicant, in the limited circumstances set out in new subsection (2C). These circumstances include, for example, where a property has not been let and the owner cannot secure entry to that property or where it is probable that occupation of the property will lead to abuse from some other person residing in that property.

19. Section 7 amends section 20 and inserts new section 20B in the 1987 Act to allow social landlords to impose a minimum period before the applicant is eligible for the allocation of housing, if certain circumstances apply. A minimum period requirement cannot be placed on homeless applicants to whom the local authority has a duty to provide settled accommodation (new subsection (2)(b)). A social landlord may determine that an applicant is ineligible for the allocation of social housing if any of the circumstances in new section 20B(5) apply in relation
to the applicant. Some of the circumstances also apply in relation to a person who it is proposed will reside with the applicant. The circumstances include antisocial behaviour, harassment, using a house for immoral or illegal purposes or offences punishable by imprisonment that were committed in the vicinity of the house. It provides the Scottish Ministers with the power by regulations to prescribe the maximum period preceding the application that a social landlord may consider any of the circumstances in section 20B(5). Subsection (4) also provides the Scottish Ministers with the power by regulations to prescribe a maximum period for an application to have remained in force before an applicant is eligible for housing to be allocated when a landlord imposes such a period under any of those circumstances. Subsection (8) provides applicants with a right to appeal to the sheriff against a landlord’s decision to make them ineligible for a period for the allocation of housing.

Short Scottish secure tenancy

20. Section 8(2) substitutes a new subsection (2) in section 35 of the 2001 Act. New section 35(2) extends the circumstances in which a landlord may serve a notice on a tenant under subsection (3) (a notice stating that the Scottish secure tenancy becomes a short Scottish secure tenancy). The circumstances include where a tenant or person associated with the tenant has, within the period of three years preceding the date of service of the notice, acted in an antisocial manner, pursued a course of conduct amounting to harassment or a course of conduct which is otherwise antisocial in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality. New section 35(3) makes a consequential amendment to section 37(1) (conversion to a Scottish secure tenancy) of the 2001 Act.

21. New section 35(4) inserts new paragraph 2A in schedule 6 to the 2001 Act to provide that the conduct referred to in new section 34(2)(b) if carried out by the persons referred to in new paragraph 2A(2), within the period of three years preceding the date of service of the notice, is a new ground for granting applicants a short Scottish secure tenancy. It also amends paragraph 6 of schedule 6 to the 2001 Act so that the ground for granting a short Scottish secure tenancy related to accommodation for a person in receipt of housing support only applies when no other paragraph in that schedule applies and where the person is in receipt of a housing support service. New section 34(5) makes another consequential amendment to section 31(5) of the 1987 Act to include new paragraph 2A as accommodation considered to be permanent accommodation under the duties of local authorities to persons found to be homeless.

22. Section 9 creates a new ground for granting a short Scottish secure tenancy, for homeowners, where the house is to be let expressly on a temporary basis to a person who owns heritable property, or where a person who it is proposed will reside with them owns heritable property. This is to allow them to make arrangements in respect of the heritable property they own, including sale or installation of adaptations, that will allow the person’s housing needs to be met.

23. Section 10 (1) amends section 34 of the 2001 Act to give short Scottish secure tenancies granted on the grounds of antisocial behaviour or a previous eviction order a term of 12 months. Subsection (2) amends section 35 of the 2001 Act to provide that a short Scottish secure tenancy created by virtue of that section also has a term of 12 months. Subsection (3) inserts new subsection (5) and (6) into section 37 of the 2001 Act (conversion to Scottish secure tenancy) to
provide that after this period, the short Scottish secure tenancy will automatically convert to a Scottish secure tenancy (unless the social landlord has taken steps to extend the short Scottish secure tenancy by a further six months or to seek repossession of the tenancy) on the term which applied before the tenancy became a short Scottish secure tenancy.

24. Section 11 inserts new section 35A in the 2001 Act to provide that the term of a short Scottish secure tenancy granted on antisocial behaviour or previous eviction grounds may be extended by a further period of six months from the date which would otherwise be the expiry day of that tenancy. Tenants must have been given two months’ notice of the extension (including the reasons for the extension) and must be being given housing support services. An extension may be required because the tenant requires support for a further period in order for the tenant to be able to sustain a Scottish secure tenancy. Subsection (2) makes consequential amendments to section 37 of the 2001 Act.

25. Section 12 amends section 36 of the 2001 Act. Section 12(a) inserts a new subparagraph (aa) in section 36(2) to provide that proceedings for recovery of possession may not be raised, in the case of short Scottish secure tenancies created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 (those granted on antisocial behaviour or previous eviction grounds), unless the landlord considers that any obligation of the tenancy has been broken. Section 12(b) inserts a new subparagraph (aa) into section 36(3) to require landlords of such tenancies to give tenants reasons why they are seeking recovery of possession of the tenancy (including, if new subsection (2)(aa) applies, the obligations the landlord considers have been broken). This section also gives tenants a right to request that their landlord review the decision to seek recovery of possession before the case goes to court (new subsection (4A)). New subsection (4C) gives the Scottish Ministers the power by regulations to make provisions about the procedure to be followed in such reviews. Section 12(e) inserts a new subsection (8) into section 36 of the 2001 Act to allow the procedure for recovery of possession (with respect to the serving of the notice for recovery of possession) under Scottish secure tenancies to also be used with short Scottish secure tenancies so long as the tenant has been given four weeks’ notice prior to the landlord raising proceedings for recovery of possession.

Scottish secure tenancy

26. Section 13(1) amends section 11 of the 2001 Act to introduce a 12-month qualifying period, where a person has used the house in question as the person’s only or principal home, before a person can apply to be added to a tenancy as a joint tenant. Subsection (2)(a) amends section 32 of the 2001 Act to replace a six-month qualifying period with a 12-month qualifying period before a tenant can apply to assign the tenancy to another person. The proposed assignee will also have to have lived at the property and used it as their only or principal home for 12 months before they may be assigned the property. It also introduces a 12-month qualifying period before a tenant can apply to sublet the tenancy to another person. In all cases where a qualifying period applies, the individual must have notified the landlord that they are living in the property as their only or principal home before the 12-month period begins (new subsection (1B) as inserted into section 32 by 13(2)(b)). Section 13(c) inserts new subparagraphs (f) and (g) into section 32(3) to provide new grounds for reasonable refusal of consent.
27. Section 14 amends schedule 3 to the 2001 Act for the purpose of succession to a Scottish secure tenancy. This schedule makes provision as to who are qualified persons to whom a Scottish secure tenancy passes by operation of law on the death of a tenant. Currently paragraph 2(2) of schedule 3 provides that a person living with a tenant as husband and wife or in a relationship of this character, except that they are of the same sex, is a qualified person if the house has been their only or principal home for a period of 6 months preceding the tenant’s death. Section 14(a) replaces this six month qualifying period with a 12-month qualifying period.

28. Paragraph 3 of schedule 3 is amended to provide that a member of the tenant’s family aged at least 16 years is a qualifying person for the purposes of succession to a Scottish secure tenancy, provided the house was their only or principal home throughout the 12 months ending in the tenant’s death. This is a change to the existing requirement that such a family member is a qualifying person where the house was their only or principal home at the time of the tenant’s death.

29. Paragraph 4(b) of schedule 3 is amended to provide that a carer providing, or who has provided, care for the tenant or a member of the tenant’s family where the house was the carer’s only or principal home throughout the period of 12 months ending with the tenant’s death is a qualifying person. This is a change to the existing requirement that such a carer is a qualifying person where the house was the carer’s only or principal home at the time of the tenant’s death and the carer had given up a previous only or principal home.

30. In all cases where a qualifying period applies in section 14, the individual must have notified the landlord that they are living in the property as their only or principal home before the 12-month period begins (new paragraph 4A).

31. Section 15 inserts paragraph (aa) in section 16(2) of the 2001 Act to remove a requirement that the court considers whether it is reasonable to make an order for eviction, in cases where another court has already convicted a tenant of using the house for immoral or illegal purposes or of an offence punishable by imprisonment, committed in, or in the locality of, the house. The landlord will have to have such grounds for seeking recovery of possession of the property and have, within 12 months of the tenant’s conviction or appeal, served a notice on the tenant that the landlord intends to seek recovery of possession of the property. The tenant retains a right to challenge the court action.

32. Section 16 amends schedule 2 to the 2001 Act to allow landlords to seek recovery of possession of adapted property where it has been allocated to persons who do not need adaptations. Landlords have an existing duty under section 16(2)(b) of the 2001 Act to rehouse any such persons in suitable alternative accommodation.

PART THREE – PRIVATE RENTED HOUSING

33. Part 3 makes provision in relation to the transfer of responsibility for hearing civil cases relating to the private rented sector from the Scottish courts to the Scottish Tribunals.
Transfer of sheriff's jurisdiction to First-tier Tribunal

34. Sections 17 to 21 and schedule 1 to the Bill make provision to transfer the types of civil private rented sector housing court actions specified in these provisions from the jurisdiction of the sheriff court to the jurisdiction of the First-tier Tribunal ("FTT"). These actions include repossession cases and various non-repossession related cases. The FTT is due to be established under the Tribunals (Scotland) Bill ("the Tribunals Bill") which was introduced in the Scottish Parliament on 9th May 2013. Provisions and powers provided in the Tribunals Bill will allow for operational detail such as the establishment of tribunal rules and appointment of members to the FTT. The Explanatory Notes in relation to this part of the Bill should, therefore, be read in conjunction with the Tribunals Bill.

35. Section 17 provides for the functions and jurisdiction of the sheriff court in relation to civil actions arising from regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984 ("the 1984 Act"), Part VII contracts within the meaning of section 63 of the 1984 Act and assured tenancies within the meaning of section 12 of the Housing (Scotland) Act 1988 ("the 1988 Act"), to be transferred to the FTT. This includes matters of eviction.

36. Part 1 of schedule 1 makes consequential amendments to this effect.

37. Section 18(2) amends section 18 of the Housing (Scotland) Act 2006 ("the 2006 Act") to provide that applications from a landlord or tenant for an order to exclude or modify the application of sections 14, 15 and 17 of the 2006 Act to the tenancy (with regards to the landlord’s duty to repair and maintain, and the prohibition on contracting out of the landlord’s duty to repair and maintain) are transferred from the jurisdiction of the sheriff court to the jurisdiction of the FTT.

38. Section 18(4) amends section 57 of the 2006 Act to provide that where the section applies, the FTT, as opposed to the sheriff, may order a person who prevents or obstructs another person from doing anything which that person is required, authorised or entitled to do under Part 1 of the 2006 Act, to permit that person to do all things which they are required, authorised or entitled to do.

39. Part 2 of schedule 1 makes consequential amendments to this effect.

40. Section 19 inserts new section 66A into the 2006 Act. New section 66A provides the ability for tenants to appeal a landlord’s refusal of, or imposition of conditions on, consent to adapt a rented house for a disabled person or for energy efficiency. The effect of the insertion of this section is to transfer jurisdiction to the FTT.

41. Part 3 of schedule 1 makes consequential amendments.

42. Section 20 provides for the jurisdiction to decide civil matters relating to landlord registration arising from the Antisocial Behaviour etc. (Scotland) Act 2004 ("the 2004 Act")
(appeals against local authority decisions regarding landlord registration) to be transferred from the sheriff court to the FTT.

43. Part 4 of schedule 1 makes consequential amendments.

44. Section 21(1)(a) provides a power for the Scottish Ministers, by regulations, to transfer jurisdiction to decide cases under section 153(2) of the 2006 Act (where a person has obstructed another person from completing an action in relation to breaches of houses in multiple occupation (“HMO”) licences or local authority amenity notices) from the sheriff to the FTT.

45. Section 21(1)(b) provides that the Scottish Ministers may also, by regulations, transfer appeals against decisions of local authorities to which section 158 of the 2006 Act applies (against decisions relating to HMOs) and applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act and warrants for ejection under paragraph 2 of schedule 5 to that Act in relation to premises or land, from the sheriff to the FTT.

46. Section 21(2) provides that regulations under subsection (1) may also:
   - disapply section 153(2) of the 2006 Act (regarding orders in cases where a person has obstructed another person under sections 145(2), 146(2), 151 or schedule 5 of that Act) which would become appropriate if all powers to make orders in these cases have been transferred to the FTT,
   - disapply section 159(1) and paragraph 9(2) of schedule 4 to the 2006 Act (which allow any decision of a local authority in relation to HMOs to be appealed by summary application to the sheriff and the sheriff to extend the period in which a local authority must decide whether to grant or refuse an HMO licence application),
   - disapply paragraph 3(1) of schedule 5 to the 2006 Act (which relates to warrants for ejection where a person has not complied with a requirement to evacuate to allow work to be carried out), and
   - make other consequential amendments to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

Landlord registration

47. Part 3 of the Bill also amends the 2004 Act by including provisions for the introduction of a time limit of 12 months for the determination of landlord registration applications.

48. Section 22 inserts a new section 85B into the 2004 Act and requires that local authorities determine applications for registration (as required by section 84 of the 2004 Act) made by relevant persons under section 83 of the 2004 Act, within 12 months of receipt of the application.

49. New section 85B(3) allows a local authority to apply to the FTT for an extension to this 12 month period. The period may be extended by such a period as the FTT thinks is appropriate, but may not be extended unless the application is made before the 12 month period expires.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

(subsection (4)). The person making the application for registration is entitled to be party to any application for an extension to the 12 month period (subsection (5)). The decision of the FTT on the application will be final (subsection (6)).

50. New section 85B(7) provides that in the event of a local authority failure to determine the landlord application within the 12 month period, authorisation is deemed to have been granted automatically by the local authority. The authority is to be treated as having entered the relevant person in the register maintained by it under section 82(1) of the 2004 Act on the day by which the authority was required to determine the application. Unless the relevant person is otherwise removed from the register in accordance with Part 8 of the 2004 Act, that person is to be treated as being removed from the register on the expiry of the period of 12 months from that date (subsection (7)(b)).

51. Where new section 85B(7) applies (where the local authority has not determined an application within 12 months of its receipt), details of the relevant person’s name and registration number must be entered in the register maintained by the authority under section 82(1) of the 2004 Act (subsection 8). Subsection (9) provides that (subject to the modifications specified in subsection (10)) the relevant person is treated for all purposes as having been registered by virtue of section 84(2)(a) of the 2004 Act (in other words, as if the authority has made a positive determination of the application). The requirement for an authority to remove the entry from the register three years from the day on which the entry is made in the register in terms of section 84(6) of the 2004 Act does not apply to deemed granted applications (in other words to those applications entered by virtue of a local authority having not determined it within 12 months of the date of receipt of the application) (subsection (10)(c)).

52. The modifications specified in subsection (10) are that in the case where an applicant does not specify the name of a person who acts for the landlord in respect of a property specified in the application under section 83(1)(c), the applicant is to be treated as being registered by virtue of section 84(3). Where an applicant specifies at least one house, and the name and address of someone acting in respect of a property specified in the application under section 83(1)(c), the applicant is to be treated as being registered by virtue of section 84(4).

53. Section 22(2) amends section 86(1)(a) of the 2004 Act so that a person entered into the register by virtue of a deemed granted application is notified of that fact as soon as practicable after the entry has been made.

Enforcement of repairing standard

54. Part 3 of the Bill also makes provision to expand access to the private rented housing panel by enabling third party applications by local authorities to enforce the repairing standard.

55. Section 23(1)(a) amends section 22 of the 2006 Act by inserting subsections (1A) and (1B), to enable 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 which is provided for in section 13 of the 2006 Act (section 14(1)(b) of the 2006 Act provides that the landlord in a tenancy must ensure that the house meets the repairing standard at all times during the tenancy).
New section 22(1B) defines such a third party applicant as a local authority, or a person specified by order by the Scottish Ministers.

56. Section 23(1)(b) amends section 22(2) of the 2006 Act to require that an application made by a third party must set out the third party applicant’s reasons for considering that the repairing standard is not met.

57. Section 23(1)(c) amends section 22(3) of the 2006 Act to provide that an application in respect of the repairing standard cannot be made unless the person making the application has informed the landlord that work needs to be carried out for the purpose of complying with the repairing standard. Section 23(1)(d) amends section 22(4) to provide that applications made under this amended section (both by tenants and by third party applicants) cannot be made if the landlord is a local authority landlord, a registered social landlord, Scottish Water or Scottish Homes.

58. New section 22(4A) as inserted by section 23(1)(e) of the Bill makes provision that the tenant of the house concerned is entitled to be a party to the determination of any application by a third party to the private rented housing panel.

59. Section 23(3) amends section 22A(1) of the 2006 Act to provide that on receipt of an application by a tenant or third party applicant (other than a local authority third party applicant), the private rented housing panel must provide the information specified in section 22A(2) to the local authority for the area in which the house is situated for the purpose of the local authority maintaining the register under section 82(1) of the 2004 Act (landlord register).

60. Section 23(4) of the Bill amends section 23 of the 2006 Act so that the processes whereby the president of the private rented housing panel decides whether to refer an application to a private rented housing committee or to reject it will also apply to applications made by a third party. Notification of rejected third party applications must be given to the third party applicant and the tenant, setting out the reasons for rejection and the procedures for appealing against it (new subsection (4A) as inserted into section 23 of the 2006 Act).

61. Section 23(5) amends section 24 of the 2006 Act so that the private rented housing committee must make a determination of applications made by a tenant or a third party as to whether the landlord has failed to comply with the repairing standard (in other words the landlord’s duty under section 14(1)(b)).

62. Section 23(6) amends section 181(2) of the 2006 Act so that rights of entry for a member of a private rented housing committee are extended to cover any house which is the subject of a third party application in respect of the repairing standard.

Procedure for third party applications

63. Section 24 amends schedule 2 to the 2006 Act so that the procedures to be adopted by a private rented housing committee in determining an application to the private rented housing
panel in relation to a landlord’s failure to comply with the repairing standard (in terms of section 14(1)(b) of the 2006 Act), take account of applications made by a third party. In the case of a third party application, the third party must be notified and given the opportunity to make written or oral representations. Any changes made at the request of a third party applicant to the date by which evidence must be provided must be notified to the third party, the tenant and landlords.

64. The procedures followed by a committee in making other inquiries must include consideration of any written or oral representations, and any report about the state of the property concerned, by third party applicants (in terms of section 24(2) which amends paragraph 2 of schedule 2 to the 2006 Act).

65. The committee may cite any person to give evidence or information, including a third party applicant (in terms of section 24(3) which amends paragraph 3 of schedule 2 to the 2006 Act). No allowances or expenses are payable to the landlords, tenant, tenant or landlord representatives of third party applicants (in terms of section 24(4) which amends paragraph 5 of schedule 2 to the 2006 Act).

66. Section 24(5) also amends the procedures for recording and notification of decisions in paragraph 6 of schedule 2 to the 2006 Act, to include third party applications. Once a private rented housing committee reaches its decision it must send notification to the landlord, tenant, and any person acting for the tenant in relation to the application and the local authority, unless that authority is the third party applicant.

67. Section 24(6) amends paragraph 7(1) of schedule 2 to the 2006 Act to provide that a third party applicant may withdraw the application under new section 22A(1A) of the 2006 Act. Paragraph 7(2), however, provides that, despite the withdrawal the committee may continue to consider the case and make a repairing standard enforcement order if appropriate.

Appeals in relation to third party applications

68. Section 25(1) amends section 64 of the 2006 Act to give a third party applicant aggrieved by a decision by a private rented housing committee mentioned in subsection (4) (a) to (f) of section 64, the right to appeal such a decision to the sheriff within 21 days of notification of the decision (new subsection (4A)).

69. Section 65(2) of the 2006 Act is amended by section 25(2) to provide that the sheriff may determine appeals by third party applicants by confirming the decision, remitting the decision to the president or the private rented housing committee as the case may be for reconsideration or quashing the decision made.

70. New section 66(3A) (as inserted by section 25(3)) makes provision for the third party applicant to be a party to proceedings, and for the tenant to be entitled to be party to the proceedings, where a landlord appeals a decision relating to a third party application to the sheriff under section 64(4) of the 2006 Act.
71. Under new section 66(3B) (also as inserted by section 25(3)), where a tenant appeals a decision of a committee in respect of a third party application to the sheriff under section 64(4) of the 2006 Act, the landlord and third party applicant are to be parties to the proceedings.

72. Under new section 66(3C) (also as inserted by section 25(3)), where a third party applicant appeals to the sheriff under new section 64(4A) against a decision of the committee in relation to that application, the landlord is to be party to the proceedings and the tenant is entitled to be a party.

PART FOUR – LETTING AGENTS

73. Part 4 of the Bill makes provision to further regulate the letting agent industry in Scotland. The purpose of this part of the Bill is to help improve letting agent levels of service and professionalism, by strengthening the regulation of the industry.

74. This involves the creation of a mandatory register of letting agents in Scotland, with an associated ‘fit and proper person test’; and the creation of a statutory code of practice to which all letting agents must adhere. The Bill also enables the First-tier Tribunal (―FTT‖) (which is to be established under the Tribunals (Scotland) Bill) to make a range of enforcement orders to provide redress for tenants and landlords in cases where a letting agent fails to comply with that code of practice.

Inclusion in the register

75. Section 26 requires the Scottish Ministers to create and maintain a national register, containing an entry for each letting agent. This will include the name and address of each person entered in the register, and any other information relating to that person the Scottish Ministers may specify in regulations. The register will be available to the public.

76. Section 27 provides that a letting agent may apply to be entered on the register, sets out the information that must be supplied as part of such an application, and makes provision for an application fee to be charged and gives the Scottish Ministers a power to determine this fee. The section should be read alongside section 39 which makes it an offence to operate as a letting agent without being entered on the register.

77. Subsection (2)(a) to (f) of section 27 sets out the information that an application must contain. These provide for what information is required depending on whether an applicant is a sole trader, a partnership, a company or a body with some other legal status. Where the applicant is not a natural person, subsection (2)(d) and (e) require certain details also to be supplied in relation to individual persons within the organisation who hold a senior or controlling position. When determining (under section 29) whether the applicant is a fit and proper person to be a registered letting agent, the Scottish Ministers may take into account information relating to these named individuals. Subsection (2)(a) to (f) should be read alongside section 28, which makes it an offence to knowingly supply false information or fail to supply the required information.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

78. Section 28 makes it an offence to knowingly supply false information or to fail to provide the required information in an application under section 27.

79. Section 29 provides that the Scottish Ministers must determine an application which is made under section 27 and sets out aspects of the process they must follow. If they determine that the applicant is a fit and proper person to carry out letting agency work, subsection (2) provides that they must enter the applicant on the register. If the Scottish Ministers determine that the applicant is not a fit and proper person then subsection (4) provides that they must refuse to enter the applicant in the register. These provisions should be read alongside section 30 which sets out the matters that must be considered in determining if a person is a fit and proper person to carry out letting agency work. Subsection (5) provides that where the Scottish Ministers are considering refusal of an application, they must give notice of this to the applicant, including providing reasons, and allow the applicant to make representations.

80. Section 30 sets out the material that the Scottish Ministers must take into account when deciding if a person is fit and proper to be entered on the register, which includes the Scottish Ministers having regard to all of the circumstances of the case. Subsection (2) relates to particular criminal convictions and contraventions of the law that must be considered. Subsection (3) lists matters to be considered that are related to compliance with the letting agent code of practice and any associated enforcement orders. Subsection (4) provides a power for the Scottish Ministers to modify the list of convictions and contraventions at subsections (2) and (3) by order subject to the affirmative procedure.

81. Section 31 allows the Scottish Ministers to request that a person supplies a criminal record certificate if the Scottish Ministers have reason to doubt the accuracy of information relating to section 30(2). This request can be made at the time of application to the register, or at any time after a person has been entered on the register. If the request is made at the time of application, then the person cannot be entered on the register until the certificate is received by the Scottish Ministers.

Duties of registered letting agents

82. Section 32 requires the Scottish Ministers to allocate a number to each registered letting agent. Registered letting agents must take all reasonable steps to ensure that the number is included in documents sent to landlords or tenants (prospective or current), advertisements and communications, and any other material that the Scottish Ministers may specify by order. Subsection (3) defines “advertisement” and “communication”.

83. Section 33 places a duty on the registered letting agent to notify the Scottish Ministers in writing, as soon as practicable, if any of the information supplied in the application has become inaccurate due to a change in circumstances. Subsection (3) requires that any notification must be accompanied by such fee as the Scottish Ministers may determine by regulations, and subsection (3) provides a power for the Scottish Ministers to set that fee. Subsection (4) makes it an offence to fail to comply with this duty to inform.
Removal from the register

84. Section 34 provides that, unless a new application is made under section 27, the Scottish Ministers must remove a registered letting agent from the register after three years from the date of registration.

85. Section 35 provides that the Scottish Ministers may remove a registered letting agent from the register without waiting for the expiry of the three-year registration period if they no longer consider the agent to be a fit and proper person to carry out letting agency work. Subsections (2) to (4) set out aspects of the process that the Scottish Ministers must follow before removing the person, including giving notice to the agent informing the agent of the right to make representations to the Scottish Ministers.

Appeals

86. Section 36 provides for appeals to the FTT against decisions of the Scottish Ministers in relation to refusal of a registration application or removal from the register. Subsection (2) sets out the time period (21 days) for an appeal to be made following notification of the decision.

Consequences of refusal or removal

87. Section 37 provides that where a person has been refused registration, or had the registration revoked, the Scottish Ministers must publicise this fact by noting it in the register. The note must remain on the register for a period of 12 months, unless the person is subsequently entered on the register within that time, in which case the note must be removed (subsections (4) and (5)).

88. Section 38 relates to situations where a person has been removed from the register or has been refused entry to the register. It provides that such a person cannot recover any costs relating to carrying out letting agency work after having been refused entry to the register or removed from the register, and after the relevant appeal period has expired. Subsection (3) also requires the Scottish Ministers to publish as soon as practicable after the relevant date, in such manner as they think fit, a notice of the agent’s refusal or removal and of the fact that no costs are recoverable from the date of refusal or removal.

Offences where no registration

89. Section 39 makes it an offence to carry out letting agency work unless registered. Subsection (2) provides that a person is not committing an offence during the period of 21 days following the date of notification of refusal or removal from the register and during the period of the appeal process up until the appeal is decided or abandoned.

90. Section 40 makes it an offence to use a number purporting to be a letting agent registration number without being a registered letting agent. Subsection (2) again provides that the offence will only be committed following 21 days of notification of refusal or removal from the register or following any appeal having been decided or abandoned.
Code of practice

91. Section 41 provides for the establishment of a letting agent code of practice. It gives a power to the Scottish Ministers, by regulations subject to the negative procedure, to create a code which sets out the standards of practice which are required of persons who carry out letting agency work (which is defined at section 51). Before finalising the code, the Scottish Ministers must carry out consultation on a draft of it.

92. Section 42 provides that where the terms of an agreement between the letting agent and either a landlord or tenant purport to exclude or limit any duty of the letting agent under the code or impose any penalty, disability or obligation in the event of a person enforcing compliance by the agent, the terms will have no effect.

Letting agent enforcement orders

93. Section 43 provides that the route of redress where alleged breaches of the code of practice will be determined will be the FTT. Subsection (1) provides that a tenant or landlord may apply to the FTT for such a determination regarding a relevant letting agent. A “relevant” letting agent is defined at subsection (2). The purpose of this section is to make it clear the circumstances in which a tenant or landlord can raise a case with the FTT.

94. Subsection (3) provides that a landlord or tenant applying to have a case heard at the FTT under subsection (1) must specify why they believe the code has been breached by the letting agent. Subsection (4) provides that, before applying to the FTT, a tenant or landlord must tell the letting agent about the alleged breach of the code and subsection (5) provides that the FTT may reject the application if the letting agent has not been allowed a reasonable opportunity to rectify the matter.

95. Subsection (6) provides that the FTT must decide regarding an application made under subsection (1) whether a letting agent has complied with the code of practice. Subsections (7) and (8) relate to a letting agent enforcement order which must be issued if the letting agent has failed to comply with the code, and set out what the order may consist of.

96. Section 44 provides that the FTT may vary or revoke an enforcement order made under section 43.

97. Section 45 provides steps that may be taken by the FTT to establish if a letting agent enforcement order has been complied with. Subsection (2) provides that the FTT must notify the Scottish Ministers if it determines there has been a failure to comply. This allows the Scottish Ministers to take the matter into account for registration considerations under section 30.

98. Section 46 makes it an offence to fail to comply with a letting agent enforcement order.
General

99. Section 47 provides a power for the Scottish Ministers to transfer, by regulations subject to the negative procedure, other, existing types of cases relating to letting agents which are currently within the jurisdiction of the sheriff court to the FTT.

100. Section 48 sets out, where offences are committed by bodies corporate, who within that body is considered to have committed the offence and be liable to be proceeded against.

101. Section 49 allows the Scottish Ministers to delegate their functions under Part 4 to another person or body (other than the powers to make orders or regulations).

102. Section 50 makes some consequential modifications to the 2004 Act relating to landlord registration.

103. Sections 51 and 52 provide definitions of various terms used within this Part.

PART FIVE – MOBILE HOME SITES WITH PERMANENT RESIDENTS

104. Part 5 makes provision for the licensing system for mobile home sites with permanent residents.

General application

105. The provisions in this part of the Bill amend the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"). The 1960 Act requires occupiers of land (referred to in these Notes as “site owners”) to hold a licence before they allow their land to be used as a caravan site. Currently the same licensing regime applies to sites used for holiday caravans, and sites with permanent residents. The Bill changes the licensing regime for most sites with permanent residents. These sites are defined as “relevant permanent sites” in new section 32Z5, which is inserted into the 1960 Act by section 70 of the Bill. New section 32Z5 is an interpretation section for new Part 1A.

106. New Part 1A deals with the licensing of relevant permanent sites in Scotland. Sites that have a licence that only allows mobile homes on them to be used for holidays are not affected by new Part 1A of the 1960 Act. Part 1 of the 1960 Act will continue to apply to such holiday sites. The definition of “excepted permission” (also in new section 32Z5) means that holiday sites that have an employee of the site owner living on them year round (for example to manage the site), are not covered by new Part 1A of the 1960 Act.

107. Section 53 of the Bill amends section 32 of the 1960 Act by inserting a new paragraph (m) into section 32(1). Section 32 changes the operation and wording of Part 1 of the 1960 Act as it applies to Scotland. For example it replaces references to English courts and legal terms with references to the relevant equivalents under Scots law. All the provisions in Part 1 of the 1960 Act need to be read alongside section 32 when considering how the Act applies to
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Scotland. The effect of the new paragraph (m) is that, when applying the 1960 Act to a relevant permanent site in Scotland, it is also necessary to read the provisions of Part 1A.

Part 1A site licence

108. Section 54 of the Bill inserts new sections 32B and 32C into the 1960 Act. New section 32B has the effect of replacing the existing system for licensing mobile home sites with permanent residents in Scotland (in terms of Part 1 of the 1960 Act) with the new system set out in new Part 1A (in terms of new section 32A(1)). New section 32B(1) provides that a relevant permanent site application may be made by the site owner of the relevant permanent site to the local authority in whose area the site is situated, and new section 32B(2) sets out what such a site licence application must include. For example, it must be in such format as is determined by the local authority, and specify the land in respect of which the application is made. Section 32B(3) requires an applicant to provide such information to the local authority as it reasonably requires.

109. New section 32C provides that the relevant local authority may charge a fee for a site licence application. A local authority may also fix different fees for different applications (subsection (2)). Such a fee cannot exceed the amount a local authority considers represents the reasonable costs of deciding on an application (subsection (3)). Subsection (4) provides that the Scottish Ministers may by regulations make provision about the charging of fees for site licence applications. This could include setting out the factors a local authority could take into account when fixing the fee for a site licence, and providing for the fee not to exceed a maximum fee level prescribed by the Scottish Ministers in the regulations.

110. Section 55 inserts new section 32D into the 1960 Act which provides for the issue and renewal of a site licence for a relevant permanent site. New section 32D(1) provides that a local authority may issue a site licence:

- where the applicant has the relevant planning permission (for the use of the land as a caravan site otherwise than by a development order), and
- if the authority is satisfied that the applicant is a fit and proper person or where the applicant is not a natural person, the individual holding the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person, and
- if the authority if satisfied that any person appointed by the applicant to manage the site is a fit and proper person, and in the case where a person to be appointed by the applicant to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site is also a fit and proper person.

110. Section 32D(2) provides that a local authority must renew a licence if:

- the applicant has the relevant planning permission (for the use of the land as a caravan site otherwise than by a development order), and
- if the authority is satisfied that the applicant is a fit and proper person or where the applicant is not a natural person, the individual holding the most senior position...
within the management structure of the relevant partnership, company or body is a fit and proper person, and

- if the authority is satisfied that any person appointed by the applicant to manage the site is a fit and proper person, and in the case where a person to be appointed by the applicant to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site is also a fit and proper person.

111. New section 32D(3) provides that the local authority must not at any time issue a site licence to a person whom the local authority knows had held a site licence which has been revoked under the 1960 Act less than three years before that time.

112. New section 32D(4) provides that before refusing to issue a site licence, the authority must give the applicant a notice stating that it is considering refusal and its reasoning for this, and informing the applicant of the right to make written representations to the authority before the date specified in the notice. New section 32D(5) requires the local authority to consider the application and any representations made in making its decision.

113. Section 55 also inserts new section 32E into the 1960 Act. Section 32E sets out procedures for the transfer of a site licence (other than on the death of a site licence holder) to a person who is to become the site owner of the relevant permanent site. This would occur, for example, where a site was sold to a new owner. Procedures similar to those that apply for a new site licence application apply in this situation, such as the need for the new site licence holder (and any person appointed to manage the site) to be a fit and proper person to hold a site licence (subsection (2)). Subsection (3) also provides that the applicant and transferee must provide the local authority with such information as the authority reasonably requires in order to establish whether the person is a fit and proper person.

114. Section 55 also inserts new section 32F into the 1960 Act. New section 32F provides for time limits in relation to an application for a site licence and consent to transfer a licence mentioned in section 32E. Under the provision, if a local authority does not determine a site licence application within 12 months of receiving it (unless that period is extended by a sheriff) then the applicant is to be treated as having been granted a site licence by the authority under new section 32F (subsection (7)). The period may be extended by the sheriff by such period as the sheriff thinks fit (subsection (3)), the sheriff may not extend the period unless the authority applies for the extension before the period expires (subsection (4)), the applicant is entitled to be party to any proceedings to extend the period of determination (subsection (5)), and the sheriff’s decision on such summary application is final (subsection (6)). If a local authority does not determine an application for consent to transfer a licence within 12 months of receiving the application, then the applicant is to be treated as having been granted consent on the day the application was made (subsection (8)).

115. Section 55 also inserts new section 32G into the 1960 Act. This provision gives the local authority the power to transfer a site licence to the person it considers to be the site owner of the relevant permanent site (subsection (2)), where a holder of a site licence does not seek consent of the authority for the transfer under section 10(1) of the 1960 Act and where it appears to the authority that the holder of the licence is no longer the site owner. The section introduces an
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offence of knowingly or recklessly providing false or misleading information to a local authority in relation to a local authority decision to transfer a licence. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (subsection (7)). In 2013 this was a maximum of £1,000.

116. New section 32H as inserted into the 1960 Act by section 55, provides that where a relevant permanent site licence is transferred to a person in accordance with section 10(4) of the 1960 Act, that person must give the authority such information as the authority may reasonably require in order to make a determination under new section 32L, in relation to a decision to revoke a site licence on the basis that someone is not a fit and proper person.

117. New section 32I is inserted into the 1960 Act by section 55. It requires a local authority after:

- determinations of relevant permanent site applications,
- determinations of an application for consent to transfer a licence mentioned in new section 32E,
- a decision to transfer a licence mentioned in new section 32G,

to notify respectively the applicant, the applicant and the transferee, and the previous holder of the site licence and transferee, of the decision, the reasons for it, and the right to appeal under new section 32M. It must do so as soon as practicable after making the decision (subsection (1)).

118. Section 56 inserts new section 32J into the 1960 Act and provides that a site licence issued or renewed for a “relevant permanent site” will be for a duration of three years (unless terminated by its revocation, or unless the holder is no longer entitled to planning permission for use of the land as a caravan site, or any planning permission for the use of the site as a caravan site expires). New section 32J(2) gives the Scottish Ministers the power to alter the duration of site licences, by order subject to the affirmative procedure.

119. Section 57 inserts new section 32K into the 1960 Act. This requires a site licence holder to tell a local authority when the holder has appointed someone to manage the site. New section 32K also requires a site licence holder to notify a local authority of a change of circumstances that means that information provided by the licence holder has become inaccurate.

120. Section 58 inserts new section 32L into the 1960 Act. This gives a local authority the power to revoke a site licence if the local authority is satisfied that the licence holder is no longer a fit and proper person, or that the person appointed to manage a site is no longer a fit and proper person. This provision can also apply if the applicant, and/or the organisation carrying out management of the site, is a body such as a company or partnership rather than an individual.

121. Section 32L(2) sets out the procedures a local authority must follow when revoking a licence (such as the requirement to notify the site owner of the proposed revocation and of the right of the site owner to make written representations). Subsection (4) requires a local authority to serve notice of the revocation on the owner of the relevant permanent site, identifying the site...
licence to which it relates, the reason(s) for revoking the licence, and explaining the right of appeal.

122. Section 59 inserts new section 32M into the 1960 Act. Under this section the person involved (the applicant, the applicant and transferee, the previous holder of the licence and the transferee, depending on the determination) can appeal to the sheriff against a local authority’s decision on a site licence application, or on the transfer of a licence (whether on death of a site licence holder or not).

123. Section 60 inserts new section 32N into the 1960 Act. This section gives the Scottish Ministers the power to make regulations in relation to the procedure and timings to be followed in relation to:

- a relevant permanent site licence application,
- the seeking of consent to transfer of a site licence mentioned in new sections 32E and 32H,
- appeals relating to a site licence under new section 32M.

**Fit and proper persons**

124. Section 61 inserts new section 32O into the 1960 Act. The section sets out the factors a local authority must consider when applying the fit and proper person test, for example to potential site licence holders, or existing site licence holders seeking to renew a licence. This section provides that the relevant material that can be taken into account includes:

- whether the person has been convicted of offences involving fraud or other dishonesty, violence, drugs, firearms, and sexual offences within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995,
- evidence an applicant has practised unlawful discrimination,
- whether the person has contravened the law relating to caravans, housing, and landlords and tenants,
- whether the person has engaged in antisocial behaviour,
- whether the person has breached the conditions of the site licence,
- other relevant material a local authority is aware of from its licensing duties.

125. Subsection (6) gives the Scottish Ministers the power to adjust the list of relevant material, by order subject to the affirmative procedure.

126. Section 62 inserts new section 32P into the 1960 Act. This gives a local authority the power, if it is carrying out the fit and proper person test, to require the relevant person to provide a criminal conviction certificate. A local authority can only do so if it has reasonable grounds to suspect that the information an applicant has provided in relation to the fit and proper person test is, or has become, inaccurate.
Offences relating to relevant permanent sites

127. Section 63 inserts new sections 32Q, 32R, 32S and 32T into the 1960 Act. New section 32Q makes it an offence for someone to knowingly or recklessly provide information that is materially false or misleading to a local authority, in respect of an application for, or transfer of, a site licence. The maximum fine, if convicted of doing so, is level 3 on the standard scale (in 2013 this was a maximum of £1,000). Section 32R makes it an offence for someone to cause or permit land to be used as a relevant permanent site without a licence. The maximum fine, if convicted for doing so, is £50,000. New section 32S makes it an offence for the site owner of a relevant permanent site to fail to comply with any licence conditions. The maximum fine, if convicted of breaching a licence condition, is £10,000. Section 32T gives the Scottish Ministers the power to vary the maximum fine for breaching a licence condition or operating a site without a licence. The process for doing this would be by order subject to the affirmative procedure. This is so that the maximum fine levels can be changed in the future, for example to reflect changes in inflation, without the need for a Bill but still requiring Parliamentary approval.

Local authority enforcement at relevant permanent sites

128. Section 64 inserts new sections 32U, 32V and 32W into the 1960 Act. These sections all relate to improvement notices. New section 32U sets out:

- the situation in which a local authority may issue an improvement notice,
- what must be part of such a notice (such as what needs to be improved, and by what date),
- the procedure for any appeal to the sheriff relating to an improvement notice, and
- the powers a local authority has to suspend, revoke, or vary an improvement notice.

129. New section 32V makes it an offence for a site owner who has been served with an improvement notice to fail to comply with the terms of the notice. If someone is convicted of doing so the maximum fine is £10,000.

130. New section 32W gives a local authority the power, if the site owner fails to take the steps specified in the improvement notice within the period specified, to take the action required on a site to meet the conditions set out in the improvement notice. Subsection (2) requires the local authority to give the site owner notice, and specific details, of the work the local authority will be carrying out (or the authority will be requiring someone else to do on its behalf and to give that person’s name), and the dates and times on which this intended action will be taken.

131. Section 65 inserts new section 32X into the 1960 Act. This gives a local authority the power to issue a penalty notice on the site owner, and provides for the situations in which the authority can do so (where there is no licence or a breach of licence conditions). A penalty notice has the effect of suspending pitch fee payments (within the meaning of paragraph 32 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (the “1983 Act”)) from residents to the site owner, for a specific period of time. It also suspends the commission a mobile home resident can be required to pay the site owner on sale of a mobile home (under paragraph 1 of Part 1 of
132. Section 66 inserts new section 32Y into the 1960 Act. This provision relates to the appointment of an interim manager to manage a mobile home site. Section 32Y(1) gives a local authority the power to apply to a sheriff to appoint an interim manager for a site. Subsection (5) gives the Scottish Ministers the power to make regulations relating to the appointment of an interim manager. These regulations may, in particular, cover the powers of an interim manager, the qualifications the manager must hold, and the actions the interim manager must carry out.

133. Section 67 inserts section 32Z into the 1960 Act. This gives a local authority the power to take emergency action where it appears to a local authority that:

- the site licence holder is failing, or has failed, to comply with a site licence condition; and as a result of that there is an imminent risk to the health and safety of anyone who is, or may be, on the land, or
- a person is causing or permitting land to be used as a relevant permanent site without a site licence, and there is an imminent risk to the health and safety of anyone who is, or may be, on the land.

134. In the circumstances above the local authority would be able to carry out work to remove the imminent risk of serious harm. The section requires an authority to provide notice to the site owner in an emergency action notice before carrying out emergency action (subsection (4)), and to provide the site owner with an emergency action report after it has begun undertaking emergency action (subsection (7)). It also provides for appeals against an authority taking emergency action.

135. Under section 26 of the 1960 Act any authorised officer of a local authority has a right of entry to a mobile home site, subject to provisions about the purpose of such entry and the hours in which it takes place. Section 68 inserts new section 32Z1 into the 1960 Act. This extends the applicability of the provisions in section 26, so that they cover situations relating to the use of the new enforcement powers a local authority has under this Bill in relation to relevant permanent sites. In relation to an emergency action notice it also has the effect that a site owner is not required to have 24 hours’ notice that someone will be carrying out such works, and that entry to the site does not have to be at a reasonable hour. This is to cover situations where such entry must be carried out urgently, for example to address something that is immediately dangerous on a site.

136. Section 69 inserts new sections 32Z2, 32Z3 and 32Z4 into the 1960 Act. Section 32Z2 gives a local authority the power to recover expenses from a site owner where the local authority has served an improvement notice, penalty notice, or emergency action notice on, or provided at emergency action report to, a site owner. Section 32Z3 allows a local authority to recover from the site owner the expenses of taking action under an improvement notice or emergency action notice.
137. Section 32Z4 gives a local authority the power to recover costs for inspections, and other work to investigate or assess compliance with licence conditions.

Miscellaneous

138. Section 70 inserts section 32Z5 into the 1960 Act. This sets out the definitions of terms that are introduced into the 1960 Act through the Bill.

139. Section 70 also inserts section 32Z6 into the 1960 Act. The effect is that a decision by a local authority to refuse to issue or renew a licence, or to revoke a licence, has no effect on an agreement a site resident has with the site owner, if that agreement is one to which the 1983 Act applies. This means that the rights of residents to remain on the site under the 1983 Act will not be affected by a decision to revoke, or to refuse to issue or renew, a site licence.

140. Section 71 sets out transitional provisions for existing site licences. Under this section an existing site licence would continue in force for two years from the day the relevant section of the Bill comes into force, unless it is revoked or replaced by a new licence issued by the local authority.

PART SIX – PRIVATE HOUSING CONDITIONS

141. Part 6 amends local authority powers to enforce repairs and maintenance in private homes.

Tenement management scheme

142. Section 72(1)(b) inserts a new section 4A in the Tenements (Scotland) Act 2004 ("the Tenements Act"). This allows local authorities to pay a missing share when the majority of owners in a tenement block have agreed to carry out work to repair or maintain their property, and one or more of the owners has not paid their share of the cost of the work (where the owner is unable or unwilling to do so, or where the owners cannot be identified or found). New section 4A(5) allows the local authority to recover the costs of the missing share and any associated administrative expenses from the owner on whose behalf it was paid. Before exercising this power, the local authority must notify the owner who has not paid a share that it intends to make the payment itself (new section 4A(4)).

143. Section 72(1)(d) amends rule 5 of the Tenement Management Scheme in schedule 1 to the Tenements Act, so that the other owners are not liable for the costs of another owner which are met by a share paid by a local authority.

144. Section 72(2) amends section 172 of the Housing (Scotland) Act 2006 ("the 2006 Act") so that local authorities can use repayment charges to recover the costs of paying missing shares from the owner on whose behalf the missing share was paid.
Work notices

145. Section 73 amends section 30(1) of the 2006 Act, which provides powers for local authorities to issue work notices to require owners to carry out work on substandard houses. The amendment inserts an additional ground on which the local authority may issue a work notice, which is where the work is needed to improve the safety or security of any house (whether or not situated in a housing renewal area).

Maintenance orders and plans

146. Section 74 amends section 42(2) of the 2006 Act, which provides powers for local authorities to issue maintenance orders to require owners to prepare a maintenance plan for securing the maintenance of the house to a reasonable standard. The amendment inserts an additional ground on which the local authority may issue a maintenance order, which is where a work notice has been served and no certificate has been issued to confirm that the work required to be carried out by the work notice has been completed.

147. Section 75(3) repeals the provisions in section 61 of 2006 Act which require local authorities to register in the appropriate land register maintenance plans approved or devised under section 46 of the 2006 Act, or varied under section 47, and notices of revocation of a maintenance plan under section 47. Section 75(1) amends section 24(1) of the Building (Scotland) Act 2003 to require local authorities to include a record of decisions to approve, devise, vary or revoke maintenance plans in the building standards register.

148. Section 75(2) amends section 47 of the 2006 Act, which allows local authorities to vary or revoke maintenance plans. The amendment allows local authorities to revoke a maintenance plan where the local authority is satisfied that a property factor has been appointed to manage or maintain the premises to which the plan relates. “Property factor” is defined in section 2 of the Property Factors (Scotland) Act 2011.

Non-residential premises: repayment charges

149. Section 76 amends sections 172 and 173 of the 2006 which allow local authorities to recover costs in connection with enforcement of repairs and maintenance to living accommodation by creating a repayment charge which is recoverable in thirty equal annual instalments. A repayment charge is a charge against property and has priority over all future burdens and most existing burdens on the property. The amendment widens the scope of sections 172 and 173 to include any non-residential parts of buildings that contain living accommodation.

PART SEVEN – MISCELLANEOUS

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

150. Part 7 of the Bill contains a provision, section 77(1) which amends the “20-year security rule” – section 11 of the Land Tenure Reform (Scotland) Act 1974 (“the 1974 Act”).
151. Section 11 of the 1974 Act permits debtors to redeem a standard security over property used as, or as part of, a private dwelling house once 20 years from the date of creation of the security has elapsed, regardless of the fact that the security is for a longer contractual term. Social landlords, their connected bodies and rural housing bodies are able to renounce their right to redeem a standard security after 20 years.

152. The amendment in section 77(1) which inserts subsection (3D) into section 11 of the 1974 Act provides that the right to redeem a standard security, as permitted by section 11, will not be allowed in certain circumstances to be prescribed by the Scottish Ministers by order subject to the negative procedure.

153. Section 77(1) also inserts subsection (3E) into section 11, which provides that an order under subsection (3D) may disapply the right to redeem a standard security subject to certain conditions or restrictions. Such an order may restrict the disapplication of the right to redeem to specified descriptions of debt, to specified creditors or creditors of specified descriptions, to specified heritable securities or heritable securities of specified descriptions. It may prescribe circumstances in which the disapplication of the right to redeem is to apply or cease to apply. For example, an order under new section 11(3D) could exclude debtors who grant a standard security in favour of the Scottish Ministers as part of a Scottish Government shared equity scheme or equity release scheme from being able to exercise the right to redeem their security after 20 years.

Delegation of certain functions

154. Section 78(1) amends section 21 of the 2006 Act by introducing a new power for the president of the private rented housing panel to delegate functions under section 23 of the 2006 Act (to refer applications to the private rented housing panel or reject applications), to the vice-president of the panel or to another member of the panel as the president sees fit (new section 21(8A) of the 2006 Act). This is in addition to the existing powers enabling the transfer of the president’s functions during times of absence or incapacity as provided for in section 21(8) of the 2006 Act. The provision is intended to increase flexibility to manage the multiple work strands undertaken by the panel. New section 21(8B) provides that such a delegation does not affect the president’s responsibility for the carrying out of delegated functions or ability to carry out the delegated functions.

155. Section 78(2) inserts new subsections (8) and (9) into section 16 of the Property Factors (Scotland) Act 2011 to provide that the functions of the president of the homeowner housing panel under section 18 (to refer applications to the homeowner housing panel for a determination as to whether a property factor has failed to carry out the factor’s duties or to comply with the property factor code of conduct or to reject applications) may be delegated to the vice-president of the panel or to such other member of the panel as the president sees fit. New subsection (9) provides that such a delegation does not affect the president’s responsibility for the carrying out of delegated functions, or ability to carry out delegated functions.
Scottish Housing Regulator: transfer of assets following inquiries

156. Section 79 makes two amendments to section 67 of the Housing (Scotland) Act 2010 (“the 2010 Act”).

157. Paragraph (a) introduces a new subsection (4A) to section 67 of the 2010 Act. This has the effect of creating a narrow exception to the duty on the Scottish Housing Regulator (the Regulator), at section 67(4), always to consult and have regard to the views of tenants and secured creditors that hold securities over houses of a registered social landlord (RSL) before it directs a transfer of the RSL’s assets. The exception would apply in circumstances where the Regulator considered that all of the conditions specified at (a) to (d) of the new subsection were satisfied. These relate to the RSL being in financial jeopardy and vulnerable to steps being taken towards its insolvency, winding up etc. Where the direction to transfer assets would reduce the risk of such steps being taken, if made without the delay that consultation with the RSL’s tenants and secured creditors would cause, the Regulator could direct the transfer of a RSL’s assets without such consultation. In all other circumstances, the duty to consult tenants and secured creditors that section 67(4) imposes on the Regulator would remain.

158. Paragraph (b) repeals the duty on the Regulator, at section 67(6)(a), when it is directing the transfer of some of the assets of a RSL, always to obtain an independent valuation of the assets to be transferred and to direct the transfer at a price that it considers the assets would fetch on the open market.

Repeal of defective designation provisions

159. Section 80 of the Bill provides for the repeal of Part 14 of the Housing (Scotland) Act 1987 (“the 1987 Act”) together with Schedules 20 and 21 of that Act. This removes the provisions of the 1987 Act which deal with the designation as defective of prescribed types of dwelling, the power to provide assistance to owners of such dwellings and the giving of notice to persons seeking to acquire a dwelling that is defective. These provisions are dependent on the Scottish Ministers or local authorities designating classes of buildings as defective, which was last done by the Scottish Ministers in 1984 and appears never to have been done by any local authority. The power to designate is, therefore, being repealed.

160. These provisions were originally set out in the Housing Defects Act 1984 and the provisions affecting Scotland were replaced by Part 14 of the 1987 Act. The designation of dwelling types was made by the Housing Defects (Prefabricated Reinforced Concrete Dwellings) (Scotland) Designations 1984. The period during which applications for assistance could be submitted in respect of these dwelling types has expired, making Part 14 obsolete.

PART EIGHT – SUPPLEMENTARY AND FINAL PROVISIONS

Interpretation

161. Section 81 provides the definition of various terms used in the Bill.
Subordinate legislation

162. Section 82 provides that any power of the Scottish Ministers to make an order or regulations includes a power to make different provision for different purposes or different areas, and incidental, supplemental, consequential, transitional, transitory or saving provision. Subsection (2) lists orders where affirmative procedure is required. Subsection (3) provides that all other orders and regulations are subject to negative procedure. Subsection (4) provides that any commencement order is not subject to either procedure.

Ancillary provision

163. Section 83 gives the Scottish Ministers a free-standing power by order to make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes or in connection with any provision made by or under the Bill.

Minor and consequential amendments

164. Section 84 introduces schedule 2, which amends and repeals enactments as required in consequence of this Bill.

Commencement

165. Section 85 allows the Scottish Ministers by order to set different dates to commence different provisions of the Bill (such an order may include transitional, transitory or saving provision as they consider necessary or expedient). It also specifies that section 1(1) (abolition of right to buy) may not come into force until a period of at least three years has passed, starting from the day of Royal Assent and that section 77 comes into force at the end of the period of two months beginning with the day of Royal Assent.

Short title

166. Section 86 gives the short title of the Bill.

SCHEDULE 1 – TRANSFER OF JURISDICTION TO FIRST-TIER TRIBUNAL

Part 1 – Regulated tenancies, Part VII contracts and assured tenancies

167. Part 1 of schedule 1 makes consequential amendments to the Rent (Scotland) Act 1984 (“the 1984 Act”) and the Housing (Scotland) Act 1988 (“the 1988 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.
Rent (Scotland) Act 1984

168. Paragraph 2 amends section 7(2) of the 1984 Act. Section 7(1) of the 1984 Act makes provision for how the rateable value of dwelling houses should be ascertained and section 7(2) provides the sheriff with powers to determine the proper apportionment of value of a dwelling house, where any question in relation to this arises.

169. Paragraphs 3 and 31 amend section 11 and Schedule 2 of the 1984 Act. Section 11 provides for the grounds for possession of certain dwelling houses repossessions cases and schedule 2 specifies the circumstances in which orders for possession can be made. These include non-payment of rent or antisocial behaviour.

170. Paragraph 4 amends section 12 of the 1984 Act. Section 12 provides extended discretion to sist or suspend proceedings to allow the sheriff to manage proceedings for repossession. For example, this could be to allow a party to fulfil or complete an action or to pay arrears.

171. Consequential to the transfer of repossession cases to the FTT in paragraph 3, paragraph 5 amends section 19 of the 1984 Act. Section 19 regards the rights of subtenants in circumstances where an order for possession of a dwelling house has been made.

172. Paragraph 6 amends section 21 of the 1984 Act. Section 21 regards circumstances where it appears to a sheriff court, after having given a landlord an order for possession of a dwelling house let on a protected tenancy or subject to a statutory tenancy, that the order was maintained by misrepresentation or concealment of material facts, and provides that the court has the power to order compensation be paid to the former tenants for loss or damage sustained.

173. Paragraph 7 amends section 23(1) of the 1984 Act. Section 23 regards tenancies which are not regulated tenancies or Part VII contracts and provides that the enforcement of repossession eviction for these tenancies is unlawful other than through proceedings before the sheriff.

174. Paragraph 8 amends section 24 of the 1984 Act. Section 24 makes special provision with regard to proceedings for repossession where the tenant is a person employed in agriculture (as defined in section 17 of the Agricultural Wages (Scotland) Act 1949).

175. Paragraph 9 repeals the definition of court from section 25 of the 1984 Act as this is no longer required as relevant proceedings are transferred to the FTT.

176. Consequentially to the transfer of jurisdiction for repossession in paragraphs 7 and 8, paragraph 10 amends section 26 of the 1984 Act. Section 26 provides that proceedings for repossession under Part III of that Act are binding on the Crown.

177. Paragraph 11 repeals section 27 of the 1984 Act which set out the procedure for applications to the sheriff under Part III.
178. Paragraph 12 amends section 31(2) of the 1984 Act. Section 31(2) regards rents under regulated tenancies and provides powers to adjust recoverable rent to cover services and furniture.

179. Paragraph 13 amends section 32(4) and (5) of the 1984 Act. Section 32(4) and (5) regard notices of increase to rent under regulated tenancies and provides powers to amend errors.

180. Paragraph 14 amends section 35(12) of the 1984 Act. Section 35(12) provides for the sufficiency of evidence in relation to rent agreements. The effect of the amendment is to ensure that this applies to proceedings before the Scottish Tribunals.

181. Paragraph 15 amends section 39 of the 1984 Act. Section 39 provides powers to order rectification of rent books after determination of recoverable rent. The effect of the amendment is to provide that the FTT can order the rectification of rent books in applicable cases.

182. Paragraph 16 amends section 43B(4) of the 1984 Act. Section 43B(4) regards changes of rent registration service providers and provides for the continuation of proceedings. The effect of the amendment is to provide that tribunal proceedings can continue following changes of responsibility.

183. Paragraph 17 amends section 45(3) of the 1984 Act. Section 45(3) provides for the sufficiency of evidence in relation to rent registers similar to section 35(12) of the 1984 Act. The effect of the amendment is to ensure that this applies to proceedings before the Scottish Tribunals.

184. Paragraph 18 amends section 60(3) of the 1984 Act. Section 60(3) provides powers to determine questions about rent limits for housing association and housing corporation tenancies.

185. Paragraph 19 amends section 64(6)(b) of the 1984 Act. Section 64(6)(b) regards the rateable value of dwelling houses for the purpose of determining whether Part VII of the 1984 Act applies. It provides powers to determine apportionment of rateable value where parties fail to agree.

186. Paragraphs 20 and 21 amend sections 75 and 76 of the 1984 Act. Sections 75 and 76 provide power to reduce the period of notice to quit or postpone the date of possession in relation to contracts described in Part VII of the 1984 Act.


188. Paragraph 23 amends section 97(8) and (9) of the 1984 Act. Section 97(8) and (9) provides powers to terminate or modify rights for tenants who share accommodation.
189. Paragraph 24 inserts new subsection (A1) into section 102 of the 1984 Act, and repeals subsection (2) and amends subsection (3) of that section. Section 102 provides power to determine any question with regard to the application of the 1984 Act. The effect of the amendment is to make clear that the FTT shall have jurisdiction over civil matters arising from this act with the exception of matters arising under Part IX which will remain within the jurisdiction of the sheriff.

190. Paragraph 25 amends section 103 of the 1984 Act. Section 103 regards the procedure by which certain actions are to be raised in the sheriff court.

191. Paragraph 26 amends section 104 of the 1984 Act. Section 104 regards the Court of Session’s power to make certain rules of procedure. The effect of the amendment is to retain this power for criminal proceedings under Part IX of the 1984 Act and not to apply it for tribunal procedures.

192. Paragraph 27 amends section 115(1) of the 1984 Act to include a definition of the FTT.

193. Paragraph 28 amends paragraphs 3 and 7 of Schedule 1 to the 1984 Act. Schedule 1 regards succession rights of protected tenants following the death of protected tenants and provides powers to determine matters where parties fail to agree.

194. Paragraphs 29 and 30 amend paragraphs 3 and 6 of Schedule 1A and paragraph 3 of Schedule 1B to the 1984 Act. Schedules 1A and 1B regard succession rights for tenants and should be read in conjunction with Section 3A of the 1984 Act.

**Housing (Scotland) Act 1988**

195. Paragraph 33 amends section 16(2) of the 1988 Act. Section 16(2) regards the power to end assured tenancies.

196. Paragraph 34 amends section 17(8) of the 1988 Act. Section 17(8) regards proceedings to fix terms for statutory assured tenancies.

197. Paragraphs 35 and 48 amend section 18 and Schedule 5 of the 1988 Act. Section 18 and Schedule 5 regard repossessions cases for assured and short assured tenancies and specifies the circumstances in which orders for possession can be made.

198. Paragraph 36 amends section 19 of the 1988 Act. Section 19 requires that proceedings must not be entertained unless a notice of proceedings has been served in the prescribed format.

199. Paragraph 37 amends section 20 of the 1988 Act. Section 20 regards discretion to sist or adjourn proceedings for possession to allow the sheriff to manage proceedings for repossession. This could be to allow parties to complete a specific action or to repay arrears.
200. Paragraph 38 amends section 21(3) of the 1988 Act. Section 21(3) regards special powers in relation to shared accommodation.

201. Paragraph 39 amends section 22(1) and (2) of the 1988 Act. Section 22(1) and (2) regards powers to order payment of removal expenses.


203. Paragraph 41 amends section 28(1) of the 1988 Act. Section 28(1) regards the effect of the termination of assured tenancies on sub-tenancies.

204. Paragraph 42 amends section 29 of the 1988 Act. Section 29 regards the effect of the termination of assured tenancies on sub-tenancies.

205. Paragraph 43 amends section 30(2) of the 1988 Act. Section 30(2) regards failure to provide a tenancy agreement for an assured tenancy and provides power to draw up an agreement if one does not already exist.

206. Paragraph 44 amends section 33(1) and (4) of the 1988 Act. Section 33(1) and (4) regards the recovery of possession of short assured tenancies under certain circumstances.

207. Paragraph 45 inserts new subsection (4A) into section 36 of the 1988 Act, and amends section 36(6)(b) and (6B). Section 36(6)(b) and (6B) provides power to award damages for unlawful eviction.

208. Paragraph 46 amends section 42(1)(c) of the 1988 Act. Section 42 regards restrictions on assured tenancies.

209. Paragraph 47 amends section 55(1) of the 1988 Act to include a definition of the FTT.

**SCHEDULE 1 - PART 2 - REPAIRING STANDARD**

210. Part 2 of schedule 1 makes consequential amendments to the Housing (Scotland) Act 2006 (“the 2006 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

**Housing (Scotland) Act 2006**

211. Paragraph 50 amends section 24(7) of the 2006 Act. Section 24(7) regards repairing standard orders when an order has been made regarding contracting out of the repairing standard.
212. Paragraph 51 amends section 194 of the 2006 Act to include a definition of the FTT.

**SCHEDULE 1 – PART 3 – RIGHT TO ADAPT RENTED HOUSES**

213. Part 3 of schedule 1 makes consequential amendments to the Housing (Scotland) Act 2006 (“the 2006 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

214. Paragraph 53 amends section 64 of the 2006 Act. Section 64 relates to appeals from decisions by local authorities and the private rented housing panel in relation to the repairing standard.

215. Paragraph 54 repeals section 65(3) and (4) of the 2006 Act. Section 65 relates to the determination of an appeal under section 64.

216. Paragraph 55 repeals section 67 of the 2006 Act. Section 67 provides the Scottish Ministers with the power to transfer jurisdiction for appeals under section 52 of that Act (regarding the right to adapt rented houses) from the sheriff to the private rented housing panel.

**SCHEDULE 1 - PART 4 – LANDLORD REGISTRATION**

217. Part 4 of schedule 1 makes consequential amendments to the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

**Antisocial Behaviour etc. (Scotland) Act 2004**

218. Paragraph 57 repeals section 92(4) and amends section 92(5) and (6) of the 2004 Act which regard the procedure for making appeals to the sheriff against decisions of local authorities about landlord registration.

219. Paragraph 58 amends section 92ZA of the 2004 Act. Section 92ZA regards the duty on local authorities to note refusals and removals for the register of landlords.

220. Paragraph 59 amends section 97(6) and (7) of the 2004 Act. Section 97(6) and (7) regards appeals against local authority decisions regarding landlord registration.

221. Paragraph 60 amends section 101(1) of the 2004 Act to include a definition of the FTT.
SCHEDULE 2 – MINOR AND CONSEQUENTIAL AMENDMENTS

222. Schedule 2 provides for minor and consequential amendments and is introduced by section 84.

223. The amendments in paragraphs 12 and 13 reflect a change in the status of the Scottish Housing Regulator, which is now a non-ministerial office holder in the Scottish Administration. These changes do not alter the position of the Regulator being subject to the Scottish Public Services Ombudsman Act 2002 and the Freedom of Information (Scotland) Act 2002.

224. The amendment in paragraph 17(4) removes the requirement for a registered social landlord to consult its tenants before it grants a standard security over existing houses in order to raise finance. The effect of the amendment is to recreate the position that had previously applied under section 68 of the Housing (Scotland) Act 2001 by requiring registered social landlords to consult their tenants only where they are proposing a disposal of land that requires the consent of the Scottish Housing Regulator (other than disposals to which the special procedure in Part 10 of the 2010 Act applies – disposals and restructuring which result in a change of landlord, or disposals by way of security of loan).
INTRODUCTION

1. This document relates to the Housing (Scotland) Bill (‘the Bill’) introduced in the Scottish Parliament on 21 November 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

OVERVIEW

2. The Bill will safeguard tenants, help to improve housing quality and secure better outcomes for communities. The Bill’s intentions are to provide the legislative basis for implementing Scottish Government policy priorities and achieving strategic housing objectives. The Government’s vision is that all people in Scotland live in high-quality, sustainable homes that they can afford and that meet their needs. The Memorandum summarises the cost and savings implications of the Bill and should be read in conjunction with the Bill’s Policy Memorandum, which sets out more fully the reasoning behind the Bill.

3. The analysis and estimates contained in this Memorandum draw on a variety of sources including:
   - consultation responses to the policy proposals,
   - draft Business Regulatory Impact Assessments (BRIA),
   - discussions with partners and stakeholders for whom there may be financial implications, or who may be affected as a result of the Bill, including local authorities, RSLs, individual organisations, businesses and the third sector.

CONTENTS

4. This Financial Memorandum sets out the costs and savings associated with the following parts to the Bill where potential costs and/or savings have been identified:
   - **Part 1** abolishes the right to buy.
   - **Part 2** amends the definition of reasonable preference in allocation of social housing in the Housing (Scotland) Act 1987 (“the 1987 Act”); sets out the factors that may be considered in the allocation of houses; makes provision for the use of short Scottish secure tenancies where there has been a history of antisocial behaviour and for temporary lets to homeowners; and introduces qualifying periods before tenants can exercise rights to assign, sub-let or request a joint tenancy.
• **Part 3** transfers jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal; introduces a time limit for determining applications for landlord registration and allows local authorities to apply to the private rented housing panel (PRHP) for enforcement of the repairing standard, setting out the procedure for such applications and the right of appeal. It is also the Government’s intention to bring forward provisions at Stage 2 which will allow for local authorities to apply for additional enforcement powers through an enhanced enforcement area.

• **Part 4** provides for a registration system and a code of practice for letting agents, and redress for tenants and landlords.

• **Part 5** amends the site licensing requirements for mobile home sites with permanent residents.

• **Part 6** amends the discretionary powers of local authorities to require owners to carry out work to repair and maintain private homes.

• **Part 7** makes a number of miscellaneous amendments in respect of the right to redeem a security after 20 years in certain circumstances; provides for the president of the PRHP to delegate certain functions; amends the Scottish Housing Regulator’s (SHR) powers to transfer assets following inquiries; and repeals defective designation provisions in the 1987 Act.

5. The Bill does not give rise to any substantial costs for the Scottish Administration, local authorities and other bodies and individuals. The most significant individual net cost per annum identified is the loss of income incurred by the Scottish Government as a result of local authority and registered social landlord (RSL) right to buy (RTB) sales ending. As a guide, this income stream stood at £2,300,000 for 2012/13. However, this figure has steadily decreased as RTB sales have reduced. The net costs that the Scottish Government expects to arise from the other provisions in this Bill are expected to be less than £1,000,000 respectively and to amount to between £1,000,000 - £3,000,000 per annum for the Scottish Administration. One-off costs associated with the provisions in the Bill are estimated to amount to between £270,000 and £400,000 for the Scottish Administration.

6. The largest cost on local authorities is related to the provisions for short Scottish secure tenancies where there has been a history of antisocial behaviour. This is estimated to amount to around £760,000 per annum across all local authorities. Similar costs for RSLs are estimated to amount to £940,000 per annum. However, significant savings are expected as a result of reduction in legal costs outsourced and incurred by RSLs in respect of evictions and appeals. This is estimated to amount to savings of approximately £1,680,000 per annum.

7. Table 1 provides an index of the Bill items, cross referencing them with their respective section number(s), detailing where they can be found in the Financial Memorandum and the expected commencement date. Table 2 provides a summary of the additional costs and savings expected as a result of the Bill provisions being introduced.
Table 1: Index of Bill items

<table>
<thead>
<tr>
<th>Bill item</th>
<th>Bill section number</th>
<th>Financial Memorandum para number</th>
<th>Expected year of commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to buy</td>
<td>1-2</td>
<td>8-54</td>
<td>2017</td>
</tr>
<tr>
<td>Social housing</td>
<td>3-16</td>
<td>55-101</td>
<td>2015</td>
</tr>
<tr>
<td>Private rented housing</td>
<td>17-25</td>
<td>102-181</td>
<td>2014 – 2017 (Part 3 of the Bill covers the transfer of jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal, tacit approval of landlord registration applications and third party reporting to the PRHP all of which may have different implementation/commencement timescales).</td>
</tr>
<tr>
<td>Letting agents</td>
<td>26-52</td>
<td>182-221</td>
<td>2015 - 2017</td>
</tr>
<tr>
<td>Mobile homes sites with permanent residents</td>
<td>53-71</td>
<td>222-250</td>
<td>2015 - 2016</td>
</tr>
<tr>
<td>Private housing conditions</td>
<td>72-76</td>
<td>251-271</td>
<td>2014 - 2015</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>77-80</td>
<td>272-304</td>
<td>2014 – 2017 (Part 7 of the Bill covers the right to redeem heritable security after 20 years, delegation of certain functions of the PRHP, SHR powers to transfer assets after inquiries, and repealing defective designation, all of which may have different implementation/commencement timescales).</td>
</tr>
</tbody>
</table>
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

Table 2: Summary Table of additional costs and savings expected as a result of provisions being introduced

<table>
<thead>
<tr>
<th>Topic</th>
<th>Fin Memo paragraphs</th>
<th>Costs on Scottish Administration</th>
<th>Costs on local authorities</th>
<th>Costs on other bodies, individuals or businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Part 1</strong>&lt;br&gt;Right to buy (RTB)</td>
<td>8-54</td>
<td>Ending RTB will have a <strong>minimal impact on central government expenditure</strong>. The Scottish Government receives income from local authority and RSL RTB sales, which is channelled into the Affordable Housing Supply Programme. This contribution has diminished annually as RTB sales numbers have decreased and was estimated to be <strong>(£2,300,000)</strong> for 2012/13.</td>
<td>Modelling of income from rental stream retained against income from sales receipts lost indicates that ending RTB would be, at worst, <strong>cost neutral</strong>. Consultation responses bear this out. There may be some increased borrowing in the short term which would be offset in the long run by rental income</td>
<td></td>
</tr>
<tr>
<td><strong>Part 2</strong>&lt;br&gt;Social housing</td>
<td>55-101</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of social housing</td>
<td>58-66</td>
<td><strong>Negligible</strong> - There are some one-off resource implications in producing guidance and the development of secondary legislation. The Scottish Government expects these costs to be minimal and to be absorbed within existing budgets.</td>
<td><strong>Negligible</strong> – There are no significant direct costs associated with the provisions for local authorities</td>
<td><strong>RSLs Annual outsourced legal costs associated with a new right of appeal (£22,000)</strong></td>
</tr>
</tbody>
</table>
The Scottish Government expects the new right of appeal to the courts to result in around 50 cases per year. The Scottish Court Service has indicated that the impact of this number of cases, across Scotland, would be minimal and could be absorbed within existing court budgets.

**Short Scottish secure tenancy**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Fin Memo paragraphs</th>
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</tr>
</thead>
<tbody>
<tr>
<td>67-87</td>
<td><strong>Negligible</strong> - There are some one-off resource implications in producing guidance and the development of secondary legislation. The Scottish Government expects these costs to be minimal and to be absorbed within existing budgets.</td>
<td>Annual cost of providing housing support – (£764,000)</td>
<td>RSLs - Annual cost of providing housing support – (£645,000)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Scottish Government expects there to be an increase in appeals about landlords’ decisions to offer short Scottish secure tenancies (“short SSTs”), estimated at around 596 cases per year across Scotland. This will be partly offset by around 60 fewer eviction cases per year due to the wider use of short SSTs and a reduction in court time for eviction cases that do</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**Annual savings in evictions** (from outsourced legal costs) (£-1,636,000)
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

<table>
<thead>
<tr>
<th>Topic</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Secure Scottish tenancy</td>
<td>88-101</td>
<td><strong>Negligible</strong> - There are no significant direct costs associated with the provisions for the Scottish Administration, other than modest resource implications in revising model tenancy agreements and publishing revised leaflets. The Scottish Government expects these costs to be minimal and to be absorbed within existing budgets.</td>
<td><strong>Negligible</strong> – There are no significant direct costs associated with the provisions for local authorities</td>
<td>RSLs - <strong>Annual savings</strong> in eviction costs (from outsourced legal costs) (£-48,000)</td>
</tr>
</tbody>
</table>

go to court. The Scottish Court Service has indicated that the impact of this number of appeals, taking into account the predicted reduction in eviction cases and court time would be minimal and could be absorbed within existing court budgets.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

<table>
<thead>
<tr>
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<th>Fin Memo paragraphs</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>absorbed within existing court budgets.</td>
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</tr>
<tr>
<td><strong>Part 3</strong> Private rented housing</td>
<td>102-181</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer of private rented sector (PRS) housing dispute cases from the Scottish civil courts to the new Scottish First-tier Tribunal (FTT)</td>
<td>103-127</td>
<td>One-off set-up costs between (£89,000) and (£131,000).</td>
<td>Nil</td>
<td>Negligible - Potential for marginal costs for advice agencies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Continuing annual running costs between (£584,000) and (£880,000).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Scottish Court Service - Loss of up to (£49,000) of fee income per annum</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Judicial Appointments Board for Scotland – One-off recruitment costs estimated between (£4,000 and £11,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tacit approval of landlord registration applications</td>
<td>128-139</td>
<td>Costs for Scottish Court Service – The Scottish Government expects these costs to be minimal and to be absorbed within existing budgets.</td>
<td>£500 - £1000 per application to a sheriff</td>
<td>Nil</td>
</tr>
<tr>
<td></td>
<td></td>
<td>One-off costs to make changes to the landlord registration IT system and update guidance between (£15,000 – £19,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third party application in respect of the</td>
<td>140-174</td>
<td>Annual operating costs between (£432,000) and (£651,000) depending on</td>
<td>Nil</td>
<td>Nil</td>
</tr>
</tbody>
</table>
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

<table>
<thead>
<tr>
<th>Topic</th>
<th>Fin Memo paragraphs</th>
<th>Costs on Scottish Administration</th>
<th>Costs on local authorities</th>
<th>Costs on other bodies, individuals or businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>repairing standard</td>
<td></td>
<td>option taken. First year set-up costs of between (£90,000) and (£125,000), inc staff salaries, accommodation, members’ fees and expenses. Costs for Scottish Court Service – <strong>Negligible</strong> – The Scottish Government expects these costs to be minimal and to be absorbed within existing budgets.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enhanced enforcement areas* (*intended to be introduced as a stage 2 amendment)</td>
<td><strong>175-181</strong></td>
<td><strong>Nil</strong></td>
<td><strong>Nil</strong></td>
<td>Cost to Landlords for providing Disclosure Scotland Certificate upon application every 3 years (£25 per certificate)</td>
</tr>
<tr>
<td>Part 4 Letting agents</td>
<td><strong>182-219</strong></td>
<td>Annual operating costs between (£321,000) and (£484,000) depending on option taken. First year set-up costs of between (£75,000) and (£116,000) inc staff salaries, accommodation, members’ fees and expenses.</td>
<td><strong>Nil</strong></td>
<td>£250 registration fee per letting agent business on a three year basis.</td>
</tr>
<tr>
<td>Part 5</td>
<td><strong>220-250</strong></td>
<td><strong>Nil</strong></td>
<td>For local</td>
<td>Site owners</td>
</tr>
<tr>
<td>Topic</td>
<td>Fin Memo paragraphs</td>
<td>Costs on Scottish Administration</td>
<td>Costs on local authorities</td>
<td>Costs on other bodies, individuals or businesses</td>
</tr>
<tr>
<td>-------</td>
<td>---------------------</td>
<td>-----------------------------------</td>
<td>-----------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>Mobile homes sites with permanent residents</td>
<td></td>
<td></td>
<td></td>
<td>The intention is that the proposals will be <strong>cost neutral</strong>. The cost of carrying out work to licence sites will be covered by a license fee charged by local authorities. Enforcement action will also be cost neutral, as costs for any action will be recovered from the site owners concerned.</td>
</tr>
</tbody>
</table>

<p>| Part 6 | Private housing conditions | 251-271 | Nil | Nil | May encourage some home owners to carry out works which they do not currently prioritise. Current annual spending on private homes by owners is £2 billion per year, but the Scottish Government is unable to |</p>
<table>
<thead>
<tr>
<th>Topic</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>estimate how effectively this addresses repair costs. Supports a culture of proactive maintenance which may reduce long term repair bills. May encourage some private landlords to carry out work needed to ensure that homes meet the repairing standard. Would provide local authorities with a method to recover costs from local businesses over a 30-year period.</td>
</tr>
<tr>
<td>Part 7 - Miscellaneous</td>
<td>272-304</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to redeem heritable security after</td>
<td>274-295</td>
<td>Nil</td>
<td>Nil</td>
<td>Home owners participating in schemes designated as</td>
</tr>
</tbody>
</table>
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

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<tr>
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<th>Costs on other bodies, individuals or businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 years: power to exempt</td>
<td></td>
<td></td>
<td></td>
<td>exempt from the 20-year security rule would lose their right to redeem the equity loan at its original value after 20 years as a result of the provisions. This loss is theoretical as, without the provisions, the schemes would either include a requirement to repay the secured loan at year 19 or the schemes may not be in existence at all since the operation of the 20-year rule could make them unviable.</td>
</tr>
</tbody>
</table>
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</tr>
</thead>
<tbody>
<tr>
<td>Delegation of certain functions (PRHP)</td>
<td>296-297</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Scottish Housing Regulator: transfer of assets following inquiries</td>
<td>298-300</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Repeal of defective designation</td>
<td>301-304</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
</tbody>
</table>

**PART 1 - RIGHT TO BUY**

**INTRODUCTION**

8. This section of the Financial Memorandum sets out the expected costs and savings of the provisions in the Bill (at sections 1-2) on the reform to the right to buy (RTB), which will end RTB entitlements for all tenants of social housing in Scotland. The intention of this reform is to create a fairer, less complex system that safeguards social housing for future generations while balancing the rights of tenants against the needs of social landlords and the wider benefits to society as a whole. It considers the financial implications for the Scottish Administration, local authorities and other bodies, individuals and businesses.

9. The Bill includes provisions to end all RTB entitlements in Scotland. A proposal to move all tenants with preserved RTB entitlements onto modernised terms was also consulted on but not pursued. This option was not widely supported by stakeholders. It was considered that it would not remove the complexities of the current system and would not offer as great a wider benefit to the community.

10. This section of the Memorandum sets out the financial impacts which will arise as a consequence of ending all RTB entitlements and the timescales over which these impacts are expected to arise.
RTB sales trends and assumptions

11. This section presents a summary of historic RTB sales trends and an explanation of how these trends have been used to inform future estimates of RTB sales and financial impacts. RTB sales numbers are driven by individual decisions by tenants with RTB entitlements to purchase their properties. Purchase decisions are affected by factors such as the value of the property, the personal financial circumstances of the tenant and wider housing market and credit availability conditions.

12. RTB sales have varied greatly over the last 30 years, with sales peaking in the late 1980s and early 1990s. Since then there has been a considerable decline in RTB sales, apart from a slight rise in the early 2000s resulting from a surge in sales associated with the introduction of the modernised RTB in the Housing (Scotland) Act 2001 ("the 2001 Act"). RTB sales have fallen mainly because most tenants who are able to purchase have already done so, resulting in the sale of most of the more desirable properties. The significantly less generous discount conditions under modernised RTB compared to preserved RTB can be seen to have further depressed sales as they offer less of an incentive to buy. The number of tenants with preserved RTB reduces over time as, in most cases, when tenants with preserved RTB entitlements move house, they move onto modernised entitlements. Apart from the reduced incentive, there are circumstances in which tenants cannot exercise modernised RTB (in pressured areas; in Registered social landlords (RSLs) that are subject to the ten-year suspension; and where they occupy a new-supply house (one built or acquired after 28 June 2008)).

13. Since 2007, RTB sales have been declining further as a result of the housing market downturn associated with the credit crunch. This has created additional uncertainty when trying to estimate future RTB sales numbers. Lower house prices may encourage some tenants to buy their property, whereas others may either be unwilling to take on the risk of a mortgage or simply unable to access the necessary credit. In order to make the analysis as simple but as informative as possible under these uncertain conditions, the assumption has been made that the rate of sales of social housing will stay constant each year and three variations in this sales rate have been examined reflecting different housing market scenarios. The sales rate is defined as the number of sales as a percentage of all stock. The rates presented below provide a reasonably realistic range of potential RTB sales numbers under different economic conditions:

- high sales rate – this approximately reflects the latest five-year average rate of sales (0.60% of all properties sold each year).
- medium sales rate – this approximately reflects the latest three-year average rate of sales over the latest available year (0.32% of all properties sold each year).
- low sales rate - this approximately reflects what the Scottish Government understands to be the latest year sales rate (0.26% of all properties sold each year).

14. The impact of ending RTB was compared to the base case which reflects the number of RTB sales that the Scottish Government would expect to occur under current RTB
legislation. Under the base case, excluding contractual RTB sales by RSLs and voluntary sales, it is estimated that there will be between 12,500 and 15,500 sales over 10 years (based on sales rate in 2011/12). This assumes the level of social stock remains unchanged over the period, which is feasible as any new build would not be eligible for sale.

**Costs on the Scottish Administration**

**Scottish Government**

15. Ending RTB will have a minimal impact on central government expenditure. The Scottish Government receives income from local authority and RSL RTB sales, which is channelled into the Affordable Housing Supply Programme (AHSP). This contribution has diminished annually as RTB sales numbers have decreased and was estimated to be £2.3 million for 2012/13. The chief impact will be on social landlords’ capital receipts and rental income, as described in the following sections.

**Costs on Local Authorities**

16. This section presents a summary of local authorities’ views on the long term financial impact of ending RTB (which were sought as part of the consultation process) and estimates the financial impacts on local authority landlords of ending RTB.

17. Local authorities are one of two types of social landlord that provide housing for rent at less than market rates, mainly, but not exclusively, for those on low incomes. 26 local authorities provide social housing in their respective areas (six others having divested themselves of their housing stock to RSLs that were created to acquire and manage it). The other type of social landlord is a RSL. The impacts of RTB reforms upon RSLs are presented in the next section.

**Local authority housing finance**

18. Local authorities generate financial resources from rental income, non-rental income (e.g. service charges) and capital receipts. Local authorities can use these financial resources to support investment directly or indirectly through borrowing. The investment might take place in the existing housing stock, to build new housing, for housing-related environmental enhancements that relate specifically to the Housing Revenue Account (HRA) stock and benefit tenants directly or to repay outstanding debt.

19. RTB sales have in the past provided the major source of capital receipts for local authorities, although this is no longer the case. Selling a house leads to a number of quite complicated, opposite, short- and long-term financial effects. Firstly, the landlord is no longer liable for future investment in the house although in practice the landlord often ends up paying for some common repairs where owners cannot or will not pay. The sale should also, either immediately or over time, result in a reduction in the landlord’s total management and maintenance costs, but this depends on the landlord’s ability to make changes to its business to realise the potential saving. If the capital receipt from the sale is used to extinguish any outstanding debt on the property (all local authorities have debt associated with the stock to a lesser of greater degree), then there will also be no future payments
required to service the debt by the remaining council tenants. However, if some or none of the debt is repaid by the receipt then the remaining tenants will be liable for the remaining debt servicing payments which could run for a further 10, 20, 30 or more years. On the other hand, the future rental income from the house (typically £3,000 per annum per property) will be lost to the local authority as the tenant will no longer be required to pay rent.

Local authorities’ views on financial impacts

20. Of the 25 local authorities who commented on the financial impact in their consultation response, only five thought the financial impact could or would be negative and only one did not support reform. None of even these authorities said that reform would be unmanageable. Most local authorities stated that the income lost as a result of losing RTB receipts would be minimal or not significant, and would be offset positively by rental income over the longer term, and outweighed by the positive benefits of reforming the RTB more generally. This position was prominent where local authorities had seen a significant reduction in the RTB sales over recent years and expected further reductions in future.

21. In the past, there may have been some concern that local authorities, and also RSLs that had acquired stock through Large Scale Voluntary Transfer (LSVT), may be more dependent on RTB sales, but this concern did not manifest itself strongly in the consultation responses. Given that the Housing (Scotland) Act 2010 ended RTB for new tenants and new-supply houses, and extended the provisions for pressured area designations, and given the small number of RTB sales, landlords have already become accustomed to reduced income from RTB sales.

22. Whilst it was noted from the consultation responses that borrowing and rent setting were the main options available to landlords, responses showed that measures such as reviewing existing business plans and investment programmes could help landlords deal with any capital shortfalls.

23. Because of the above, and the fact that the proposed reform is intended to commence in 2017, there should be little or no impact on availability of resources to meet the 2015 Scottish Housing Quality Standard target.

24. Landlords themselves are best placed to be able to take a view on the financial impacts of the proposed reforms based on their individual circumstances. The Scottish Government’s estimates, however, support the views of landlords that ending RTB will not greatly affect social landlords’ capacity to invest in their stock and that uncertainty associated with current economic conditions is likely to have much more effect.

Flexibility available to local authorities

25. Local authority landlords will continue to be able to dispose of houses on a voluntary basis - sometimes known as a "contractual" RTB. These general consent powers are set out in section 14 of the Housing (Scotland) Act 1987 (“the 1987 Act”). These powers are intended to be used for sales to sitting tenants or for disposing of stock that is difficult to let.
26. The sale should be at the best consideration that can reasonably be obtained. At one time Scottish Ministers had powers under section 74 of the Local Government (Scotland) Act 1973 as amended by section 11 of the Local Government in Scotland Act 2003 to consent to a sale at less than best consideration, but any such sale is now entirely a matter for the local authority.

27. A local authority can also, with Ministers’ consent, dispose of properties to individuals or RSLs (for example) under section 12(7) of the 1987 Act, which is often followed by a demolition of the houses. Alternatively, it can transfer them to the General Fund under section 203(2) of 1987 Act, where again they may be demolished or used for purposes other than general letting e.g. social work.

Estimating the financial impacts of RTB reforms on local authorities

28. Although there will be a reduction in local authorities’ immediate income from RTB receipts as a result of the reform, and three local authorities felt that there may be a short-term increase in borrowing, this should be at least offset and probably more than offset by the long-term benefit of continued rental income (net of associated operating costs) from the stock not sold as a result of the reforms. Crucially, the benefit resulting from the retained net rental surplus would continue to be received over the remaining lifetime of the properties. If sales continue at current levels, the Scottish Government estimates that up to 15,500 units could be retained over a 10-year period. However, this figure is difficult to predict and could increase if the general economic situation improved and mortgage funding became easier to obtain.

29. The main effect of ending RTB over the short term would be a fall in income from selling homes. However, over the longer term, there would be continuing rental income from properties that might otherwise have been sold. In some cases, this could give more rental surplus to borrow against for new housing or improving the existing stock than the money received from sales. Ending the right to buy may also reduce local authorities’ overall costs by helping them to better manage their stock.

30. Since rents in the social sector are below market levels, whether the rental surplus is worth more or less than the capital receipt will depend on how large the RTB discount is, how much below the market level the rents are and the level of the management and maintenance costs. The modelling indicates that, under the preserved right to buy, with its generous discounts, local authorities are likely to be in a better financial position if houses remain part of their stock rather than being sold. In contrast, under the less generous discounts of the modernised right to buy, the sales income may realistically be more than the net rental surplus, and there may be no financial advantage for landlords in keeping the property. Putting these two conclusions together, by ending RTB, since most sales take place under the preserved right to buy, the overall financial effect is likely to be at least neutral, and may be positive.

31. There will be other advantages to retaining stock that transcend the sales receipt against rental stream model. Local authorities will have improved ability to manage their
assets, as there will be a more predictable revenue stream. This may give them greater confidence to borrow over the long term.

32. The retained net rental surplus generated by not selling a property could be used in a number of ways to finance capital expenditure that would otherwise have been financed by a combination of RTB receipts and borrowing. Firstly, in any given year the surplus could be applied directly to funding capital works in that same year as indeed it can now. Many local authorities do fund significant amounts of capital expenditure from current revenue (CFCR). Secondly, the surplus could contribute to reserves available for use in subsequent years to fund capital expenditure. Finally, if there was a need to fund capital expenditure up front, local authorities, through their prudential borrowing capacity, could use the future net rental surplus (assuming they are generating such a surplus as not all currently do) over the lifetime of the property to pay for any borrowing needed to fund such investment.

33. In these ways it is possible for local authorities to convert revenue streams into capital investment, and thus the retained net rental surplus can be used to compensate for any shortfall in capital funding due to lower RTB receipts. This will only occur sustainably, however, if there is a net rental surplus in the first place i.e. rents are sufficiently high to cover costs or alternatively costs sufficiently low to lie below rental income.

34. Income derived from RTB sales receipts represents a decreasing relative share of local authorities’ funding for capital expenditure. In 2007/08 the capital returns submitted by local authorities to the Scottish Government indicated that capital receipts from RTB sales were equivalent to 46% of total HRA capital expenditure. By 2011/12, capital receipts from RTB sales were equivalent to only 7% of total HRA capital expenditure.

35. Year on year, ending RTB should gradually promote greater long-term financial sustainability within the sector by rebalancing local authorities’ business models away from volatile capital income derived from the sale of assets under RTB and increasing their reliance on more stable revenue income from rents.

Scottish Government modelling

36. Social landlords are best placed to assess the impact of reforms on their finances due to their detailed knowledge of their individual circumstances, including which stock would be eligible for RTB. However, the Scottish Government has done some modelling based on national data for local authorities, to give an indication of the impact of RTB reforms on the local authority sector as whole.

37. If a local authority retains a house, it will receive a rental stream from that house. However, it will also have to incur costs associated with the house, such as supervision and management, repairs and maintenance, and capital expenditure relating to major repairs to the house. The rental surplus from retaining the house is calculated as the value of the rents less the associated costs over the remaining lifetime of the property. These figures are expressed in present value terms, which involves discounting a future stream of costs and benefits in order to calculate an equivalent amount in today’s money. It should be noted that debt
service costs are not included in the calculation. This is because the debt has already been incurred: thus the local authority is liable for the debt service costs regardless of whether the house is sold under RTB or whether it is retained.

38. The Scottish Government collects aggregate data\(^1\) from local authority landlords. Data for average rents, supervision and management costs and repairs and maintenance costs were taken from the HRA returns supplied by local authority landlords to the Government. Data for capital expenditure were taken from the capital returns supplied by local authorities to the Scottish Government. The most recent rents were used as a base from which to start modelling. Since costs fluctuate much more over time, a long-average of real costs (i.e. adjusted for inflation) was used for this data.

39. However, it is likely that the houses sold under RTB are in relatively better condition than the average house, and thus have higher rents and a lower requirement for repairs and maintenance and major repairs. In addition, supervision and management costs may not be very responsive to changes in the number of RTB sales. The explanation for this is that the presence of fixed costs involved in managing housing stock makes this type of expenditure less responsive to changes in stock than maintenance and capital expenditure. In the past, this has made it difficult for local authority landlords to reduce supervision and management costs as stock levels have fallen due to RTB sales. Correspondingly, following the abolition of RTB, it should be possible for local authority landlords to manage these retained houses within the same supervision and management budgets, i.e. there will be limited or no additional supervision and management costs required to manage the retained stock than under the no-reform scenario.

40. Various scenarios were therefore constructed. In Scenario A, national averages are used, and then in Scenarios B and C, various adjustments are made for the likely higher rents and lower costs associated with RTB stock as outlined at table 3.

Table 3: RTB - Assumptions underlying scenarios – rents and costs as percentage of average for Scottish local authorities

<table>
<thead>
<tr>
<th>Scenarios</th>
<th>Rent (average)</th>
<th>Supervision and management</th>
<th>Repair and maintenance</th>
<th>Capital expenditure (major repairs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario A</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Scenario B</td>
<td>105%</td>
<td>50%</td>
<td>75%</td>
<td>75%</td>
</tr>
<tr>
<td>Scenario C</td>
<td>110%</td>
<td>0%</td>
<td>50%</td>
<td>50%</td>
</tr>
</tbody>
</table>

\(^1\) The data is available at [http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSIS/HRATables](http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSIS/HRATables)
Since these calculations are based on future rents and costs, it is necessary to estimate what these might be in order to calculate the rental surplus. Rents are assumed to grow at inflation plus 1.5%, in line with historic trends. Costs are assumed to grow at the same rate as inflation, which reflects the general need for government expenditure to be contained given the current fiscal climate. The discount rate used to calculate the net present value is a real rate of 3.5% - the rate recommended by HM Treasury’s Green Book for Appraisal and Evaluation in Central Government. Figures were calculated over the remaining life of the property. Because the remaining life can vary depending on the state of the property, totals were calculated for 30, 40 and 50 years. The rental surplus is then compared to the average capital receipt under modernised terms and preserved terms in 2011/12. An estimate of the combined impact is obtained by multiplying by the number of sales in 2011/12 for each type of sale.

### Table 4: RTB - Rental surplus versus capital receipt

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Duration</th>
<th>Rental surplus</th>
<th>Rental surplus less Modernised Terms</th>
<th>Rental surplus less preserved Terms</th>
<th>Combined impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario A</td>
<td>30 years</td>
<td>£18,663</td>
<td>-£38,114</td>
<td>-£15,642</td>
<td>-£26,260,449</td>
</tr>
<tr>
<td></td>
<td>40 years</td>
<td>£26,004</td>
<td>-£30,772</td>
<td>-£8,300</td>
<td>-£16,539,848</td>
</tr>
<tr>
<td></td>
<td>50 years</td>
<td>£32,991</td>
<td>-£23,786</td>
<td>-£1,313</td>
<td>-£7,289,436</td>
</tr>
<tr>
<td>Scenario B</td>
<td>30 years</td>
<td>£38,053</td>
<td>-£18,723</td>
<td>£3,749</td>
<td>-£586,973</td>
</tr>
<tr>
<td></td>
<td>40 years</td>
<td>£48,736</td>
<td>-£8,041</td>
<td>£14,432</td>
<td>£13,556,712</td>
</tr>
<tr>
<td></td>
<td>50 years</td>
<td>£58,180</td>
<td>£1,403</td>
<td>£23,876</td>
<td>£26,060,696</td>
</tr>
<tr>
<td>Scenario C</td>
<td>30 years</td>
<td>£57,444</td>
<td>£668</td>
<td>£23,140</td>
<td>£25,086,503</td>
</tr>
<tr>
<td></td>
<td>40 years</td>
<td>£71,468</td>
<td>£14,691</td>
<td>£37,163</td>
<td>£43,653,272</td>
</tr>
<tr>
<td></td>
<td>50 years</td>
<td>£83,369</td>
<td>£26,592</td>
<td>£49,065</td>
<td>£59,410,829</td>
</tr>
</tbody>
</table>

Due to the limitations of working with aggregate data, and the fact that estimates are based on future variables, different outcomes could be feasible and these are shown in table 4. What table 4 shows is that, while it is not impossible that the net rental surplus could be less than the capital receipt under preserved RTB, under a range of plausible assumptions it is likely to be higher. However, the assumptions under which the net rental surplus would be
higher than the capital receipt under modernised RTB are much more stringent. Despite this, because the vast majority of sales are on the preserved terms, in most cases where the net rental surplus exceeds the capital receipt from preserved RTB, then the overall impact of the reform will also be positive on this measure, even if the rental surplus is less than the capital receipt from modernised RTB sales.

**Costs on other bodies, individuals and businesses**

43. This section presents the financial impacts of RTB reforms upon RSLs, social housing tenants and other UK departments / bodies.

**Registered social landlords**

44. RSL respondents were also supportive of the proposed reform. None of the RSLs who responded to the consultation thought that the financial impact on them would be negative. Charitable RSLs are exempt from the RTB and, therefore, the proposed reform would not have any financial impact on their organisation. For the larger RSLs it was noted that many can and already are adjusting financial plans to accommodate any rebalancing of income away from RTB receipts to greater dependency on rental income.

45. RTB sales are a relatively less important source of capital funding for RSLs than for local authority landlords. In general, RSLs sell proportionally fewer properties under RTB than local authorities because most RSL tenants have either no RTB entitlement (for example, if the RSL is a charity) or have had their modernised RTB entitlements suspended until 2022. Local authority landlords have consistently sold a much higher proportion of their total stock (previously up to 1%) than RSLs (for whom the figure is usually below 0.5%). The figure for local authorities in 2009/2010 and 2010/2011 was 0.5%, decreasing to 0.4% in 2011/12. For RSLs it was 0.2% in 2009/10 and 2010/11, decreasing to 0.15% in 2011/12. These sales rates for local authority and RSL stock reflect that the majority of sales are under preserved terms. The impact of RTB reforms upon RSLs’ investment capacity was not modelled as for local authorities because the information collected by the Scottish Housing Regulator (SHR) on the sale of RSL assets is not suitable for this type of analysis.

46. RSLs’ capacity to invest in new and existing stock will not be significantly affected by the RTB reforms because RSLs do not and are not expecting to use RTB sales receipts as the main source of funding for these activities. The majority of funding for new RSL housing comes from capital grants from Scottish Government and private borrowing from banks and other institutions. Therefore RSLs typically only rely on minor contributions from RTB sales receipts. Like local authorities, they would retain any capital receipt (except where a RSL has acquired a property from Scottish Homes or through a stock transfer from a local authority). The receipts may be reinvested in the housing supply programme to displace further borrowing, used to keep rental increases below what they would otherwise be or added to reserves. However, RSLs are generally much more reliant on their incoming rental income and borrowing and, therefore, less reliant on RTB sales for this purpose than local authority landlords.
47. Six RSLs were created specifically to acquire and manage housing stock which was transferred from the following councils: Glasgow City, Inverclyde, Argyll and Bute, Dumfries and Galloway, Scottish Borders and Eilean Siar. The picture for these six stock transfer RSLs is somewhat different because a proportion of their tenants will have kept their preserved RTB entitlements when they transferred from their local authority landlord and may exercise their RTB at any time (subject to any conditions agreed as part of the stock transfer process or limits to their discount imposed by the cost floor rules). The capital receipts from any transferred stock are also treated differently (either retained or passed back to the Scottish Government to fund the AHSP) depending on the particular stock transfer.

48. These six stock-transfer RSLs are subject to additional monitoring by the Scottish Housing Regulator (SHR) and Scottish Government. In addition to routine submissions of information that are required of all RSLs, the six stock-transfer RSLs also submit business plans to SHR on an annual basis. SHR monitors progress made by stock-transfer RSLs in relation to registration conditions and also assesses how governance and management arrangements are working. SHR looks for assurances that these organisations: are investing in their stock (as promised to their tenants); are developing structures for devolved decision-making (through consultation with tenants); and have strategies in place for managing risks to their businesses.

49. In addition to the statutory RTB, RSLs may, if they so wish, consider disposing of houses to sitting tenants on a voluntary basis. The relevant provisions relating to RSLs are in sections 65 to 68 of the 2001 Act and require the consent of the Scottish Ministers. Scottish Ministers have delegated authority for this to the SHR, which has issued section 66 guidance relating to voluntary sales and disposals.

Social housing tenants

50. There was strong support for reform from tenants’ organisations. The reforms could retain up to 15,500 additional units in the social rented sector over 10 years, thus allowing more households to benefit from the greater security of tenure and lower average rents in the sector compared to private renting options. Responses received from the consultation indicate that some tenants do have concerns that decreasing RTB sales receipts could result in rent increases. However, although this is a decision for individual landlords, the Scottish Government considers that there should not be significant upward pressure on rents. If a landlord needs an amount of capital equivalent to that which would have come from RTB sales, the rental surplus on the units not sold as a result of the reforms should be adequate to cover the costs of borrowing the necessary additional principal. Even if the costs of borrowing this additional principal did require to be partially met from increases to rents across a landlord’s total stock, the Scottish Government does not think that this should be significant because the number of RTB sales foregone should be small relative to the number of units still generating rental income.

51. If a social landlord did consider increasing rents, there are provisions within the 2001 Act which place duties on social landlords to consult with tenants specifically on rent setting and a range of other housing and related matters.
Other bodies

52. If social landlords decide to increase rents or borrowing in order to compensate for reduced capital receipts that may result from ending RTB, this may increase housing benefit claims to the Department for Work and Pensions (DWP) and, in the short term, applications from local authorities for loans to the Public Works Loan Board (PWLB). The effects of the reforms in retaining up to 15,500 additional homes within the social rented sector should mean that this number of households will be subject to lower rents than they might have paid in alternative private rented accommodation and may therefore have a reduced requirement for housing benefit support. There is also evidence emerging that RTB properties end up in the private rented sector. A recent Glasgow University study suggests that 43% of local housing allowance housing benefit claims in Renfrewshire are ex-RTB properties. The report estimates that the UK Government is paying an extra £3 million each year in housing benefit in Renfrewshire alone, compared to what it would have paid if those houses were still owned by the council.

Summary of financial implications of ending RTB entitlements

53. The chief impact of the reform will be on social landlords. They are broadly supportive of the reforms and are in the best position to assess any financial impact that may arise from them. Social landlords are of the view that no significant negative impact should arise as a result of the reform. Social landlords are already adjusting their businesses to accommodate the impact of falling RTB receipts as a result of the reforms in the 2010 Act and current housing market conditions. Moreover, as discussed previously, the financial impacts of RTB reforms should not be significant and thus any rent increases or additional loans that arise as a result of the reforms should not be significant.

54. This reform will improve the financial sustainability of the sector by continuing to promote reliance on income derived from rents and ending reliance on income derived from the sale of assets at a discount. This should in turn give all social landlords greater control over management of their assets and thus promote their strategic planning capacity to meet demand for social housing.

PART 2 - SOCIAL HOUSING

INTRODUCTION

55. This section of the Financial Memorandum sets out the expected costs and savings of the provisions in the Bill (at sections 3-16) on the allocation of social housing, the short Scottish secure tenancy (short SST) and the Scottish secure tenancy (SST). It considers the financial implications for the Scottish Administration, local authorities and other bodies, individuals and businesses.

56. The expected costs and savings were arrived at with the assistance of the Scottish Court Service, Association of Local Authority Chief Housing Officers, the Glasgow and West of Scotland Forum of Housing Associations, the Chartered Institute of Housing Scotland, the Scottish Federation of Housing Associations, the Antisocial Behaviour...
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

Officers’ Forum and the Antisocial Behaviour Lawyers’ Forum. There was extensive consultation with these key stakeholders on the content of this section of the Financial Memorandum between February and September 2013, with discussions at the Affordable Rented Housing Advisory Group (ARHAG) meetings of 21 February and 19 June 2013 and discussions with individual RSLs as part of the Business and Regulatory Impact Assessment (BRIA). The BRIA\(^2\) sets out more detail on consultation.

57. Stakeholders acknowledged that it was difficult to obtain information to inform this Financial Memorandum because landlords do not routinely collect the information to the level of detail required for the proposed changes to legislation. However, stakeholders recognised that this is a comprehensive and robust effort to identify the overall level of direct financial costs for social landlords. Landlords were content with the assumptions made about the number of cases and that the best use had been made of the data that was available. The costs and savings for individual social landlords will depend on whether, and to what extent, they use the tools available to them.

**ALLOCATION OF SOCIAL HOUSING**

58. In Part 2, the Bill includes the following provisions:

- **Reasonable preference in allocation of social housing and rules on priority of allocation of housing: consultation (sections 3 and 4).** Replaces the groups social landlords must give reasonable preference to in the allocation of their housing with a broader definition. Under this definition, social landlords will have to determine which groups they will prioritise. Scottish Ministers will be able to determine groups which all social landlords must include in their policy. Social landlords will have to publish a statement setting out the rationale for their priority groups and who they consulted.

- **Factors which may be considered in allocation: age (section 5).** Allows social landlords to take account of an applicant’s age in the allocation of housing (within existing equalities legislation).

- **Factors which may be considered in allocation: ownership of property (section 6).** Allows social landlords to consider property the applicant or a member of the applicant’s household owns or has owned (unless it would be unreasonable for them to occupy the property).

- **Determination of minimum period for application to remain in force (section 7).** Allows social landlords, in specified circumstances, to set a minimum period before an applicant is eligible for housing. Scottish Ministers will determine the maximum preceding period or periods over which landlords can consider behaviour and the maximum period or periods that landlords could make an applicant ineligible for the allocation of housing. Also introduces a new right for tenants to appeal a landlord’s decision to make them ineligible for the allocation of housing.

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\(^2\) Business and Regulatory Impact Assessment for the Housing Bill: Social Housing
Costs on the Scottish Administration

Scottish Government

59. There are no significant direct costs associated with the provisions for the Scottish Administration, other than some resource implications in producing guidance and the development of secondary legislation. These relate to setting out the groups that Scottish Ministers decide social landlords must include in their allocation policies and the maximum period or periods for which an applicant can be made ineligible for the allocation of social housing. These costs are expected to be minimal and to be absorbed within existing budgets.

Scottish Court Service costs

60. The new right of appeal to the courts in section 7 is expected to result in around 50 cases per year\(^3\). The Scottish Court Service has indicated that the impact of this number of cases, across Scotland, would be minimal with additional costs estimated around £5,000 and could be absorbed within existing court budgets.

Costs on local authorities

61. Local authorities will want to review their allocation policies given the increased flexibilities in these provisions. The size of the landlord and their housing list, what changes they wish to make and whether the review will be in-house will all affect the implications for local authorities. Landlords estimate that revising an allocation policy can cost around £10,000 (costs of consulting tenants and changes to IT, application forms and information for applicants). However, it is normal practice for local authorities regularly to review their allocation policies and, therefore, these provisions are not expected to result in additional costs for them. There may be minimal costs for the new requirement to publish a statement to accompany an allocation policy.

62. In terms of continuing costs, local authorities already verify applications and, therefore, the provisions in sections 5 or 6 are not expected to result in direct costs for local authorities. There may be modest additional staff time for monitoring applications for social housing from homeowners\(^4\), but there is no indication that this will result in a need for additional staffing.

63. The provision in section 7 formalises existing practice by local authorities and will not therefore result in additional costs for them. The new right for tenants to appeal to the courts may have implications for local authority legal staff. The number of cases, based on complaints to the Scottish Public Services Ombudsman (SPSO) about applications,\(^5\)

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\(^3\) See paragraphs 62 and 66.

\(^4\) Statistics on new RSL tenants from the Scottish Continuous Recording System (SCORE) indicate that around 1,100 of the 26,000 RSL lets a year are to people who own or are buying property. Equivalent statistics are not available for local authorities but there are a similar number of total lets by them each year and assuming the same number of applications to local authorities from homeowners then the number of lets to homeowners is anticipated to be small.
allocations and transfers are estimated at around 26 per year\textsuperscript{5}. Following consultation with stakeholders, it is expected that the implications for local authorities will be in terms of a modest amount of staff time rather than additional financial costs.

**Costs on other bodies, individuals and businesses**

*Registered social landlords (RSLs)*

64. Like local authorities, RSLs regularly review their allocation policies and it is expected that the implications of these provisions for RSLs will be a modest increase in staff time rather than direct costs. There may be minimal costs per RSL for publishing the statement to accompany their allocation policy.

65. As is the case with local authorities, the verification of homeowner applications might require additional staff time, but not additional staffing and therefore no direct costs. Similarly, landlords’ consideration of age is not expected to result in additional direct cost to RSLs.

66. The provision in section 7 formalises RSLs’ existing practice and will not, therefore, result in additional costs for RSLs. The introduction of a new right of appeal for tenants may however result in additional costs to RSLs. If applicants who currently complain to the SPSO take legal action instead, then that would be around 22 RSL applicants\textsuperscript{6}. The expected small number of cases, means that the financial implications for RSLs are expected to be around £22,000 across all RSLs (around £1,000 per case resulting from outsourced legal services).

**SHORT SCOTTISH SECURE TENANCY**

67. Part 2 of the Bill also includes the following provisions:

- **Creation of short Scottish secure tenancy: antisocial behaviour (section 8).**
  Gives social landlords the flexibility to grant short SSTs or convert existing SSTs to short SSTs where applicants or tenants have acted antisocially in or near their home within the last three years. Social landlords must provide or ensure the provision of housing support services they consider appropriate to enable the conversion of the tenancy to a SST.

- **Grant of short Scottish secure tenancy: homeowners (section 9).**
  Gives social landlords the flexibility to grant short SSTs to homeowners who require housing, to enable them to meet their own housing need.

\textsuperscript{5} Estimated number of complaints to the SPSO about local authority housing which relate to applications, allocations and transfers. A category breakdown is not available for local authorities beyond ‘housing’ for which there were 341 complaints in 2011/12. To estimate the number of housing cases that relate to allocations the percentage of housing complaints about RSLs that fall into the category of ‘applications, allocations and transfers’ (7.7%) is used as a percentage of the 341 housing complaints against local authorities (7.7% of 341 = 26).

\textsuperscript{6} Number of complaints to the SPSO about RSLs which relate to applications, allocations and transfers in 2011/12 [http://www.spso.org.uk/sites/spso/files/communications_material/statistics/2011-12/Complaints%20received%20by%20subject%20and%20authority%20%282011-12%20website%20version%201.0%29.pdf](http://www.spso.org.uk/sites/spso/files/communications_material/statistics/2011-12/Complaints%20received%20by%20subject%20and%20authority%20%282011-12%20website%20version%201.0%29.pdf)
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

- **Short Scottish secure tenancy: term (section 10).** Extends the minimum term from 6 to 12 months for short SSTs that are intended to automatically convert to a SST at 12 months. It also clarifies the terms of a tenancy when it changes from a SST to a short SST and back again to a SST.

- **Short Scottish secure tenancy: extension of term (section 11).** Introduces an extension for short SSTs that are intended to convert to SSTs at 12 months for a further one-off period of six months.

- **Short Scottish secure tenancy: recovery of possession (section 12).** Introduces a new requirement on social landlords to give tenants reasons why they are seeking to recover possession of any property let under a short SST. Introduces a right for tenants whose short SST is not going to convert to a SST to require their social landlord to review the decision to seek recovery of possession before court action is taken. Also, resolves issues that prevent landlords from taking action to recover possession under a short SST by way of the SST procedure at any time during the term of a short SST.

**Costs on the Scottish Administration**

*Scottish Government*

68. There are no significant direct costs associated with the provisions for the Scottish Administration, other than some resource implications in producing guidance and the development of secondary legislation, which amends the notice for tenants to include reasons for seeking recovery of possession (section 12). These costs are expected to be minimal and they will be absorbed within existing budgets.

*Scottish Court Service*

69. Following consultation with the Scottish Court Service the provisions are not expected to result in any significant additional financial costs. While there may be an increase in appeals about landlords’ decisions to offer short SSTs, estimated at around 596 cases per year across Scotland⁷, this will be partly offset by around 60 fewer eviction cases per year⁸. The use of the short SST is expected to result in a reduction of evictions, as well as a reduction in court time for eviction cases that do go to court. The Scottish Court Service has indicated that the impact of the increased numbers of appeals per year, across Scotland, taking into account the predicted reduction in eviction cases and court time would be minimal.

**Costs on local authorities**

70. There is an existing requirement to provide housing support services to tenants with a history of antisocial behaviour who have been given short SSTs that are intended to convert

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⁷ 496 related to the offer or conversion of tenancies to short SSTs for previous antisocial behaviour and an estimated 100 appeals per year related to homeowners. See paragraphs 74 and 82.

⁸ Due to the increased use of short SSTs and the focus on early intervention and support it is anticipated that around 20 fewer eviction cases by local authorities and 40 fewer eviction cases by housing associations, per year. See paragraphs 78 and 85.
to SSTs after 12 months. The support provided is that which landlords consider appropriate with a view to enabling the conversion of the tenancy. Homeless applicants will already have had their need for housing support services assessed and any support provided as part of the new housing support duty for homeless households, which came into force on 1 June 2013. The costs of providing housing support services under the housing support duty are estimated to be £2,970 per client per year (£1,485 per 6 months)\(^9\).

71. The provisions in sections 8 and 11 mean that assessments on the need for housing support services will be required in around 3,000 cases by local authorities across Scotland\(^10\). Stakeholders indicate this is likely to have a limited impact in terms of staff time and is not expected to result in the need for additional staffing and therefore direct costs for local authorities.

72. Estimates of the potential costs of providing housing support are set out below:

- Data on applicants suspended from receiving an offer of housing suggests that local authorities may, under the provision in section 8, grant a short SST to around 60 new tenants each year\(^11\). With around 42% of lets to homeless applicants\(^12\) it is expected that around 25 of these 60 new tenants will already have been assessed and be receiving any housing support services required under the housing support duty for homeless households. Of the remaining, around a third of applicants are expected to require housing support services\(^13\). The cost of 12 months of housing support services for the remaining 35 new tenants is therefore estimated to be £35,640 (12 cases requiring support (1/3 of 35) x £2,970) across 26 local authorities.

- Section 8 also means that local authorities may convert existing tenancies to short SSTs. It may affect existing tenants who engage in more than two instances of antisocial behaviour. Using available statistics it is estimated that local authorities manage around 5,282 antisocial behaviour cases (households) per year\(^14\). If tenancies are converted to short SSTs in 50% of these 5,282 cases, that

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\(^9\) Discussions with landlords on the Business and Regulatory Impact Assessment confirmed that there is significant variation in the type, costs and duration of support. Members of the Affordable Rented Housing Advisory Group suggested the costs of the new housing support duty for homeless households. These costs were set out in the Financial Memorandum for the 2010 Act (http://www.scottish.parliament.uk/S3_Bills/Housing%20(Scotland)%20Bill/b36as3-stage2-fm.pdf) and were based on supporting people support costs in 2004 (Table 2.1 http://www.scotland.gov.uk/Resource/Doc/207283/0055011.pdf) uprated for inflation. The figures have been further uprated to reflect the period since the 2010 Act.

\(^10\) See bullet points in paragraph 72 (35 + 2,641 + 273 = 2,949)

\(^11\) Scottish Government statistics indicate that around 550 applicants were made ineligible for the allocation of housing between 2011 and 2012 across the 26 local authorities (http://www.scotland.gov.uk/Resource/0040/00400707.xls). Information from local authorities suggests most relate to rent arrears. A reasonable estimate that 10% could relate to previous antisocial behaviour means that around 60 applicants each year may be offered short SSTs under this new ground.

\(^12\) http://www.scotland.gov.uk/Resource/0040/00409265.xls (11,445 lets to statutory homeless applicants by local authorities/27,226 total lets by local authorities x 100 = 42%)

\(^13\) http://www.scottish.parliament.uk/S3_Bills/Housing%20(Scotland)%20Bill/b36as3-stage2-fm.pdf Table 11

\(^14\) The 5,282 cases has been calculated as follows:
would be around 2,641 converted tenancies\textsuperscript{15}. The cost of housing support services for this group of existing tenants is estimated to be £2,613,600 (880 cases requiring support (1/3 of 2,641 tenancies) x £2,970) across 26 local authorities (0.28% of total rental income for local authorities\textsuperscript{16}).

The provision in section 10 replaces two 6 month tenancies, with a single 12 month tenancy and is therefore not expected to result in additional financial costs for local authorities. The provision in section 11, will potentially extend the period of support by six months for a small number of tenants (around 273 cases a year\textsuperscript{17}) and therefore the additional costs are expected to be £405,405 (273 x £1,485) across 26 local authorities (0.04% of total rental income for local authorities\textsuperscript{18}).

73. The above calculations are expected to be a very high estimate of the potential costs of providing housing support. This is because the costs are based on local authorities funding all of the housing support being provided, however stakeholders have said that the majority of housing support services are already being provided by NHS or social work due to the existing broader support needs of applicants and tenants or are provided by way of advice and

<table>
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<th>Statistic</th>
<th>Source / Calculation</th>
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| 158,630 antisocial behaviour incidents dealt with by the police annually | Page 30, ACPOS, The Police Service in Scotland Performance Report 2011/12 [Link no longer operates]\textsuperscript{[9]}
| 37% of social tenants who had experienced at least one form of antisocial behaviour in 2011 had reported it to someone | Household Survey data estimate of the percentage of total antisocial behaviour cases that come from the social rented sector.
| 58,693 incidents dealt with by social landlords (local authorities and RSLs) | 37% of 158,630 incidents reported to the police
| Average of 6 antisocial behaviour incidents per antisocial case (household) | Social Landlord’s Crime and Nuisance Group estimates [http://www.insidehousing.co.uk/tenancies/landlords-spend-%C2%A3300m-a-year-on-anti-social-behaviour/6523076.article?MsgId=58452]
| 9,782 estimated antisocial behaviour cases (households) in social sector | 58,693 incidents in the social sector divided by average of 6 incidents per case (household)
| 5,282 estimated antisocial behaviour cases managed by local authorities | 54% of social housing is managed by local authorities [http://www.scotland.gov.uk/Resource/0040/00409265.xls] total number of dwellings 2011/12). 54% of 9,782 estimated antisocial behaviour cases in the social sector.

\textsuperscript{15} The percentage of tenancies that will be converted to short SSTs will depend on landlords use of the flexibilities in the legislation. Some will use it more than others. It is anticipated that landlords will want to ensure they have a robust case for converting a SST to a short SST to avoid legal challenge in the courts as well as human rights issues. An assumption of 50% has therefore been used for the calculation.

\textsuperscript{16} Income from rents on houses 2011/12 was £934 million [http://www.scotland.gov.uk/Resource/0040/00406074.xls]

\textsuperscript{17} There are currently 2 grounds for granting short SSTs that would be able to be extended for a further period of six months under provision 11. Current statistics indicate that there are around 30 short SSTs granted under these two grounds. Most short SSTs are expected to convert to SSTs at 12 months due to the provision of housing support and the potential impact support and a short SST will have on behaviour. But, if concerns were to remain about 10% of these 30 tenants at 12 months then short SSTs would be extended in three cases. The new ground for granting short SSTs for previous antisocial behaviour could add a further 273 cases (10% of 60 short SSTs for new tenants and 2,641 converted tenancies for existing tenants as set out in paragraph 71). The total number of cases which could be extended for a further six months is therefore 6 + 264 + 3 = 273.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the
Scottish Parliament on 21 November 2013

assistance by housing officers. The actual financial cost to landlords will depend on the type
of support provided and who is providing it. The range of potential costs of support based on
25%, 50% and 100% of the costs calculated in paragraph 72 are set out below. Given that the
majority of housing support is not funded by social landlords, a best estimate of the financial
cost to local authorities is 25% of the costs calculated in paragraph 72.

Table 5: Estimated annual costs to local authorities from providing housing support
services

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<th>Estimate</th>
<th>Best Estimate</th>
<th>High</th>
<th>Very High</th>
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<tr>
<td>£m</td>
<td>0.764</td>
<td>1.527</td>
<td>3.055</td>
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74. Applicants and tenants have the right to appeal a landlord’s decision to offer them a
short SST rather than a SST, or a proposal to convert their secure tenancy to a short SST, in
the courts. The provisions under sections 8 and 9 may, therefore, result in a small increase in
cases (270 appeals per year under section 8\(^{18}\) and around 50 per year under section 9\(^{19}\)). This
may have modest implications for local authority legal staff but the implications are expected
to be in terms of staff time rather than additional financial costs.

75. The provisions under sections 8, 9 and 12 will require local authorities to amend their
systems. There are therefore likely to be minimal one-off costs for local authorities. Social
landlords have indicated that tenants would be aware of the reason for seeking recovery of
possession (section 12) and local authorities already have internal processes and procedures
for granting short SSTs (these will be used for the provisions under sections 8 and 9),
including internal appeals mechanisms (section 12). Therefore, there are no continuing costs
related to tenancy changes as a result of these provisions.

Savings

76. The intention behind section 8 is to allow local authorities to intervene in a
meaningful way at an early stage of antisocial behaviour. The provision would allow local
authorities to convert a SST to a short SST after two or more incidents of antisocial
behaviour. Limited evidence related to the development of the antisocial behaviour
framework in Scotland suggests that “around 50% of perpetrators will desist from antisocial
behaviour to keep their tenancy secure”\(^{20}\). This is supported by anecdotal evidence from
landlords. Therefore, if local authorities use the new flexibilities, this is likely to result in
benefits in terms of a reduction in the monitoring and management of antisocial behaviour.

\(^{18}\) Based on an assumption of appeals in around 10% of the 60 short SSTs to new tenants and 2,641 converted
short SSTs for existing tenants (see paragraph 71).

\(^{19}\) Statistics from the Scottish Continuous Recording System (SCORE) on new RSL lets indicate that there have
consistently been 1000 lets a year over the last 10 years to people whose previous living circumstances were
recorded as owning/buying. If around 50% of these lets were by short SSTs that would be around 500 lets per
year. If 10% of these were to appeal that would be 50 appeals per year.

\(^{20}\) ‘Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland – Volume 2:
77. Landlords estimate the average cost of monitoring and managing an antisocial behaviour case at £2,000 per annum\(^{21}\). The savings that could result if 50% of the 60 short SSTs for new tenants and 2,641 converted tenancies desisted from future antisocial behaviour would result in **efficiencies of around £2,701,000** (£2,000 per case x 2,701 cases x 50%). These efficiencies will reflect a move from monitoring and managing antisocial behaviour to focus instead on early intervention and support to prevent the antisocial behaviour continuing or escalating. However, the extent to which these efficiencies will result in financial savings for individual landlords will depend on the extent to which the efficiencies release staff to work on other things.

78. It is expected that section 8 will result in a reduction in the number of evictions for antisocial behaviour. Statistics from the Scottish Government on the number of antisocial behaviour local authority cases that went to court in the last three years was an average of around 80 per year. It is difficult to gauge the impact of the changes in terms of a reduction in the number of cases that social landlords take to court due to antisocial behaviour. If short SSTs were used in 50% of cases\(^{13}\), that would be 40 short SSTs and if 50% of these were to desist from future antisocial behaviour (see paragraph 77), then a reasonable estimate might be **20 fewer local authority cases** across Scotland (50% of 40 SSTs). The efficiencies are likely to be in staff time, which will offset the staff time required for other provisions.

79. Recovery of possession under section 8 would use the short SST eviction process, if eviction is necessary. As early intervention, the conversion of the tenancy and the provision of support are expected to have a positive impact on the majority of tenants it is expected that eviction will be a consideration in only a small minority of cases. The short SST eviction process does not require courts to consider the reasonableness of eviction action therefore local authorities will not have to prepare cases in the depth currently required to demonstrate that the action is reasonable. As legal services tend to be in-house in local authorities, the efficiencies are likely to be in staff time, which will offset the staff time required for other provisions.

**Costs on other bodies, individuals and businesses**

*Registered social landlords (RSLs)*

80. RSLs will need to undertake around 2,500 assessments on the need for housing support services across Scotland\(^{22}\). This is likely to have a limited impact in terms of staff time, but is not expected to result in the need for additional staffing and therefore direct costs for RSLs. RSLs will need to provide or ensure the provision of support as a result of a number of provisions:

- The continuing costs for RSLs as a result of section 8 will result from the requirement to ensure the provision of support that they deem necessary in each case. Data on applicants suspended from receiving an offer of housing suggests

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\(^{21}\) Estimated cost of resolving a more complex persistent ASB case provided by the Anti Social Behaviour Officers’ Forum to Scottish Government officials that may be avoided by early tenancy intervention.

\(^{22}\) See bullet points in paragraph 80 (8+2,250 + 232 = 2,490)
that RSLs may grant a short SST to around 11 new applicants each year\(^{23}\). Around 27% of RSL lets are to homeless applicants\(^{24}\), and therefore of these 11 new tenants around three will already have been assessed and be receiving housing support services under the housing support duty for homeless households. The cost of 12 months of housing support services for the remaining eight new tenants is estimated to be £8,910 (three cases requiring support (1/3\(^{25}\) of 8) x £2,970).

- If tenancies are converted to short SSTs in an estimated 50% of the 4,500 cases of antisocial behaviour involving existing tenants\(^{26}\), that would be 2,250 converted tenancies. The cost of housing support services for this group of existing tenants is estimated to be £2,227,500 (750 cases requiring support (1/3\(^{23}\) of 2,250 tenancies) x £2,970) across 162 RSLs (0.22% of total rental income for RSLs\(^{27}\)).

- Section 10 replaces two six month tenancies, with a single 12 month tenancy and is therefore not expected to result in additional financial costs for RSLs. Section 11 will potentially extend the period of support by six months for a small number of tenants (around 232 cases a year\(^{28}\)) and therefore the additional costs are expected to be £344,520 (232 x £1,485) across 162 RSLs (0.03% of total rental income for RSLs\(^{25}\)).

81. As with local authorities the range of potential costs of support based on 25%, 50% and 100% of the costs calculated in paragraph 80 are as follows:

<table>
<thead>
<tr>
<th>Estimate</th>
<th>Best estimate</th>
<th>High</th>
<th>Very high</th>
</tr>
</thead>
<tbody>
<tr>
<td>£m</td>
<td>£0.645</td>
<td>£1.290</td>
<td>£2.581</td>
</tr>
</tbody>
</table>

\(^{23}\) Scottish Housing Regulator statistics indicate that RSLs made around 112 applicants ineligible for the allocation of housing between 2009 and 2010. Information from local authorities suggests that most are related to rent arrears. A realistic estimate that 10% could relate to previous antisocial behaviour means that around 11 applicants each year may be offered short Scottish secure tenancies under this new ground.

\(^{24}\) [http://www.scotland.gov.uk/Resource/0040/00409265.xls](http://www.scotland.gov.uk/Resource/0040/00409265.xls) (7,660 lets to statutory homeless applicants by RSLs / 28,786 total lets by RSLs x 100 = 27%)

\(^{25}\) See first bullet point in paragraph 72 and footnote 12.

\(^{26}\) As 46% of social housing is managed by RSLs ([http://www.scotland.gov.uk/Resource/0040/00409265.xls](http://www.scotland.gov.uk/Resource/0040/00409265.xls) total number of dwellings 2011/12) it is assumed that RSLs will deal with around 4,500 cases of antisocial behaviour a year (46% of 9,782 cases managed by social landlords referred to in the table in footnote 12).


\(^{28}\) There are currently 2 grounds for granting short SSTs that would be able to be extended for a further period of 6 months under provision 11. Statistics are not available on the reasons for short SSTs granted by RSLs but statistics on the number of tenants evicted for antisocial behaviour in 2011/12 indicate that RSLs evicted almost twice as many as local authorities (64 compared to 36). So, if the Scottish Government assumes that RSLs grant around 60 short SSTs a year (twice as many as local authorities), and if concerns were to remain about 10% of these 60 tenants at 12 months then short SSTs would be extended in 6 cases. The new ground for granting short SSTs for previous antisocial behaviour could add a further 226 cases (10% of 10 short SSTs for new tenants and 2,250 converted tenancies for existing tenants as set out in paragraph 80). The total number of cases which could be extended for a further 6 months is therefore 1 + 225 + 6 = 232.
82. Applicants and tenants have the right to appeal a landlord’s decision to offer them a short SST rather than a SST, or a proposal to convert their secure tenancy to a short SST, in the courts. Sections 8 and 9 may result in a small increase in cases (226 appeals per year under section 8 and around 50 per year under section 9). As RSLs tend to outsource their legal services, the additional costs for RSLs of these additional cases are expected to be around £276,000 (276 cases x £1,000 per case).

83. The provisions under sections 8, 9 and 12 will require RSLs to amend their systems. There are, therefore, likely to be minimal one-off costs for RSLs. Social landlords have indicated that tenants would be aware of the reason for seeking recovery of possession (section 12) and RSLs already have internal processes and procedures for granting short SSTs (these will be used for the provisions under sections 8 and 9), including internal appeals mechanisms (section 12). Therefore, there are no continuing costs related to tenancy changes as a result of these provisions.

Savings

84. RSLs are expected to gain efficiencies from a reduction in antisocial behaviour by applicants and tenants through their use of short SSTs. With around 2,261 cases, a 50% reduction in antisocial behaviour is estimated to create savings of £2,261,000 (£2,000 per case x 2,261 cases x 50%). However, the extent to which these efficiencies will result in financial savings for individual landlords will depend on the extent to which the efficiencies release staff to work on other things.

85. Section 8 is expected to result in a reduction in the number of evictions for antisocial behaviour. Statistics from the Scottish Government on the number of antisocial behaviour local authority cases that went to court in the last three years was an average of around 80 per year. Figures are not available for RSLs, but statistics for 2011/12 on the number of tenants evicted indicated that RSLs evicted almost twice as many as local authorities (64 compared to 36). If twice as many RSL tenants than local authority tenants are taken to court for eviction then there are around 160 cases per year from RSLs seeking recovery of possession due to antisocial behaviour. It is difficult to gauge the impact of the changes in terms of a reduction in the number of cases that social landlords take to court due to antisocial behaviour. However, if short SSTs were used in 50% of cases, that would be 80 short SSTs and if 50% of these were to desist from future antisocial behaviour then a reasonable estimate might be 40 fewer RSL eviction cases across Scotland (50% of 80 SSTs). RSLs tend to outsource their legal services and RSLs have told the Scottish Government that an eviction case costs on average £7,000. A reasonable estimate therefore is that 162 RSLs would save around £280,000 (40 x £7,000).

29 Based on an assumption of appeals in around 10% of the 11 short SSTs to new tenants and 2,250 converted short SSTs for existing tenants (see bullet points paragraph 80).
30 Statistics from the Scottish Continuous Recording System (SCORE) on new RSL lets indicate that there have consistently been 1000 lets a year over the last 10 years to people whose previous living circumstances were recorded as owning/buying. If around 50% of these lets were by short SSTs that would be around 500 lets per year. If 10% of these were to appeal that would be 50 appeals per year.
31 11 cases a year for new tenants and 2,250 converted tenancies a year (see paragraph 80).
32 http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/Evictions
86. The 2,261 short SSTs granted under section 8\(^{33}\) would use the short SST eviction process, if eviction is necessary. Again, eviction is expected to be a consideration in a small minority of cases. The short SST eviction process is more straightforward than the SST eviction process as it does not require courts to consider the reasonableness of eviction action. RSLs tend to outsource legal services, which are then an additional financial cost to organisations. RSLs have told the Scottish Government through engagement on the business and regulatory impact of the provisions that a straightforward eviction costs in the region of £1,000 but an eviction that requires repeat attendance at court costs on average £7,000. Therefore an estimate of the saving per case from this provision is around £6,000. If 10% of tenancies result in eviction action, that is around 226 cases, then a reasonable estimate is that RSLs would save around £1,356,000 (226 x £6,000).

87. The additional options available for tackling antisocial behaviour will not only have benefits for local authorities, they will also benefit communities who will experience a reduction in antisocial behaviour and will consequently benefit other organisations involved in its management, such as the police. It is not possible to quantify these benefits.

**SCOTTISH SECURE TENANCY**

88. Part 2 of the Bill also includes the following provisions:

- **Assignation, sublet and joint tenancy of Scottish secure tenancy (section 13).** Retains tenants’ rights to assign, sublet and make joint tenancy requests with their landlords consent, but only after a qualifying period of 12 months. It also gives social landlords stronger grounds for refusing consent to an assignation when it would result in under-occupation of the property or it being assigned to someone not in housing need.

- **Succession to Scottish secure tenancy (section 14).** Introduces a 12-month qualifying period before partners (cohabitees), family members and carers can succeed to a property (currently there is only a qualifying period for partners (6 months)).

- **Grounds for eviction: antisocial behaviour (section 15).** Requires a court to grant an order for recovery of possession in cases where a landlord is seeking possession because a court has convicted a tenant, within the previous 12 months, of using the property for illegal purposes or of an offence in or near the property that is punishable by imprisonment. Social landlords have to follow the procedures already set out in legislation for short SSTs.

- **Recovery of possession of properties designed for special needs (section 16).** Allows the existing ground for recovering possession for an adapted property to be used where the property is occupied by people who did not need the adaptations.

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\(^{33}\) Based on 11 short SSTs to new tenants and 2,250 converted short SSTs for existing tenants (see bullet points on paragraph 81)
Costs on the Scottish Administration

Scottish Government

89. There are no significant direct costs associated with the provisions for the Scottish Administration, other than some modest resource implications in publication of revised Model SST Agreement and Model short SST Agreements and revised leaflets setting out the changes to tenants’ rights. These costs are expected to be minimal and will be absorbed within existing budgets.

Scottish Court Service

90. These provisions are not expected to result in additional financial costs to the Scottish Court Service. There may be an increased number of appeals by tenants who are aggrieved by a landlord’s refusal to agree a request to assign or sub-let the tenancy (section 13). Social landlords have estimated that very few appeals are made to landlords (less than 1% of assignation requests are appealed) and, therefore, the increase is likely to be minimal. While there may be an increased number of cases going to court for recovering possession of an adapted property (section 16) discussions with landlords have indicated that this is likely to happen in no more than a handful of cases per year. The Scottish Court Service has indicated that the impact, across Scotland, will be minimal and could be absorbed within existing court arrangements.

Costs on local authorities

91. Section 13 introduces a qualifying period before tenants can request to assign or sublet a tenancy or make a joint tenancy request and gives local authorities’ stronger grounds for refusing consent to assignation requests. Local authorities already make decisions around whether to allow sub-letting, assignation and joint tenancies requests, but policies and procedures will need to be amended to take account of the new qualifying period. This is likely to require modest staff time but not result in additional financial costs to local authorities because additional staff would not be required. Additional staff time may be required on an on-going basis to undertake checks that a tenant and proposed assignee or joint tenant has met the residency requirement.

92. Sections 13 and 14 may have implications for local authorities in terms of an increase in staff time to deal with requests from tenants to internally review their decisions. This is not expected to result in additional direct costs to local authorities. Tenants who are aggrieved by a refusal to an assignation or sub-letting request can raise proceedings in court. An increase in such appeals will result in additional time for legal staff, but is not expected to result in additional financial costs for local authorities.

93. Recovery of possession under section 15 would use the short SST eviction process, if eviction is necessary. As early intervention, the conversion of the tenancy and the provision of support are expected to have a positive impact on the majority of tenants it is expected that eviction will be a consideration in only a small minority of cases. The short SST eviction process does not require courts to consider the reasonableness of eviction action therefore local authorities will not have to prepare cases in the depth currently required to demonstrate
that the action is reasonable. Again, the efficiencies are likely to be in staff time, which will offset the staff time required for other provisions.

94. Section 16 is a minor amendment that allows local authorities to use adapted property to house applicants who do not need the adaptations rather than leave the property vacant for a period of time, in the knowledge that they can evict the tenants without the need for the adaptations and re-house them elsewhere when there are applicants who need the adaptation. Landlords have said that this is likely to happen in no more than a handful of cases per year and therefore the costs to landlords would be minimal.

95. Sections 13, 14, 15 and 16 will result in unquantifiable benefits for local authorities and communities as the best use is made of limited social housing. Social housing will be prioritised for those who need it most and who will fully occupy it. Having more properties available for those who need it will reduce the amount of time some families spend in temporary or overcrowded accommodation.

Costs on other bodies, individuals and businesses

Registered social landlords

96. RSLs will, like local authorities, also have to review their policies and procedures in light of section 13, but again this is likely to require staff time but not result in additional financial costs to RSLs. Additional staff time would also be required on a continuing basis to undertake checks that a tenant and proposed assignee or joint tenant has met the residency requirement. As with local authorities, RSLs have indicated that section 16 will only be used in a handful of cases and, therefore, the costs to RSLs would be minimal.

97. Sections 13 and 14 may have implications for RSLs in terms of an increase in staff time to deal with requests from tenants to internally review their decisions. This is not expected to result in additional direct costs to RSLs. Tenants who are aggrieved by a refusal to an assignation or sub-letting request can raise proceedings in court. An increase in such appeals and the associated costs may result in increased costs for RSL but these are expected to be minimal with the number of cases expected to be small.

98. The estimated eight short SSTs granted under section 15 would use the short SST eviction process, if eviction is necessary. Again, eviction is expected to be a consideration in a small minority of cases. The short SST eviction process is more straightforward than the SST eviction process as it does not require courts to consider the reasonableness of eviction action. RSLs have told the Scottish Government through its engagement on the Business and Regulatory Impact of the provisions that a straightforward eviction costs in the region of £1,000 but an eviction that requires repeat attendance at court costs on average £7,000. Therefore an estimate of the savings from this provision is around £48,000 (8 cases x £6,000 saving per case).

34 RSLs initiated eviction action in 26 cases relating to ‘antisocial behaviour’ in 2011-12. A breakdown is not available, but if these cases are evenly spread across the 3 grounds for recovery related to antisocial behaviour that is 8 cases per ground. Section 15 is intended to apply to ground 2.
99. Section 16 is a minor amendment that allows RSLs to use adapted property to house applicants who don’t need the adaptations rather than leave the property vacant for a period of time, in the knowledge that they can evict the tenants without the need for the adaptations and re-house them elsewhere when there are applicants who need the adaptation. Landlords have said that this is likely to happen in no more than a handful of cases per year and therefore the costs to landlords would be minimal.

100. As with local authorities, sections 13, 14, 15 & 16 will result in unquantifiable benefits for RSLs and communities as the best use is made of limited social housing. Social housing will be prioritised for those who need it most and who will fully occupy it. Having more properties available for those who need it will reduce the amount of time some families spend in temporary or overcrowded accommodation.

Overall Summary

101. In summary, the Scottish Government expects the following costs and savings resulting from the allocations, tenancies and housing management provisions:

Table 7: Social housing - Summary table of additional costs and savings by section for local authorities and RSLs

<table>
<thead>
<tr>
<th>Section</th>
<th>Local authorities</th>
<th>RSLs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Calculation</td>
<td>Paragraph</td>
</tr>
<tr>
<td>3 and 4. Reasonable Preference</td>
<td>--</td>
<td>61</td>
</tr>
<tr>
<td>5. Age</td>
<td>--</td>
<td>62</td>
</tr>
<tr>
<td>6. Property</td>
<td>1,100 homeowners allocated social housing each year</td>
<td>60</td>
</tr>
<tr>
<td>7. Tenants made ineligible for housing and new right of appeal</td>
<td>26 potential appeals to the court</td>
<td>63</td>
</tr>
<tr>
<td>8. short SST for antisocial behaviour</td>
<td>12 new tenants + 880 existing tenants = 892 tenants requiring housing support</td>
<td>72-73</td>
</tr>
<tr>
<td></td>
<td>270 appeals on decisions to offer</td>
<td>74</td>
</tr>
</tbody>
</table>
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

<table>
<thead>
<tr>
<th>Section</th>
<th>Local authorities</th>
<th>RSLs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Calculation</td>
<td>Paragraph</td>
</tr>
<tr>
<td>Short tenancy</td>
<td>to offer short tenancy</td>
<td></td>
</tr>
<tr>
<td>20 fewer evictions</td>
<td>78</td>
<td>--</td>
</tr>
<tr>
<td>270 simpler evictions</td>
<td>79</td>
<td>--</td>
</tr>
<tr>
<td>9. short SST for homeowners</td>
<td>500 homeowners offered short tenancies each year. Estimated 50 appeals to court.</td>
<td>74</td>
</tr>
<tr>
<td>10. 12 month short tenancies</td>
<td>--</td>
<td>72</td>
</tr>
<tr>
<td>11. 6 month extension for short SSTs</td>
<td>273 requiring support for additional 6 months</td>
<td>70-72</td>
</tr>
<tr>
<td>12. Short Tenants rights on eviction</td>
<td>--</td>
<td>75</td>
</tr>
<tr>
<td>13. Assignment, sublet &amp; joint tenancy</td>
<td>--</td>
<td>91-92</td>
</tr>
<tr>
<td>14. Succession</td>
<td>--</td>
<td>90</td>
</tr>
<tr>
<td>15. Simpler evictions</td>
<td>19 eviction cases for the relevant eviction ground</td>
<td>93</td>
</tr>
<tr>
<td>16. Repossession of adapted properties</td>
<td>--</td>
<td>94</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: -- denotes no or minimal costs. The above table does not include an estimated £5 million of efficiencies from a reduction in managing and monitoring antisocial behaviour (£2.7 million by local authorities (paragraph 77) and £2.3 million by RSLs (paragraph 84)). The Scottish Government is unable to ascertain how much of these efficiencies will be realisable as financial savings to individual landlords as this will depend on whether staff can be released to do other duties. Focus will move from managing and monitoring antisocial behaviour to early intervention and support. The above table also does not take into account unquantifiable savings to communities from the better use of social housing or a reduction in the instances and management of antisocial behaviour as a result of the provisions in the Bill.
PART 3 - PRIVATE RENTED HOUSING

INTRODUCTION

102. This section of the Financial Memorandum sets out the expected costs and savings of the provisions in the Bill (at sections 17 - 25) on Private Rented Housing. The provisions are associated with the transfer of civil private rented sector (PRS) cases from the sheriff court to the new First-tier Tribunal (FTT), introduction of tacit approval for landlord registration and third party reporting to the Private Rented Housing Panel (PRHP). It considers the financial implications for the Scottish Administration, local authorities and other bodies, individuals and businesses.

TRANSFER OF PRIVATE RENTED SECTOR (PRS) HOUSING DISPUTE CASES FROM THE SCOTTISH CIVIL COURTS TO THE NEW SCOTTISH FIRST-TIER TRIBUNAL (FTT)

Caseload

103. The Scottish Government estimates that a PRS tribunal which considers cases transferred from the courts would have a caseload of approximately 700 cases per year.

104. Caseload estimates are based on:
- information relating to section 11 of the Homelessness etc. (Scotland) Act 2003 which places a duty on private landlords to notify local authorities when they raise proceedings for eviction and some other statutory notices (there were 566 cases in 2012-13);
- data from court statistics regarding non eviction land/heritable cases (there were 113 of these in 2011 - not all of which will relate to the private sector – this was the last year that this data was captured). It has not been possible to arrive at more definitive numbers for non-eviction PRS cases but the Scottish Government believes that this is a reasonable estimate for these cases; and
- projections for new cases involving appeals by landlords related to tacit approval of landlord registration applications which will also be contained in the Housing Bill. (approximately 50-60 per year).

105. Dependent upon successful passage of the Tribunals (Scotland) Bill, the PRS tribunal will be part of a chamber within the FTT which could also include the existing Private Rented Housing Panel/Homeowner Housing Panel jurisdictions alongside the cases in the Bill related to letting agent disputes. This chamber could have a significant overall annual caseload and so there are likely to be economies of scale over time.

Timing

106. Establishment of a PRS tribunal is directly linked to the establishment of the FTT following the enactment of the Tribunals (Scotland) Bill. It is estimated that commencement of the new PRS tribunal is likely to be no earlier than 2016.
Costs on the Scottish Administration

Scottish Tribunals Service

107. The Scottish Tribunals Service (STS), currently a delivery arm of the Scottish Government, provides support to the Scottish Tribunals (which includes the FTT) and will support the administration of the PRS tribunal. Under proposals currently being progressed by Scottish Ministers, STS could merge with the Scottish Court Service (SCS) to form a non-ministerial government department under the leadership of the Lord President of the Court of Session. In this case, support for the PRS tribunal will be provided by the new department with appropriate funding.

Cost range

108. Costings for the PRS tribunal are based largely on scaling the operation of the existing private rented housing panel (PRHP), which hears around 250 cases per year, including assumptions that:

- members of the new tribunal would be paid a daily fee at the same levels as PRHP members (currently £316 per day for legal members and £163 per day for housing members);
- most cases would be determined by the tribunal committees without carrying out site inspections; and
- most cases would be determined by two member committees (without the need for a surveyor member).

109. Data from other larger tribunal jurisdictions has also been used to augment the Scottish Government’s understanding of tribunal operating principles. The overall costs vary according to the number of cases that can be dealt with by a tribunal committee in a day without affecting the quality of decision-making. Information from tribunals with larger annual caseloads indicates that the number of cases handled in a day will be dependent largely on the tribunals’ judiciary and will develop as the tribunal builds up expertise; therefore, the Scottish Government has costed some scenarios to give a range. These scenarios show that the more cases heard by each committee per day, the lower the overall cost of the new tribunal. The PRHP generally handles one or two cases per hearing day, whereas larger tribunal jurisdictions and the courts can hear significantly more cases in a day. It could be that the PRS tribunal will start by hearing a small number of cases in a day (with associated costs in line with Scenario A shown at table 8) and, as it builds its experience and expertise, particularly in handling routine cases, it will progress to hearing more in a day (hence reducing costs to a level in line with Scenario B or C shown at table 8).

Set-up costs

110. Table 8 shows the set-up costs which have been estimated using data from the different scenarios and costs from the recent set-up of the homeowner housing panel (HOHP). The HOHP was an extension of the jurisdiction of the PRHP created by the Property Factors (Scotland) Act 2011. As such, some set-up costs may vary and there may be some additional costs.
Table 8: PRS Tribunal - Estimated set-up costs

<table>
<thead>
<tr>
<th>Set-up cost breakdown</th>
<th>Scenario A - 2 cases per committee per day</th>
<th>Scenario B - 6 cases per committee per day</th>
<th>Scenario C - 10 cases per committee per day</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Judicial training costs</td>
<td>68,854</td>
<td>34,707</td>
<td>27,878</td>
</tr>
<tr>
<td>IT - case management system</td>
<td>27,000</td>
<td>27,000</td>
<td>27,000</td>
</tr>
<tr>
<td>development</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New website</td>
<td>3,100</td>
<td>3,100</td>
<td>3,100</td>
</tr>
<tr>
<td>General Office Expenses</td>
<td>2,520</td>
<td>2,520</td>
<td>2,520</td>
</tr>
<tr>
<td>Staff Salaries</td>
<td>22,120</td>
<td>22,120</td>
<td>22,120</td>
</tr>
<tr>
<td>Publicity material</td>
<td>7,200</td>
<td>7,200</td>
<td>7,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>130,793</strong></td>
<td><strong>96,647</strong></td>
<td><strong>89,818</strong></td>
</tr>
</tbody>
</table>

Annual operating costs

Table 9 details the estimated annual operating costs based on initial assumptions, which include cases being generally handled by committees comprising two members - one legal and one housing member. At present cases are heard by a sheriff sitting alone and so a legally qualified member with a background in a relevant area of law and the addition of a housing member will allow greater specialism in the decision making process.

Table 9: PRS Tribunal - Estimated annual operating costs

<table>
<thead>
<tr>
<th>Operating cost breakdown</th>
<th>Scenario A - 2 cases per committee per day</th>
<th>Scenario B - 6 cases per committee per day</th>
<th>Scenario C - 10 cases per committee per day</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Postal Costs</td>
<td>10,870</td>
<td>10,870</td>
<td>10,870</td>
</tr>
<tr>
<td>General Admin Expenses</td>
<td>18,572</td>
<td>18,572</td>
<td>18,572</td>
</tr>
<tr>
<td>Legal costs</td>
<td>22,677</td>
<td>22,677</td>
<td>22,677</td>
</tr>
<tr>
<td>Members Fees&lt;sup&gt;35&lt;/sup&gt;</td>
<td>307,034</td>
<td>92,750</td>
<td>55,650</td>
</tr>
<tr>
<td>Venue Hire</td>
<td>42,244</td>
<td>42,244</td>
<td>42,244</td>
</tr>
<tr>
<td>Members Expenses&lt;sup&gt;36&lt;/sup&gt;</td>
<td>25,895</td>
<td>13,053</td>
<td>10,485</td>
</tr>
<tr>
<td>President’s Fees</td>
<td>99,880</td>
<td>99,880</td>
<td>99,880</td>
</tr>
<tr>
<td>Administrative Staff Costs</td>
<td>242,360</td>
<td>242,360</td>
<td>242,360</td>
</tr>
</tbody>
</table>

<sup>35</sup> Members fees have been estimated using the number of days required for tribunal committees to deal with 700 cases per year (depending on the scenarios) plus additional time for legal members to conduct preparatory casework.

<sup>36</sup> Members expenses have been estimated using the current spend on members expenses for the PRHP reduced to remove site visit expenses and scaled by the projected number of members required for the PRS tribunal.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

<table>
<thead>
<tr>
<th>Operating cost breakdown</th>
<th>Scenario A - 2 cases per committee per day</th>
<th>Scenario B - 6 cases per committee per day</th>
<th>Scenario C - 10 cases per committee per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members Training</td>
<td>32,507</td>
<td>17,605</td>
<td>14,625</td>
</tr>
<tr>
<td>Computer Charges/website costs</td>
<td>9,201</td>
<td>9,201</td>
<td>9,201</td>
</tr>
<tr>
<td>Staff Office Accommodation</td>
<td>58,128</td>
<td>46,868</td>
<td>46,868</td>
</tr>
<tr>
<td>Staff Travel &amp; Subsistence</td>
<td>10,875</td>
<td>10,875</td>
<td>10,875</td>
</tr>
<tr>
<td>Total</td>
<td>880,243</td>
<td>626,955</td>
<td>584,306</td>
</tr>
</tbody>
</table>

Cost variables

112. The costings are best estimates based on current information and a number of assumptions. There are a number of factors which could alter the final figures. The biggest variable that could affect costings is the caseload. Additional cases will require additional resources to process and a more accessible dispute resolution forum could receive more applications from private rented sector landlords and tenants.

113. Accommodation has been costed for administrative staff based within Scottish Government buildings as is the case with the PRHP. The actual costs will depend on capacity within Scottish Government buildings at the time of set-up and the need for additional venues. Therefore, there is a risk that accommodation costs could increase significantly if more external office space or venues are required, particularly as part of a wider housing chamber alongside other jurisdictions within the FTT.

Appeals

114. There will be a route of appeal from the FTT to the Upper Tribunal where an appeal from the sheriff court currently exists. Based on current appeal statistics from the court, the Scottish Government estimates that there will be three or four appeals per year. Appeal work will be redistributed from the civil courts to the Upper Tribunal where it will be heard by the same judiciary and so the Scottish Government does not expect additional costs.

Scottish Court Service

115. The Scottish Government estimates that the redirection of around 700 cases from the Scottish courts to the FTT will reduce fee income for SCS by around £49,000 per annum. The reduction in case numbers is not likely to yield any realisable savings but may have a limited effect in allowing remaining cases to progress more efficiently.

Members training has been estimated using the projected number of members required multiplied by daily fees for two days training per year per member.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

Judicial Appointment Board for Scotland

116. The FTT will require additional members to hear cases in the PRS tribunal. Appointment processes will be overseen by the Judicial Appointments Board for Scotland (JABS). Based on a commitment of 15 days per year (which is consistent with the commitment for members of the PRHP/HOHP), the Scottish Government has estimated that the PRS tribunal will require the appointment of up to 39 legal members and 23 housing members to hear 700 cases. This estimate builds in time for legal members to carry out preparatory casework. JABS may require additional resource to oversee the necessary appointment exercise. Initial recruitment costs have been estimated based on the recent appointment of members for the HOHP at between £4,000-11,000 but this will depend on the process JABS adopt for tribunals appointments.

Scottish Civil Justice Council

117. It is the Scottish Government’s intention that in time, the Scottish Civil Justice Council (SCJC) will take over responsibility for making and amendment of tribunal rules. However, in the first instance, Scottish Ministers will continue to make rules for tribunals until the SCJC can assume its role. Scottish Ministers will make initial rules for the PRS tribunal and, as rules will already be in place before responsibility for rule making transfers, the Scottish Government expects no additional resource will be required for the SCJC.

Costs on local authorities

118. It is expected that there will be no additional costs for local authorities from proposals for a PRS tribunal.

119. Houses in multiple occupation (HMO) and landlord registration appeal cases will involve local authorities, although it is expected that there will be very few of these and the nature of the appeal will remain unchanged, except that it will be heard by a tribunal rather than the sheriff court. As tribunal procedures would be designed on the assumption that legal representation is not the norm, there may be some savings for local authorities.

Costs on other bodies, individuals and businesses

Fees

120. The FTT has a generic power to charge fees for applicants to bring cases. The PRS tribunal may charge a fee to parties to help offset some of the operating costs, although this would need to be balanced against ensuring access to justice. It is expected that, if required, these would be set at a level similar to current court fees so as not to be prohibitive and an exemptions policy would be required for those who could not afford to pay. Based on current court fees (around £70), the maximum fee income for 700 cases would be around £49,000 (equivalent to 7-9% of annual operating costs). It is expected that the impact on landlords and tenants would be no different than current court fees.
**PRS advice agencies**

121. There are likely to be marginal training costs for advice organisations to ensure that their staff are equipped to provide correct advice to clients regarding the appropriate forum and its processes for their disputes.

**Potential for wider sector savings**

122. Bringing a case to court can incur significant costs for landlords and tenants. A specialist housing tribunal with active tribunal judiciary and less formal inquisitorial (rather than adversarial) proceedings will assist parties to present their own cases effectively. Procedures would be designed on the assumption that legal representation was not required, which could save both landlords and tenants money.

123. In the Scottish Government’s consultation and engagement with stakeholders, many landlords expressed their frustration with inconsistency of court decisions, which is often attributed to a lack of specialist housing expertise on the part of sheriffs. Tribunal committees would include housing members with specialist knowledge to reduce this inconsistency in decision-making.

124. Many housing cases can remain in the court system for significant periods of time and are subject to repeated continuation which can add to the cost and the stress of the case. A PRS tribunal would be designed to pro-actively manage cases so that only those that are ready come to a hearing. This should reduce the number of times cases for issues such as arrears require to come to a hearing, which could save money for landlords and tenants.

125. Some stakeholders have commented on the success of the PRHP in raising standards across its narrow jurisdiction, both in terms of the individual cases it hears and as a deterrent against unscrupulous landlords. Effective enforcement of legal rights by a housing tribunal could deliver the same benefits across the wider sector to both tenants and landlords. It is not possible to quantify these potential savings at this time. However, the Scottish Government will monitor the impacts of the PRS tribunal on the wider sector.

**Business and Regulatory Impact Assessment (BRIA)**

126. The Scottish Government has published a BRIA\(^{38}\) which outlines the impact of these proposals on Scottish businesses and the third sector.

**Summary**

127. In summary, the Scottish Government expects the costs to be as detailed below at Table 10.

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\(^{38}\) The Scottish Government, [Business and Regulatory Impact Assessment – PRS Tribunal](#).

78
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

Table 10: PRS Tribunal - Summary of costs

<table>
<thead>
<tr>
<th></th>
<th>Paragraph reference</th>
<th>Additional costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scottish Administration</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Government</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Scenario A</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>One-off set-up costs</td>
<td>Table 8</td>
<td>£130,793</td>
</tr>
<tr>
<td>Continuing annual running costs</td>
<td>Table 9</td>
<td>£880,243 p.a.</td>
</tr>
<tr>
<td><strong>Scenario B</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>One-off set-up costs</td>
<td>Table 8</td>
<td>£96,647</td>
</tr>
<tr>
<td>Continuing annual running costs</td>
<td>Table 9</td>
<td>£626,955 p.a.</td>
</tr>
<tr>
<td><strong>Scenario C</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>One-off set-up costs</td>
<td>Table 8</td>
<td>£89,818</td>
</tr>
<tr>
<td>Continuing annual running costs</td>
<td>Table 9</td>
<td>£584,306 p.a.</td>
</tr>
<tr>
<td>Scottish Court Service</td>
<td>115</td>
<td>Loss of up to £49,000 of fee income per annum</td>
</tr>
<tr>
<td>Judicial Appointments Board for Scotland</td>
<td>Table 8</td>
<td>One-off recruitment costs of between £4-11,000</td>
</tr>
<tr>
<td><strong>Local authorities</strong></td>
<td>118-119</td>
<td>None</td>
</tr>
<tr>
<td><strong>Other bodies, individuals and businesses</strong></td>
<td>120-125</td>
<td>Potential for marginal costs for advice agencies</td>
</tr>
</tbody>
</table>

**TACIT APPROVAL OF LANDLORD REGISTRATION APPLICATIONS**

128. The Bill includes a minor technical amendment to the landlord registration system for the tacit approval of valid landlord registration applications after a period of 12 months from the date of receipt. This will support a consistent approach to determination of applications by local authorities across Scotland. This means that in the event of failure to determine the application within the period set, authorisation is deemed to have been granted automatically by the relevant authority. Engagement with local authorities indicated a broad support for this approach, which aligns landlord registration with the licensing of houses in multiple occupation regime.

129. In recognition of the fact that some cases are more complex, and require detailed investigation, local authorities will have the power to make a summary application to a sheriff for an extension to the 12-month period. The 12-month period may be extended by such period as the sheriff thinks fit, as long as the summary application is made before the 12-month period expires. The sheriff’s decision on such an application is final. It is envisaged that this process will transfer to the FTT that will be created under the Tribunals (Scotland) Bill, once the new tribunal is established.

**Costs on the Scottish Administration**

**Scottish Government**

130. Introduction of tacit approval of landlord registration applications after 12 months will impact on the landlord registration IT system, which is managed by an external IT provider on behalf of the Scottish Government. There will be a one off-cost to make changes to the IT
software to assist local authorities with the case management of applications that would automatically be deemed approved after 12 months, unless other arrangements were in place.

131. It is not possible for the IT provider to provide a quote for the work until the detail of the work has been discussed and agreed with the IT Subgroup which represents local authority users of the system. However, based on previous experience of upgrades to the IT system, it is estimated that the cost to be in the region of £14,000 - £18,000, including VAT. This would include system documentation, project management, development and testing and updated user guidance for local authorities and landlords. The cost would be met from the current budget allocated for landlord registration IT development.

132. In addition, the Scottish Government guidance for local authorities will need to be updated. This would be a one-off cost of approximately £1,000 which would be met by the existing budget.

Scottish Court Service

133. This provision will result in a power for local authorities to be able to apply for an extension to the 12-month time period for determining an application. As there are already established arrangements for similar cases under HMO licensing for example, the Scottish Government does not expect any initial set-up costs.

134. In terms of continuing costs it is difficult to know exactly how many summary applications relating to landlord registration there may be. Based on information provided by local authorities, a reasonable estimate of the number of summary applications would be around 50 – 60 per year. The Scottish Court Service has indicated that the average cost per summary application is £95, and that the estimated costs of £4,750 - £5,700 per year could be absorbed within the existing budget.

Costs on local authorities

135. The provision will only apply to any new applications received after the provision comes into force. The Scottish Government consulted with all local authorities about the impact of this provision. All but two of the authorities who responded indicated that they expected any applications made after the provision is implemented to be determined well within the 12-month time limit, and that there would be little need to consider an extension to that period. They did not expect any additional costs.

136. One local authority indicated that resources may need to be re-allocated to ensure that all cases would be approved within the 12-month time period. However, the proposed change will allow a local authority to apply to extend that period once for a limited time, where necessary.

137. Only one local authority (with the highest number of registered landlords) estimated between 10 – 20 cases a year where an application to a sheriff for an extension of the 12-month period may be required. Another authority estimated fewer than 20 cases per year.
Estimates provided by authorities on the costs of applying to a sheriff for an extension were £500 - £1000 per case.

138. Data from the landlord registration system on the time taken to determine applications indicated that, between August 2012 and June 2013, no applications had taken longer than 12 months. However, over the course of a full year it is reasonable to assume that a small number of cases may require a summary application to the court. It is estimated that this will be no more than 50 – 60 per year across all local authorities.

**Costs on other bodies, individuals and businesses**

139. No additional costs have been identified for landlords or any other bodies, individuals or businesses.

**Summary**

In summary, the Scottish Government expects the following costs to result from this provision:

**Table 11: Summary table of additional costs – tacit approval for landlord registration**

<table>
<thead>
<tr>
<th>Scottish Administration</th>
<th>Paragraph reference</th>
<th>Additional costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government</td>
<td>130-132</td>
<td>£15,000 – £19,000 one-off cost</td>
</tr>
<tr>
<td>Scottish Court Service</td>
<td>133-134</td>
<td>£4,800 – £5,700 pa</td>
</tr>
<tr>
<td>Local authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The cost of making an application to a sheriff for an extension to the 12-month approval period</td>
<td>135-138</td>
<td>£500 - £1,000 per application to a sheriff/estimate no more than 60 per year across all local authorities</td>
</tr>
</tbody>
</table>

**THIRD PARTY APPLICATION IN RESPECT OF THE REPAIRING STANDARD**

140. This provision will give local authorities discretionary powers to apply to the PRHP for a determination of whether the landlord has failed to comply with the Repairing Standard. Other third parties may notify the relevant local authority where they believe the repairing standard is not being met, so that an application by the relevant authority can be considered. This provision will not affect an individual tenant’s right to apply to the panel.

141. The policy extends the way that applications may be made to the PRHP and is aimed at giving local authorities increased flexibility to address substandard property condition either as a part of a strategic approach to tackling problem areas or for individual properties. There is broad support from stakeholders to enhance local authority powers to tackle the issue of poor quality housing, with discretionary powers to apply to the PRHP to enforce the repairing standard. A third party application may be made to the PRHP without the need for the tenant to be involved, unless the tenant chooses to participate in the process. By enabling
enforcement action to be taken independently of the tenant, the Scottish Government aims to minimise the risk of the landlord taking action to remove the tenant by giving notice to quit or threatening eviction.

**Costs on the Scottish Administration**

*Scottish Government*

142. It is the Scottish Government’s intention that there will be no charge to a local authority for making an application to the PRHP. This is consistent with the current policy that there is no charge for a tenant to apply to the panel.

143. Using data extrapolated from the Scottish House Condition Survey (SHCS)\(^{39}\), the Scottish Government estimates that around 1% of PRS dwellings in disrepair should be issued with a repair notice under the relevant Housing Act and 4% of PRS dwellings should be issued with an improvement order.

144. Based on these figures, the Scottish Government estimates that there are potentially around 13,000 properties in the PRS that are in a serious state of disrepair and about which councils may wish to consider taking repairing standard cases before the PRHP. These properties are likely to have built up in the housing system over an extended period of time, with properties gradually falling into disrepair. Given this, and the high volume of potential such cases, it is assumed that these cases will need to be dealt with over an extended period of time rather than in a single year.

145. According to the SHCS survey, around 60% of dwellings in the PRS are high-density type dwellings with a substantial number of shared elements including tenements, four-in-a-block and tower/slab dwellings. Where disrepair occurs in multiple dwellings in such properties, the PRHP may be able to hear multiple cases as a single group case, with the effect of reducing the annual caseload the panel actually hears. It is unlikely that all such cases would be suitable for a single hearing, and so, for the purposes of this Financial Memorandum, it is assumed that 50% of these cases would involve a group hearing. This figure reflects the fact that these cases will be about serious types of disrepair that are likely to affect multiple properties, such as shared roofs and party walls.

146. The Scottish Government cannot say with any certainty how many cases may be referred by local authorities, as this will depend on how councils use the discretionary powers available to them. The Scottish Government assumes that it will take 10 to 15 years to deal with the total number of disrepair cases that have built up in the private rented sector. Based on the maximum potential caseload of 13,000, and assuming that the number of cases that may be held at a single hearing may be reduced by 50%, the Scottish Government estimates that the additional number of repairing standard cases going to the PRHP per annum could range from:

- scenario 1: 6500 cases per year over a 10 year period = 650 cases per year,

\(^{39}\)[Scottish House Condition Survey: Key Findings 2011]
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

- scenario 2: 6500 cases per year over a 15 year period = 434 cases per year.

147. The cost estimates under the two scenarios would decrease depending on the number of cases heard by committee each year. These scenarios assume that each committee hears two cases per day and that the committee consists of a legal member, a housing member and a surveyor. In some circumstances, the membership of the panel may be reduced to two, and only on direction of the president and with the consent of the parties can the chairperson exercise the functions of the committee alone. The Scottish Government is unable to say to how many cases may be heard by a committee with fewer than three members and so for the purposes of this Memorandum, the estimates are based on a three member committee.

148. The Scottish Government has estimated the costs in two distinct ways. One method used a cost scaling technique. Firstly, a cost scaling factor was derived by dividing the new third party caseload estimate by the number of repairing standard cases currently going to the PRHP each year (650/229 = cost scaling factor 2.8). Secondly, the known costs to the PRHP of processing 229 repairing standard only cases were scaled-up using this factor to estimate the cost of processing 650 cases. Another method was used to estimate four items of cost including; members’ fees, members’ training, members’ expenses and staff accommodation. These costs were calculated, in full, using additional information and in order to incorporate a number of assumptions about how the new panel would operate – with several assumptions adopted to maximise cost efficiencies. The method used to estimate these four costs is set out in this Memorandum.

New member expenses

149. The number of members recruited to the PRHP will need to be increased to deal with the additional workload expected from local authority applications. The Scottish Government has calculated the number of new members that need to be recruited to hear 650 and 434 cases per year on the basis that each committee hears two cases per day. This hearing rate was deemed appropriate by the Scottish Tribunal Service, and represents an increase in output compared to the average of one case per day currently heard by the panel. The estimate also assumes that each member works 15 days per year – the current minimum requirement for PRHP members.

150. The number of new members required based on each of the scenarios is as follows:
- scenario 1: 65 members (21.7 each of legal, housing and surveyor members)
- scenario 2: 43 members (14.5 each of legal, housing and surveyor members)

151. Based on the average cost of expenses for existing PRHP members (currently £519 per annum per member, based on 229 repairing standard cases only\(^{40}\)), the Scottish Government estimates that the total cost of expenses for additional members is as follows:
- scenario 1: 65 members x £519 = £34,000
- scenario 2: 43 members x £519 = £22,000

\(^{40}\) Excludes rent assessment cases dealt with by the PRHP
Members’ fees

152. In addition to expenses, members are paid a daily fee. The current rates are £316 for a legal member, £253 for a surveyor and £163 for a housing member. The estimated cost of member’s fees is based on fees multiplied by number of members and the number of days worked. In terms of daily fees for members this equates to an annual cost as follows:

- scenario 1: (£316+£253+£163) x 21.7 members x 15 days per year = £238,000
- scenario 2: (£316+£253+£163) x 14.5 members x 15 days per year = £159,000

Members’ training

153. The current level of training provided for PRHP members is two days per year. Members are paid a daily fee for this. Based on this data, the Scottish Government estimates the average daily rate fee for all types of member to cover two training days per year are as follows:

- scenario 1: 65 members (legal, housing and surveyor members) = £32,000
- scenario 2: 43 members (legal, housing and surveyor members) = £21,000

Accommodation and administrative staff

154. The existing repairing standard caseload for the PRHP for 2011 was 229 cases, handled by 4 administrative staff. This means that average number of cases dealt with per staff member was 57. Assuming that staff will deal with the same average number of cases per year when third party reporting rights are introduced, the Scottish Government estimates that the following number of additional administrative staff will be needed to deal with the increased caseload:

- scenario one: 650 cases divided by 57 = 11 administrative staff
- scenario two: 434 cases divided by 57 = eight administrative staff

155. In order to maximise cost effectiveness, the Scottish Government has assumed that new staff will be housed in Scottish Government buildings which are less expensive to rent than in the private sector. Under scenario 1, of the 11 staff, two would be located in Dundee, two in Edinburgh and seven in Glasgow (which is currently the administrative centre for the PRHP). This would provide the new Panel with a central and a regional administrative base to process cases from all around Scotland. Under scenario 2, the eight additional staff would be distributed two in Dundee, two in Edinburgh and four in Glasgow.

156. The Scottish Government Property Advice Branch estimates the cost of accommodation for 11 staff to be £35,000 and £24,000 for eight staff.

157. In addition, accommodation will be required for committee hearings. In order to maximise cost effectiveness, the Scottish Government has assumed that the majority of hearings would take place in Scottish Government buildings, subject to future space capacity. There may be some hiring of venues and this has been factored into the overall cost estimate.
158. The Scottish Government Property Advice Branch estimated the cost of having two and one dedicated Tribunal hearing rooms in Scottish Government buildings are £12,000 and £5,000 respectively. Therefore total accommodation costs to cover staff and hearings are estimated to be £48,000 for scenario 1 and £29,000 for scenario 2.

One-off set-up costs

159. The main set-up costs for year 1 only would be for recruitment and judicial training for new panel members. The data on actual set-up costs incurred by the homeowner housing panel (HOHP), which was set-up in 2012, has been scaled up to estimate how much the PRHP would need to expand to deal with the higher volume of repairing standard cases.

160. The HOHP recruited 41 new members to process an estimated 340 cases per year. Under scenarios 1 and 2, the Scottish Government would recruit 65, and 43 members respectively. The HOHP judicial training and recruitment costs are scaled up based on the higher number of members that would need to be trained up and recruited for the PRHP.

161. The Scottish Government understands that the HOHP used two administrative staff (or 50% of its administrative staff) to set-up the HOHP. On this basis and the estimates for new administrative staff, it would require approximately four to six staff to be involved in the set-up of the extended PRHP. Staff salaries for those involved in the set-up and general office expenses incurred in setting-up the additional office are based on the higher number of new administrative staff that would need to be involved in setting up the extended PRHP compared to the HOHP. Some costs incurred by the HOHP were not deemed applicable because the PRHP does already exist and so items such as IT and web systems are already in place. The remaining set-up costs were assumed to be the same as for the HOHP e.g. the presidents fees for establishing an expanded PRHP.

162. The one-off set-up costs are summarised for each scenario at Table 12:

Table 12: Third party reporting rights to the PRHP – one-off set-up costs

<table>
<thead>
<tr>
<th>One-off set-up costs</th>
<th>Scenario 1: Address total RS cases (13,000) over 10 years</th>
<th>Scenario 2: Address total RS cases (13,000) over 15 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial training costs</td>
<td>£71,341</td>
<td>£47,579</td>
</tr>
<tr>
<td>Judicial recruitment</td>
<td>£11,098</td>
<td>£7,401</td>
</tr>
<tr>
<td>General office expenses</td>
<td>£2,555</td>
<td>£1,711</td>
</tr>
<tr>
<td>Staff salaries</td>
<td>£22,424</td>
<td>£15,020</td>
</tr>
<tr>
<td>President’s fees</td>
<td>£10,600</td>
<td>£10,600</td>
</tr>
<tr>
<td>President’s expenses</td>
<td>£200</td>
<td>£200</td>
</tr>
<tr>
<td>Publicity material</td>
<td>£7,200</td>
<td>£7,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£125,418 pa</strong></td>
<td><strong>£89,711 pa</strong></td>
</tr>
</tbody>
</table>

Overall costs

163. Given that the PRHP is already well established to deal with referrals relating to enforcement of the repairing standard, the PRHP model has been used to estimate the
additional costs of processing third party reporting rights. The costs for the operation of the PRHP for 2011/2012 have been scaled up for the estimated number of third party reporting cases.

164. Based on the PRHP Annual Report 2011, it is possible to estimate that the total cost of 229 repairing standard cases received by the panel was around £360,000, equating to an average cost per case of £1,560.

165. The overall costs per annum for the continuing operating costs for an expanded PRHP are summarised for each scenario at Table 13.

**Table 13: Overall costs per annum for continuing operational costs for an expanded PRHP.**

<table>
<thead>
<tr>
<th>Costs</th>
<th>Scenario 1: Address total RS cases (13,000) over 10 years £</th>
<th>Scenario 2: Address total RS cases (13,000) over 15 years £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Variable costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postal costs</td>
<td>9,143</td>
<td>6,097</td>
</tr>
<tr>
<td>Other legal costs</td>
<td>19,074</td>
<td>12,721</td>
</tr>
<tr>
<td>General expenses</td>
<td>15,620</td>
<td>10,417</td>
</tr>
<tr>
<td>Members fees</td>
<td>237,900</td>
<td>158,661</td>
</tr>
<tr>
<td>Venue hire</td>
<td>35,531</td>
<td>23,697</td>
</tr>
<tr>
<td>Members expenses</td>
<td>33,730</td>
<td>22,495</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>350,998 pa</strong></td>
<td><strong>234,089 pa (rounded)</strong></td>
</tr>
<tr>
<td>Fixed costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff costs (PRHP 1 x B3 and 3 x A3)</td>
<td>203,847</td>
<td>135,951</td>
</tr>
<tr>
<td>Training</td>
<td>31,720</td>
<td>21,155</td>
</tr>
<tr>
<td>Charges/web site costs</td>
<td>7,738</td>
<td>5,160</td>
</tr>
<tr>
<td>Accommodation</td>
<td>47,800</td>
<td>29,475</td>
</tr>
<tr>
<td>Staff expenses</td>
<td>9,148</td>
<td>6,101</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>300,254 pa (rounded)</strong></td>
<td><strong>197,842 pa</strong></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>651,252 pa</strong></td>
<td><strong>431,931 pa</strong></td>
</tr>
</tbody>
</table>

166. The Scottish Government estimates therefore that the total costs and cost per case are:

- **scenario 1**: 650 cases a year over 10 years, 3 members. Total annual estimated cost of £777,000, including £125,000 for set-up costs in year 1 only. The average cost per case in year 1 is £1,195. The annual estimated cost thereafter is £651,000 with an average cost per case of £1,002.

- **scenario 2**: 434 cases a year over 15 years, 3 members. Total annual estimated cost of £522,000, including £90,000 set-up costs for year 1 only. The average cost per case in year 1 is £1,203. The annual estimated cost thereafter is £432,000 with an average cost per case of £996.
Scottish Court Service

167. This provision does not introduce any new rights of appeal to the courts. There are already established arrangements for tenants and landlords to appeal to a sheriff court in relation to a determination by the PRHP. Therefore the Scottish Government does not expect any initial set-up costs.

168. In terms of continuing costs it is difficult to know how many additional appeals may be made to a sheriff as a result of third party reporting rights to the PRHP. Based on evidence in the PRHP annual report for 2011 from a caseload of 229 cases, only four were appealed. Based on this figure and an estimated additional caseload of 650 and 434 cases, the number of appeals may only be between 11 and 8 appeals per year. The Scottish Court Service (SCS) has indicated that the average cost per summary application is £95, and that the estimated costs per year of £760 - £1,045 per year could be absorbed within the existing SCS budget.

Costs on local authorities

169. Feedback provided by a number of local authorities indicates that there may be some costs involved in gathering evidence on property condition, processing the application, and where appropriate defending a case in court on appeal by the landlord.

170. One local authority has indicated that the policy may help to reduce costs, by avoiding duplication of effort to deal with a complaint about property condition across different local authority services. Where a local authority can make a direct referral to the PRHP it may reduce the number of services and agencies who need to get involved.

171. Local authorities have generally not provided any estimation as to the value of any costs or savings. However, one local authority has offered very approximate figures as to the time and cost involved in referring a case to the PRHP. It was estimated that it would take 16 hours to prepare each case. This included visit(s) to the affected property, communication and letters to the landlord, completion of the application and attendance and preparation at a PRHP hearing. The estimated cost per referral based on staff wages of £22 per hour was £352.

172. This provision does not place any new mandatory duties on local authorities. The discretionary power to make an application to the PRHP means that applications can be made based on existing budgets and local priorities, as informed by individual local housing strategies.

Costs on other bodies, individuals and businesses

173. Landlords have a legal obligation to meet the repairing standard. More cases may be identified as requiring work to be done to meet that standard as a result of this policy, but the costs related to bringing properties up to standard are not regarded as additional costs.
Summary

174. In summary, the Scottish Government expects the following costs resulting from the introduction of third party reporting rights to the current PRHP structure, prior to ultimate transfer to the FTT:

Table 14: Summary table of additional costs – Third party reporting rights to the PRHP

<table>
<thead>
<tr>
<th>Scottish Administration</th>
<th>Paragraph reference</th>
<th>Additional costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 1 set-up costs:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>scenario 1</td>
<td>162</td>
<td>£125,000</td>
</tr>
<tr>
<td>scenario 2</td>
<td>162</td>
<td>£90,000</td>
</tr>
<tr>
<td>Variable costs (members’ fees, expenses etc.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scenario 1</td>
<td>165</td>
<td>£351,000</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>165</td>
<td>£234,000</td>
</tr>
<tr>
<td>Fixed costs (staff salaries, accommodation etc.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scenario 1</td>
<td>165</td>
<td>£300,000</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>165</td>
<td>£198,000</td>
</tr>
<tr>
<td>Scottish Court Service</td>
<td>167-168</td>
<td>£760 - £1,045</td>
</tr>
<tr>
<td>Local authorities</td>
<td>169-172</td>
<td>No additional costs</td>
</tr>
<tr>
<td>Landlords</td>
<td>173</td>
<td>No additional costs</td>
</tr>
</tbody>
</table>

ENHANCED ENFORCEMENT AREAS

175. In addition to provisions to enable third party application in respect of the repairing standard, the Scottish Government intends to include provisions at Stage 2 to enable local authorities to make an application to Scottish Ministers for additional enforcement powers for a specified geographic area designated as an enhanced enforcement area.

176. These enhanced enforcement powers would include mandatory criminal record disclosure checks for private landlords at registration and powers of entry to, and inspection of, private rented properties for the purposes of checking that statutory housing standards are being met.

177. A local authority would be required to provide evidence to support the need for Enhanced Enforcement Area status in its application. It is envisaged that an Enhanced
Enforcement Area would be set for a specified time, for example, a period not exceeding five years.

**Costs on the Scottish Administration**

178. It is not envisaged that there would be any significant cost to the Scottish Government or other central public bodies arising from this provision.

**Costs on local authorities**

179. It is not envisaged that there would be any significant costs to local authorities. In the event that Scottish Ministers grant their approval to create an Enhanced Enforcement Area, it would be for the local authority to resource and deploy the enforcement using the powers conferred. The local authority might do this by targeting its existing enforcement resources in the Enhanced Enforcement Area.

**Costs on other bodies, individuals and businesses**

180. The costs envisaged for private landlords are minimal. Should a private landlord require to provide a disclosure certificate as part of an application for landlord registration, this will incur a cost every three years, at the point of registration. The cost for a disclosure certificate in 2013 was £25. Other additional costs are likely to relate to ensuring that the property complies with relevant legislation e.g. that statutory housing standards are being met.

**Summary**

181. In summary, the Scottish Government expects the costs resulting from enhanced enforcement areas to be minimal.

**PART 4 – LETTING AGENTS**

182. The Bill provides that:

- a mandatory register of all letting agents in Scotland is established, which will include an associated ‘fit and proper person test’;
- a statutory code of practice is developed in partnership with industry stakeholders; and
- a dispute resolution mechanism is established for customers of letting agents to apply to when a dispute arises.

**Available Evidence**

183. Whilst data exists at a UK level, no information in relation to how many letting agents are in operation in Scotland is available. Scottish Government Analytical Services Division, therefore, undertook analysis of the available UK data using a model which enabled figures
to be scaled down in order to provide Scottish estimates of letting agent numbers. Assumptions have been based on the most robust evidence available.

184. Existing data suggests that there were in the region of 11,560 UK firms engaged in some form of letting agent activity in 2011/12\[^{41}\]. Using a scaling factor in relation to the % of UK PRS dwellings which are in Scotland (six per cent), analysts were able to estimate that there are around 719 letting agents operating in Scotland. Of the 11,560 UK firms, the Ombudsman received a total of 7,731 complaints against them, equating to 0.7 complaints per letting agent firm. When this proportion (0.7) is applied to the estimate of 719 Scottish letting agents, this provides an estimate of 481 potential complaints per year against Scottish letting agents. The following financial estimates are therefore based on the cost of processing 481 letting agent complaints per annum.

**Costs on the Scottish Administration**

**Scottish Government**

185. The Scottish Government will take on responsibility for management and delivery of the letting agent registration system, code of practice development and establishment and funding for a dispute resolution panel. Provisions in the Bill will also enable Scottish Ministers to delegate another appropriate body to perform this role.

186. One-off set-up costs and continuing administrative costs will be incurred by the Scottish Government in relation to:

- establishment of an IT system to enable registration of letting agent details and publication of a register of letting agents online,
- facilitation and consultation costs in order to develop a stakeholder-led statutory code of practice, and
- establishment of a dispute resolution panel.

**Registration system and online database of letting agents**

187. The recent introduction of the Property Factors (Scotland) Act 2011 saw the development of an IT system to handle all registration applications and a website to provide the public with access to that register. Currently, the property factors register and online database are administered centrally by the Scottish Government and, therefore, existing systems are in place, which can be amended to incorporate the registration of all letting agents.

188. It is expected that a letting agent registration database and website could be developed within an expanded Scottish Government property factors database and website, therefore presenting savings in terms of system development.

\[^{41}\] RICS Research: Better regulation of sales and letting agents: An impact assessment of costs and benefits
189. With regards to administrative costs associated with creation and maintenance of the letting agent register, provisions in the Bill permit Scottish Ministers to prescribe the level of fees to accompany an application to the register of letting agents. Furthermore, provisions outline that a fee to be prescribed can accompany any request to amend existing details on the letting agent register. Accordingly, the Bill’s provision for fee-charging will enable the cost of administering the letting agent register to be self-financing and result in neutral costs to the Scottish Government in that respect. Income from fees will not cover the running costs of the letting agent redress mechanism. Those costs will largely be borne by Scottish Government budgets.

190. The Scottish Government will estimate the potential set-up and running costs of the register and set fees taking into account the estimated numbers of businesses operating as letting agents.

191. As a guide, the recent introduction of a register of property factors saw the fees currently applicable to individuals and businesses operating as a property factor set at the following levels: £100 for property factors with a portfolio size of 100 or fewer properties; £370 for property factors with a portfolio size of more than 100 properties. The property factor registration fees are levied once every three years. At present, no fees are levied when requests are made to change existing details on the property factor register, although the power to prescribe such fees does exist within the 2011 Act.

192. The estimated number of letting agents in Scotland is 719. For illustrative purposes, if a three-yearly fee level of £250 per letting agent business was set (an approximate mid-point between the two tiers of property factor fees) and no fees were initially prescribed in relation to requests to amend existing details on the register (pending subsequent assessment of how many amendment requests were made by letting agents) then the total expected income to the Scottish Government would be approximately £180,000 in the first year of operation of the register. After 3 years of operation of the register, the Scottish Government would envisage charging re-registering lettings agents a similar fee to cover the subsequent three years. Therefore, income of approximately £180,000 would be accrued in the fourth year of the register’s existence.

Code of Practice costs

193. The Scottish Government expects that a statutory code of practice for the industry will be developed in partnership with a range of stakeholders. Voluntary codes of practice, published by a number of trade bodies, are already in operation and will help inform the development of a statutory code of practice.

194. Costs will therefore be incurred by the Scottish Government in relation to the facilitation of this process, however such costs are expected to be minimal (estimated to be around £3000), as meeting venues will be utilised within Scottish Government buildings and existing staff will undertake secretariat duties.
195. It is also expected that a draft statutory code of practice will be subject to full public consultation. This one-off cost is again expected to be minimal (around £3000), with a further cost in relation to analysis of consultation responses and publication of a consultation analysis report expected to be in the region of £4000. These costs are expected to be met from within existing programme budgets. Further minimal costs will be incurred in relation to the publication of the statutory code of practice, to be met from existing programme budgets.

Establishment of a dispute resolution panel costs

196. Building on the experience of the 2011 Act, provisions in this Bill in relation to dispute resolution for letting agent customers has been modelled on the existing Private Rented Housing Panel (PRHP), see Annex A for further details. Based on the PRHP Annual Report 2011, it is possible to estimate that the total cost of 250 cases received by the PRHP was around £432,000 in 2011/12, equating to an average cost per case of around £1,730. The average costs of letting agent cases that have been modelled are therefore similar to this (see table 15).

197. Dispute resolution panel costs are modelled on three different scenarios based on the number of cases a committee could hear per day, as follows:

- scenario 1: Low caseload turnover – each committee hears 2 cases per day;
- scenario 2: Medium caseload turnover – each committee hears 6 cases per day; and
- scenario 3: High caseload turnover – each committee hears 10 cases per day.

Estimated members’ expenses

198. In order to estimate the number of hearing days which would be needed to hear 481 cases (assuming each committee hears 2, 6 or 10 cases per day), the Scottish Government has applied the following calculation:

- scenario 1: \( \frac{481}{2} \) hearings per committee, per day = 241 hearing days required;
- scenario 2: \( \frac{481}{6} \) hearings per committee, per day = 80 hearing days required;
- scenario 3: \( \frac{481}{10} \) hearings per committee, per day = 40 hearing days required.

199. It is assumed that each member will work 15 days each year (based on current minimum working days for PRHP members). It is also assumed that in the majority of cases heard, a panel would consist of one legal member and one housing member. However, it has been assumed that 80 per cent of Panels would have two members (a legal member and a housing member) and 20 per cent would have three members (a legal member, a housing member and a specialised member). Estimates of members’ expenses, fees and training have been uprated to reflect these additional costs for the three member Panel. The method for this is set out in paragraph 208-209.

200. Therefore:

42 However, it has been assumed that 80 per cent of Panels would have two members (a legal member and a housing member) and 20 per cent would have three members (a legal member, a housing member and a specialised member). Estimates of members’ expenses, fees and training have been uprated to reflect these additional costs for the three member Panel. The method for this is set out in paragraph 208-209.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

- scenario 1: 241/15 days per member = 16 housing members required to process 481 cases. 16 legal members required also. Therefore, total members required = 32;
- scenario 2: 80/15 days per member = 5 housing members required to process 481 cases. 5 legal members required also. Therefore, total members required = 10.
- scenario 3: 48/15 days per member = 3 housing members required to process 481 cases. 3 legal members required also. Therefore total members required = 6.

201. As well as Panel members, it is assumed that 1 legal member would be required for interlocutory work (preparation of cases) every other day. This would result in an additional eight interlocutory legal members required for scenario 1, three interlocutory legal members required for scenario 2 and two interlocutory legal members required for scenario 3.

202. The average expenses costs for PRHP members is £625 per member per annum. However, in the vast majority of cases, the Scottish Government expects that letting agent panel members will not be required to make site visits and therefore this amount has been reduced by 33% to provide a more realistic average expenses costs for letting agent panel members. Therefore:
- scenario 1: (32 members + 8 interlocutory members) x £625 x 0.66 = then uprated as per footnote 37 = £17,642 estimated members expenses
- scenario 2: (10 members + 3 interlocutory members) x £625 x 0.66, then uprated as per footnote 37 = £5,858;
- scenario 3: (6 members + 2 interlocutory members) x £625 x 0.66, = £3,515

Estimated members’ fees

203. In the vast majority of cases, the Scottish Government assumes that 1 legal member and 1 housing member will sit on each panel. The daily fee rate for these members at current PRHP rates is £316 for legal members and £163 for housing members. Therefore, the estimated fee costs (including interlocutory work) for each scenario is:
- scenario 1 - £164,000
- scenario 2 - £55,000
- scenario 3 - £33,000

204. These estimates can be seen in Annex A.

Estimated costs for members’ annual training

205. The Scottish Government assumes that each member will undergo 2 days of training per year, based on the current level of PRHP training for members. PRHP members are paid

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43 As per footnote 36
44 As per footnote 38
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

a daily fee for this. This would therefore result in the following estimated total costs (in relation to members’ fees) for training members each year:

- scenario 1 - £22,000
- scenario 2 - £7,300
- scenario 3 - £4,400

206. These estimates can be seen in Annex A.

Estimated costs should a larger panel be required

207. As per footnote 37, the Scottish Government expects that the majority of cases will be heard by a 2 person panel. However, there may be some instances where a 3 person panel may be required; for example, in cases where a member with specialised expertise is required. For the purposes of estimating the overall costs of such an increase to panel numbers, it is assumed within this Financial Memorandum that this would only occur in 20% of cases going before a panel.

208. Such an increase in panel members would result in increased costs in relation to members’ expenses, fees and training. In total, the Scottish Government estimates that these costs (shown in Annex A) would be expected to increase by 10%. This is included in the figures presented above. In relation to these three cost items, the three panel model would incur the following costs: Scenario 1 = £14,173, Scenario 2 = £4,654 and Scenario 3 = £2,409.

Estimated costs of administrative accommodation

209. Currently, 4 PRHP administrative staff deal with around 250 PRHP cases, providing an average of 63 cases per head of staff. The Scottish Government assumes that each member of staff for the proposed letting agent panel will process, on average, 63 cases per year. Therefore, assuming that the new panel would deal with an average 481 cases per year, this would result in an estimated eight members of administrative staff being required.

210. In order to maximise cost effectiveness, it is assumed that new staff will be housed in Scottish Government buildings. Under all scenarios, it is assumed that staff will be located in Glasgow (which is currently the administrative centre for the PRHP). Initial estimates by the Scottish Government for accommodation costs for eight staff in Glasgow are £30,000 per annum.

211. As a further maximisation of cost effectiveness, the Scottish Government assumes that the majority of hearings would take place in Scottish Government buildings (subject to space capacity), in order to minimise the need to hire expensive external venues.

212. This brings the total cost of accommodation to £35,000 under all scenarios, as can be seen in Annex A.
Estimated one-off setup costs for establishing a new panel

213. Set-up cost estimates for a new letting agent panel are shown at table 15:

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Actual Cost (£)</th>
<th>Estimated set-up cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial training costs</td>
<td>45,000</td>
<td>43,994</td>
</tr>
<tr>
<td>Judicial recruitment</td>
<td>7,000</td>
<td>6,844</td>
</tr>
<tr>
<td>IT-case management system development</td>
<td>27,000</td>
<td>27,000</td>
</tr>
<tr>
<td>New website</td>
<td>3,100</td>
<td>3,100</td>
</tr>
<tr>
<td>General Office expenses</td>
<td>900</td>
<td>1,732</td>
</tr>
<tr>
<td>Staff salaries</td>
<td>7,900</td>
<td>15,200</td>
</tr>
<tr>
<td>President’s fees</td>
<td>10,600</td>
<td>10,600</td>
</tr>
<tr>
<td>President’s T&amp;S</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Publicity material</td>
<td>7,200</td>
<td>7,200</td>
</tr>
<tr>
<td><strong>Estimated total cost</strong></td>
<td><strong>108,900</strong></td>
<td><strong>115,869</strong></td>
</tr>
</tbody>
</table>

214. These estimated costs are based on data available from the establishment of the homeowner housing panel (HOHP), which was set up in 2012. The actual set-up costs shown have been scaled up or down to reflect the additional number of members and staff that would need to be recruited and training for the new letting agent panel under each scenario.

Costs on local authorities

215. The Scottish Government does not expect additional costs for local authorities as a result of further regulation of the letting agent industry.
Costs on other bodies, individuals and businesses

216. The introduction of a registration system will result in costs to individuals and businesses operating as letting agents. A fee will be applicable to join the register of letting agents, for requesting changes to registration details and/or when renewing a registration. Fee levels will be set by Scottish Ministers.

217. The introduction of a new dispute resolution mechanism for customers of letting agents is likely to result in savings for the court service. Currently, landlords who have contractual disputes with a letting agent are required to undertake civil court action. The Scottish Government proposes that such cases would be heard by a letting agent panel and, therefore, savings to the court service would be expected. However, it is not possible to quantify what this saving could be.

Summary

218. In summary, the Scottish Government expects the costs and savings resulting from further regulation of letting agents to be as follows:

Table 16: costs and savings resulting from further regulation of letting agents

<table>
<thead>
<tr>
<th></th>
<th>Additional costs (£)</th>
<th>Paragraph reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 1 set-up and running costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scenario 1</td>
<td>£116,000</td>
<td>213</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>£82,000</td>
<td>213</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>£75,000</td>
<td>213</td>
</tr>
<tr>
<td>Fixed costs (staff salaries, accommodation etc)*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scenario 1</td>
<td>£238,000</td>
<td>Annex A</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>£223,000</td>
<td>Annex A</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>£220,000</td>
<td>Annex A</td>
</tr>
<tr>
<td>Variable costs (members fees, expenses etc)*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scenario 1</td>
<td>£246,000</td>
<td>Annex A</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>£126,000</td>
<td>Annex A</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>£101,000</td>
<td>Annex A</td>
</tr>
<tr>
<td>Scenario 1 Total</td>
<td>£600,000</td>
<td></td>
</tr>
<tr>
<td>Scenario 2 Total</td>
<td>£431,000</td>
<td></td>
</tr>
<tr>
<td>Scenario 3 Total</td>
<td>£396,000</td>
<td></td>
</tr>
<tr>
<td>Local authorities</td>
<td>£0</td>
<td>215</td>
</tr>
<tr>
<td>Other bodies, individuals and businesses</td>
<td>Estimated £250 per letting agent business</td>
<td>192</td>
</tr>
</tbody>
</table>

* Estimates have been uprated to assume that 80 per cent of cases are heard by two Panel members and 20 per cent are heard by three Panel members.

219. The Scottish Government’s estimate of costs to ‘other bodies, individuals and businesses’ is based on the potential direct costs incurred in the payment of a registration fee (assuming a fee structure similar to the 2011 Act is implemented for letting agents). This
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

estimate does not include any potential training costs or costs to alter business practices that a letting agent may have to undertake in order to comply with a code of practice. Therefore, this may be subject to change.

PART 5 - MOBILE HOME SITES WITH PERMANENT RESIDENTS

220. This section of the Financial Memorandum sets out the expected costs associated with the provisions included in the Bill (at sections 53 – 71) on the licensing of residential mobile homes sites. It sets out the costs and savings to the Scottish Administration, local authorities and other bodies, individuals and businesses.

221. The following consultation was carried out in order to determine the costs set out in this Financial Memorandum:

• The Scottish Government’s Communities Analytical Services carried out an analysis of the mobile home industry in Scotland. This analysis included desk research of previous studies, and a survey sent to site owners of residential, holiday and mixed parks. The quantitative analysis from the survey was complemented with in-depth interviews with local authorities’ officials. The survey was sent in July 2012, and a total of 23 responses were received. The survey helped to inform the Scottish Government further about the mobile home industry in Scotland and was useful in assessing the impact site licensing changes might have on business.

• Formal consultation on the proposals for site licensing from 21 May to 13 August 2012. 129 responses were received and were independently analysed.

• Research into the mobile homes sector in Scotland was also carried out on behalf of (the then) Consumer Focus Scotland in 2012, and a report on the findings from that research was published in spring 2013. This was also taken into account in preparing this Financial Memorandum.

• Consultation with key stakeholders, through meetings and correspondence with individual bodies and through regular meetings with the Residential Mobile Homes Stakeholder Working Group. That group has continued to discuss the site licensing proposals since the end of the formal consultation. Its members include representatives from:
  • local authorities,
  • Convention of Scottish Local Authorities (COSLA),
  • British Holiday and Home Parks Association,
  • Independent Park Home Advisory Service,
  • National Association of Park Home Residents,
  • Park Home Legislation Action Group Scotland,

Consumer Focus Scotland, Stories To Be Told, 2013. As part of UK-wide government reforms, Consumer Focus was abolished in May 2013, and replaced with Consumer Futures, a new body representing consumers in the regulated markets of energy, post, and (in Scotland) water.
MOBILE HOMES SITE LICENSING

Current position

222. The Bill includes provisions to update the licensing regime for residential mobile homes sites. The current site licensing regime is governed by the Caravan and Control of Development Act 1960 (the 1960 Act). The 1960 Act requires an occupier of land to obtain a site licence before the land can be used as a caravan site. It covers privately-owned residential mobile home sites, holiday sites and privately-owned Gypsy/Traveller sites but excludes local authority sites\(^{46}\).

223. Local authorities can attach conditions to site licences but, although they can enter and inspect sites, they have limited powers to enforce compliance with those conditions.

Bill provisions

224. Part 5 of the Bill contains provisions in relation to the licensing of mobile homes sites with permanent residents (referred to in the Bill as “relevant permanent sites”). These provisions will insert a new Part [1A] into the 1960 Act to deal with the licensing of such sites. These will make the following changes to the 1960 Act:

- introduction of statutory minimum application criteria (to be set by Ministers in regulations), which would require all applicants for relevant permanent site licences to provide the same basic information;
- requirement to renew licences every 3 years;
- provision for local authorities to charge a licence fee. The level this fee will be set by each local authority, but the Bill allows Ministers to make regulations specifying matters to be taken into account in determining the fee and/or to set a maximum fee;
- requirement for site owners to satisfy a fit and proper person test;
- increased enforcement powers for local authorities to take action where there has been a breach of site licence conditions.

225. The proposed enforcement powers include powers for a local authority to:

- issue an improvement notice on a site owner, to require them to carry out work to comply with a licence condition;
- issue a penalty notice, which would suspend pitch fee payments, and the commission a resident pays to the site owner on the sale of their mobile home, if the site owner failed to comply with an improvement notice;
- undertake emergency works on sites and recover the costs from site owners;

\(^{46}\) The First Schedule to the 1960 Act lists sites which do not require licences – these include local authority sites.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

- ask a sheriff to appoint an interim manager to take over the running of the site in specific circumstances, such as when a site licence is revoked, or a local authority has refused to renew a licence;
- revoke a site licence in certain circumstances;
- recover the costs of enforcement action from the site owner involved.

Costs on the Scottish Administration

Scottish Government

226. The operation of the new licensing and enforcement regime will not have cost implications for the Scottish Government. There may be one-off costs to the Scottish Government in consulting on and developing secondary legislation that supports the implementation of the new licensing system (for example, regulations on the procedures to be followed in relation to licence applications, licence transfers and appeals against local authority decisions on applications).

227. The Scottish Government does not expect that secondary legislation will be required under all of these powers at the initial implementation stage. The intention is to discuss with stakeholders whether regulations are needed on some matters before the provisions are brought into force. Some other powers (such as to alter maximum fines) are required to provide flexibility to adapt and update the licensing regime in future. The cost of the SSIs required for implementation is expected to be between £600 and £1500, on the basis of an approximate cost of £300 per SSI and will be met from within existing programme budgets.

228. There will also be one-off costs to the Scottish Government for the development and publication of guidance on the legislative changes in this Bill and consultation on the SSIs. This is estimated to be less than £10,000 and will also be met from within existing programme budgets.

Scottish Court Service costs

229. Court figures cannot be broken down to the level of identifying how many court cases relate to mobile homes, but the Scottish Government is aware of only one such court challenge to site licence conditions in recent years. Site licences can be revoked at present, but only by a criminal court, on application by a local authority following the conviction of a site owner for breach of licence conditions (see section 9 of the 1960 Act).

230. The new licensing regime is likely to give rise to more court challenges to local authority decisions than the current regime. Licences will be due for renewal every three years. Local authorities will have greater discretion to refuse licence applications and where they do so, applicants may seek to challenge their decisions. Local authorities will also have enhanced enforcement powers, including the ultimate sanction of revoking a licence without first obtaining a criminal conviction. Licensees may challenge the use of those powers. In both cases the Bill creates routes of appeal which will allow local authority decisions to be challenged in the sheriff court. The Scottish Government expects that these appeals will be
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

raised using the summary application procedure and follow the standard arrangements for such cases, meaning there would not be any initial set-up costs.

231. These new appeals in relation to mobile homes licensing will have continuing implications for the Scottish Court Service but, although it is difficult to predict how many appeals there may be, it is not expected that the annual case numbers will be significant. Research by Consumer Focus identified 92 mobile home sites in Scotland, with around 3,314 mobile homes. The majority of sites have fewer than 50 residential homes. If appeals were raised in relation to every site licence application in Scotland, this would give a total of 92 mobile home appeals over three years. However, the Scottish Government expects that the majority of site owners will satisfy the fit and proper person test, be granted a licence, and will continue to run their sites in compliance with the licence conditions and without the local authority taking enforcement action against them. As highlighted above, the Scottish Government is aware of only one court challenge to licence conditions in the past year. If that pattern were repeated in future years it would mean that slightly over 1% of the sites in Scotland might give rise to court action in any year. Even if, as an example, 5% of owners were refused a licence or were subject to enforcement action, and half of those owners raised an appeal, this would give a total of two to three appeal cases a year.

232. The estimated cost to the Scottish Court Service of a summary application case is £95 but the Scottish Government estimates that this small number of additional cases could be subsumed within existing sheriff court staffing and court sittings so there would be no additional cost to the Scottish Court Service.

Costs on local authorities

233. The provisions will require local authorities to consider licence applications for relevant permanent sites.

234. There are cost implications associated with licensing relevant permanent sites, including staff time, support and administration resources. The implications for each local authority will depend on the number of relevant permanent sites in a local authority's area, the geography of that area and the size of the sites. Most local authorities have at least one such site in their area.

235. The costs of an enhanced licensing regime can be separated into two parts. Firstly, the initial costs of administering the new application process and, secondly, the costs associated with enforcement action.

Costs of administering application process

236. Local authorities will incur administrative costs in logging, considering and approving applications, including assessing whether applicants meet the fit and proper person test. They

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47 Consumer Focus Scotland, Stories To Be told. 2013
48 The sheriff has not yet issued a formal decision in that case.
49 Figures provided by the Scottish Court Service.
will also incur costs in relation to site visits, both in terms of travel and reporting on the visits. The precise costs for each local authority will depend on the salary levels of the staff carrying out administrative work, the number of sites in their area, and the travel distances involved. These costs are to be met through the introduction of a fee on application.

237. The Bill confers power on local authorities to set their own fees, but requires them to take into account factors that the Scottish Ministers can set out in regulations. Local authorities will also have to observe any maximum fee level that the Scottish Ministers may choose to set. The cost of providing a licence will reflect the cost to an authority of providing one. This will clearly vary from authority to authority, depending on the size and geography of a local authority’s area and the way individual authorities decide to tackle the tasks involved. Based on research, analysis, and interviews with local authority stakeholders, the Scottish Government estimates that the likely cost of a site licence will be around £600 (for current sites, £56,511 every three years, across the sector). However, the exact cost will depend on many factors, such as the amount of staff time involved, staff salaries, and the procedures adopted by an authority. The Scottish Government’s estimated figure takes into account the elements set out at table 17.

Table 17: Mobile home site licensing - Likely cost of a site licence

<table>
<thead>
<tr>
<th>Tasks</th>
<th>Indicative time (days full-time equivalent)</th>
<th>Indicative salary (including National Insurance and other contributions)</th>
<th>Cost per day</th>
<th>Cost</th>
<th>Total cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Statutory minimum application criteria</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receiving, logging, and electronically storing information relating to the application</td>
<td>0.5</td>
<td>£35,000</td>
<td>£95.89</td>
<td>£47.95</td>
<td><strong>£109.59</strong></td>
</tr>
<tr>
<td>Checking and authorising</td>
<td>0.5</td>
<td>£45,000</td>
<td>£123.29</td>
<td>£61.64</td>
<td></td>
</tr>
<tr>
<td><strong>Fit and proper person test</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compiling information, reviewing records</td>
<td>1</td>
<td>£45,000</td>
<td>£123.29</td>
<td>£123.29</td>
<td><strong>£123.29</strong></td>
</tr>
<tr>
<td><strong>Visiting site</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transport costs (distance)</td>
<td>N/A</td>
<td></td>
<td>£80.00</td>
<td><strong>£381.37</strong></td>
<td></td>
</tr>
<tr>
<td>Visit x 2 officials</td>
<td>2</td>
<td>£35,000</td>
<td>£95.89</td>
<td><strong>£191.78</strong></td>
<td></td>
</tr>
<tr>
<td>Reporting</td>
<td>0.5</td>
<td>£35,000</td>
<td>£95.89</td>
<td>£47.95</td>
<td></td>
</tr>
<tr>
<td>Informing site owner</td>
<td>0.5</td>
<td>£45,000</td>
<td>£123.29</td>
<td>£61.64</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL COST</strong></td>
<td><strong>£614.25</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statutory minimum application criteria</td>
<td>£109.59</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fit and proper person test</td>
<td>£123.29</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Visiting site</td>
<td>£381.37</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Costs of enforcement action

238. The Scottish Government intends for the enhanced enforcement regime to be as cost-neutral as possible. Local authorities will retain discretion to undertake the enforcement action they consider to be most appropriate and to manage budgets accordingly. The Bill confers power on local authorities to issue a range of enforcement notices (considered below) and allows them to recover the expenses of issuing such notices. It also allows local authorities to charge fees for inspections, and other work, to investigate or assess compliance with licence conditions. Such a fee cannot exceed the costs reasonably incurred by the local authority in carrying out the work. It will be for local authorities to decide whether it is necessary or proportionate for them to use these powers of recovery in individual cases. For example, they may decide that charging a fee for a single inspection is unnecessary but it is desirable to charge fees for a series of additional inspections where a site owner is being uncooperative.

239. The Bill confers power on local authorities to issue improvement notices to require site owners to take action to remedy failures to comply with licence conditions. Where a site owner fails to comply with the improvement notice, the local authority can carry out the work required and can issue a penalty notice which suspends payments of pitch fees, and the commission a resident pays to the site owner on the sale of a mobile home, until the work is done. The Bill also allows local authorities to reclaim from site owners their expenses in relation to improvement notices, penalty notices and carrying out work so this provision should be cost-neutral for local authorities. The exact costs will vary from case to case, depending on the amount of work required by the local authority.

240. The Bill confers power on local authorities to enter land and take emergency action where a failure by a site owner to comply with licence conditions has created an imminent risk of serious harm to health and safety. The exact costs will depend on the work carried out. The Bill allows local authorities to recover their expenses from the site owner so this provision should be cost-neutral for local authorities.

241. The Bill makes provision for a local authority to revoke a site licence, and to apply to a sheriff to appoint an interim site manager. The Bill also allows Scottish Ministers to make regulations relating to the appointment of an interim manager. These regulations can include provisions relating to the powers of an interim manager, the qualifications they must hold, and the actions the interim manager must carry out. It is the Scottish Government’s intention that management by an interim site manager would be funded directly by the turnover from the site.

Costs on other bodies, individuals and businesses

Residential mobile home site owners

242. The majority of residential mobile home sites in Scotland are owned by family businesses, mostly small and medium enterprises. Most sites are relatively small (11 to 50 units). Site owners charge residents an annual pitch fee and also receive a percentage commission charge (usually 10%) when residents sell their mobile homes. A recent Scottish Government survey suggested that the average annual pitch fee for residential sites was
£1,338, and that around 73% of turnover from sites comes from these pitch fees, but these results were based on a very low response rate. A much larger study carried out by the UK government in 2002 indicated that only 42% of turnover was attributable to pitch fees. The Scottish Government research suggested that the resale market for mobile homes had declined since the economic downturn, hence reducing the income site owners receive from commission fees. It, therefore, seems reasonable to assume that the percentage of turnover attributable to pitch fees will be more than 42% even if it is less than 73%.

243. The majority of the costs of the new licensing regime will fall to site owners, who will need to pay new fees for licences. The relative impact of the licence costs will depend on the size of the business and the level of the fee charged. As with the costs for local authorities, the costs can be separated into two parts. Firstly, the initial costs of obtaining a licence and secondly, any costs associated with enforcement action.

**Licence costs**

244. The provisions in the Bill (section 54, which inserts section 32C(3) into the 1960 Act) mean that when setting a licence fee a local authority will need to ensure that the fee they charge for a relevant permanent site application reflects what they consider to be the authority’s reasonable administrative costs in deciding an application (which will involve logging, considering and approving an application). This will include assessing whether the applicant has met the fit and proper person test, and conducting a site visit. As set out above the Scottish Government estimates that a three-year licence fee of around £600 would cover the likely costs to be involved.

245. Assuming that 73% of turnover was attributable to pitch fees and that the average annual pitch fee is £1,338, a licence fee of £600 would amount to 1-3% of turnover over 3 years for sites with under 20 units and less than 1% of turnover for larger sites. The Bill allows local authorities to charge reduced fees for smaller sites. If, as seems likely, annual pitch fees account for less than 73% of turnover, the total turnover from sites will be greater and the relative impact of licence fees will be reduced.

**Enforcement costs**

246. The Bill is drafted on the principle that site owners who do not comply with the legislation or with the conditions of their licences should bear the costs of action by local authorities in order to enforce compliance. These costs will vary depending on the enforcement action required but owners who comply with the licensing regime will not have to bear any further enforcement costs.

247. The Bill confers power on local authorities to issue improvement notices to require site owners to take action to remedy failures to comply with licence conditions. The Bill also allows local authorities to reclaim from site owners their expenses in relation to improvement notices. The exact costs will vary from case to case, depending on the amount of work required by the local authority. Where site owners fail to comply with an improvement notice, local authorities can serve penalty notices, suspending owners’ rights to receive pitch fees from site residents and the commission a resident pays to the site owner on the sale of
their mobile home. These costs to site owners will be avoidable, as they will only be incurred where site owners fail to comply with licence conditions. The Bill also protects the interests of site owners by allowing them to challenge improvement notices by appealing to the sheriff.

248. The Bill confers power on local authorities to enter land and take emergency action where a failure by a site owner to comply with licence conditions has created an imminent risk of serious harm to health and safety. The exact costs will depend on the work carried out. Again, the Bill allows local authorities to recover their expenses from the site owner. These costs to site owners will be avoidable, as they will only be incurred in extreme cases where site owners fail to comply with licence conditions to such an extent that an imminent risk of serious harm is created. The Bill also protects the interests of site owners by allowing them to challenge emergency works by appealing to the sheriff.

249. The Bill makes provision to refuse or revoke site licences in certain circumstances, such as when a site owner is no longer a fit and proper person to hold a site licence. The Bill also provides for the site to continue in operation but to be managed by an interim manager. This management activity would be funded directly by the turnover from the site, with any surplus being returned to the owner. As with the other enforcement powers, these costs to site owners will be avoidable, as they will only be incurred where site owners do not pass the fit and proper person test or breach licence conditions.

Site residents

250. None of the Bill provisions will impose direct costs on site residents.

Table 18: Summary table of additional costs – Mobile home site licensing

<table>
<thead>
<tr>
<th>Paragraph reference</th>
<th>Additional costs/savings (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scottish Administration</strong></td>
<td></td>
</tr>
<tr>
<td>Scottish Government</td>
<td>226-228 No additional cost</td>
</tr>
<tr>
<td>Scottish Court Service</td>
<td>229-232 No additional cost</td>
</tr>
<tr>
<td><strong>Local Authorities</strong></td>
<td></td>
</tr>
<tr>
<td>Licence Administration</td>
<td>236-237 Cost neutral – costs to be covered by licence fees</td>
</tr>
<tr>
<td>Enforcement Costs</td>
<td>238-241 Cost neutral – costs to be recovered from site owners</td>
</tr>
<tr>
<td><strong>Other bodies, individuals or businesses</strong></td>
<td></td>
</tr>
<tr>
<td>Site owners – Licence fees</td>
<td>244-245 Approximately £600 per licence (For current sites, £56,511 every three years, across the sector)</td>
</tr>
<tr>
<td>Site owners – Enforcement costs</td>
<td>246-249 No additional costs for owners who comply with licence conditions. Variable costs to non-compliant owners, depending on the extent of the licence breach and the work required by the licensing local authority.</td>
</tr>
<tr>
<td>Site residents</td>
<td>250 No additional costs.</td>
</tr>
</tbody>
</table>
PART 6 – PRIVATE HOUSING CONDITIONS

INTRODUCTION

251. This section of the Financial Memorandum sets out the expected costs and savings of the provisions in the Bill (at sections 72-76) on private housing conditions. It considers the financial implications for the Scottish Administration, local authorities and other bodies, individuals and businesses.

252. Local authorities have enforcement powers under Part 1 of the Housing (Scotland) Act 2006 (“the 2006 Act”). These are discretionary powers to allow local authorities to require home owners, including owner occupiers and private landlords, to carry out work needed to repair or maintain private property. The Bill amends the 2006 Act to make the use of these powers more effective by—

- providing a discretionary power to allow local authorities, where appropriate, to support decisions by owners for repair works by paying missing shares on behalf of owners who are unable or unwilling to pay their share of the cost of work agreed by a majority of owners.
- extending the situations in which local authorities can issues maintenance orders to include an automatic follow-on where a work notice has been issued.
- reducing the number of documents in connection with maintenance orders that have to be registered in the Land Register and amending the ways in which local authorities can approve or devise maintenance plans.
- providing that a work notice which requires work to repair a substandard house can also include work to improve security or safety.
- extending the powers to issue repayment charges where a work notice or maintenance order has been enforced to include commercial properties.

253. The 2006 Act provides powers rather than duties and the use of the powers will vary by local authority. It is not possible to quantify the additional costs and benefits of the proposed changes because the use of these powers is discretionary. The Scottish Government assumes that the amendments will allow local authorities to make more effective use of existing resources.

Costs on the Scottish Administration

Scottish Government

254. There are no new financial costs or requirements for the Scottish Government in the changes to local authority enforcement powers. Costs of any additional guidance are likely to be minimal.

Registers of Scotland

255. Registers of Scotland receives a fee for registration of maintenance orders, plans and repayment charges. The registration fee is £60 for each document. However, repayment
charges are compatible with the Automated Registration of Title to Land (ARTL) and charges registered through ARTL are charged a reduced fee of £50.

256. The amendments would mean that maintenance plans would not be registered but could encourage an increase in maintenance orders and possibly also repayment charges.

257. It is not possible to quantify the impact of the amendments on these numbers, but as the numbers are relatively low, the Scottish Government does not expect a significant financial impact on Registers of Scotland from the Bill.

Costs on local authorities

258. Local authorities have a statutory duty to address housing that is below tolerable standard and enforcement powers to require owners to carry out work needed to address substandard housing. Local authorities already have powers to recover costs from owners. The current powers were introduced by the 2006 Act and came into effect from 1 April 2009.

259. Local authorities have discretionary powers to offer a wide range of assistance to help home owners with repairs, maintenance and improvements to private property. In 2012/13, local authorities spent £7 million on assistance for home owners with work to repair, maintain and improve their homes, and a further £4 million on assistance in connection with enforcement notices.\(^\text{50}\)

260. If owners are unwilling or unable to carry out work, local authorities can carry out work themselves and recover the costs. However, this requires an initial outlay by the local authority and there is a risk that the full cost will be unrecoverable.

261. This Bill makes changes to existing powers. It is not expected that the measures in the Bill will increase the costs to local authorities. The changes are intended to make the use of the powers more effective and this includes a reduction in the administration costs incurred by local authorities by reducing the number of documents that have to be registered. Because the measures in the Bill build on the existing enforcement powers no transitional costs are expected.

Costs on other bodies, individuals and businesses

Home owners

262. The primary responsibility for the cost of work to protect and preserve private property rests with owners, under the terms of their title deeds. The last estimate of the cost of repairs in the private sector was in the Scottish House Condition Survey (SHCS) 2002.\(^\text{51}\) The report estimated a total cost of £5 billion for comprehensive repairs needed for private housing in Scotland, including £825 million for comprehensive repairs needed for private

\(^{50}\) [http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/SoA](http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/SoA)

These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

rented housing. It was estimated that £598 million would be needed for the comprehensive repair of common parts shared between homes across all tenures (shared between owners and social landlords). In addition it was estimated that it would cost £1.24 billion to carry out essential improvements, including full central heating and thermal insulation, to private sector property.

263. Subsequent Scottish House Condition Surveys have not included estimates of repair costs but it is likely that overall costs have not reduced because measures of underlying disrepair have been static.

264. The importance of work is not always recognised by owners and in some cases local authorities need statutory powers to require owners to carry out work. This is work that would be required in any case over time to prevent the deterioration of the building, and the costs may in fact be lower than if the work was delayed.

265. Current enforcement powers allow local authorities to carry out the work and recover their costs from owners where owners are unwilling or unable to arrange work themselves. Local authorities can recover the costs of work that they undertake on behalf of owners who are unable or unwilling to do the work themselves. Local authority enforcement powers are discretionary and the main constraint on their use is the limits of local authority resources to meet the upfront cost of enforcement, even if these costs are in principle recoverable over the longer term. Local authorities have to prioritise intervention to best meet the needs identified in their local housing strategies and will only cover part of the total work that home owners should be carrying out.

266. The Bill amends the existing enforcement powers to improve their efficiency. This will not affect home owners’ responsibility for carrying out work on their home but should improve local authorities’ ability to ensure that owners are required to do so when intervention is necessary.

267. Local authorities can recover the cost of registering any documents in the land registers. Consequently, changes to reduce the number of documents that have to be registered will reduce that cost to home owners.

Private landlords

268. The Scottish House Condition Survey 2002 estimate that the cost of comprehensive repairs would be £825 million and the cost of essential improvements £223 million in private rented homes. It is likely that this figure has increased because, while measures of underlying disrepair have not changed much, the size of the private rented sector has increased. In 2002 there were an estimated 170,000 privately rented properties in Scotland. In 2011 this had increased to 290,000.

Local businesses

269. All owners in buildings which contain living accommodation are responsible for their share of the cost of enforcement of repair and maintenance work by local authorities. Local
authorities can currently use a repayment charge to recover their costs from residential owners in 30 annual instalments. The Bill would extend the power to use repayment charges to recover costs owed by owners of commercial properties, such as a ground floor shops, including costs of registering repayment charges and the discharge of repayment charges. This would provide local authorities with more effective powers for recovering costs and allow local businesses the same timescale for repayment. Currently local authorities rely on civil recovery methods which are not always effective and may force businesses into insolvency.

Construction sector

270. The construction sector will benefit if more owners spend more money looking after their homes. The Scottish House Condition Survey Local Authority Report for 2009/11 estimates that on average each year 42% of owners of private sector homes have done work on their homes and spent a total of £2 billion.

271. Costs and savings will arise in the financial year from which the changes to enforcement powers come into effect and continuing. The maximum costs and benefits, so far as they can be quantified, are set out at table 19.

Table 19: House condition enforcement powers - Summary of costs and benefits

<table>
<thead>
<tr>
<th>Paragraph reference</th>
<th>Improved local authority enforcement powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government 254</td>
<td>No expected additional costs or savings</td>
</tr>
<tr>
<td>Registers of Scotland 255-257</td>
<td>No expected additional costs or savings</td>
</tr>
<tr>
<td>Local authorities 258-261</td>
<td>No expected additional cost but may allow existing powers to be used more effectively</td>
</tr>
<tr>
<td>Home owners 262-267</td>
<td>May encourage some owners to carry out works which they do not currently prioritise. Current annual spending on private homes by owners is £2 billion per year, but the Scottish Government is unable to estimate how effectively this addresses repair costs. Supports a culture of proactive maintenance which reduces long term repair bills.</td>
</tr>
<tr>
<td>Private landlords 268</td>
<td>May encourage some private landlords to carry out work needed to ensure that homes meet the repairing standard</td>
</tr>
<tr>
<td>Local businesses 269</td>
<td>Would provide local authorities with a method to recover costs over a 30 year period</td>
</tr>
<tr>
<td>Construction sector 270-271</td>
<td>May encourage part of the estimated £5 billion worth of repairs that are needed in Scotland</td>
</tr>
</tbody>
</table>
PART 7 – MISCELLANEOUS

INTRODUCTION

272. Part 7 makes a number of miscellaneous amendments in respect of:

- the right to redeem a security after 20 years in certain circumstances;
- the Scottish Housing Regulator’s (SHR) powers to transfer assets following inquiries, and
- repeals defective designation provisions in the Housing (Scotland) Act 1987 (“the 1987 Act”).

273. This section of the Financial Memorandum sets out the expected additional costs and savings of the provisions in the Bill (at sections 77 – 80) covering these provisions. It considers the financial implications for the Scottish Administration, local authorities and other bodies, individuals and businesses.

RIGHT TO REDEEM HERITABLE SECURITY AFTER 20 YEARS: POWER TO EXEMPT

Introduction

274. The Bill includes the following provisions:

- it gives Scottish Ministers a power to designate securities to which the 20-year security rule will not apply. This is the right of a borrower to redeem a security over a private dwelling house after it has been in existence for at least 20 years, by paying the original debt plus interest, less any money already repaid.
- in designating securities, Scottish Ministers must describe the securities affected by reference to the type of debt that is secured. They may also attach conditions to the disapplication, or restrict it to specific descriptions of debt, specific creditors or types of creditor, or specific securities or types of security.

275. The Scottish Government intends to use these provisions to designate certain schemes that it operates which advance loans that are linked to the market value of dwelling houses, such as Help to Buy, Help to Adapt and the Low-cost Initiative for First-time Buyers (LIFT), as being exempt from the 20-year security rule. Without use of these provisions, in cases where securities are redeemed after 20 years or more have elapsed, Scottish Ministers would risk receiving the original value of the equity loan rather than the market value of its equity share at the date of redemption. Owners are not obliged to exercise this right, but would have an incentive to do so when the value of the equity has risen. When the equity value has fallen they can redeem the equity loan based on the property’s current market value. Thus exercise of this right is only likely to occur when it would reduce the receipt to Scottish Ministers.

276. In order to avoid this situation from arising, it is currently common practice to limit agreements to 19 years for securities of these types. In fact, by year 19, many homeowners may have already sold the home or, in the case of the shared equity schemes, tranch ed up to
full ownership. For those who have not, there is unlikely to be a difficulty in agreeing a new loan period with the Scottish Government.

277. However, the repayment requirement at year 19 has become a barrier to lender participation in the new Help to Buy (Scotland) scheme and the existing LIFT schemes as a result of the new Financial Conduct Authority Mortgage Market Review (MMR) guidance 2014. Under the Mortgage Market Review guidance, lenders providing a first charge loan will be required to take account of the effect that a shared equity loan may have on the affordability of the first charge loan.

278. Lenders have raised concerns that any Scottish Government legal documentation for its shared equity schemes containing a “payment event” provision at year 19 introduces an element of risk for them. Lenders’ view is that under the MMR rules they will need to take any ‘payment event’ provision into account when assessing a buyer for a mortgage (as the 19-year period is likely to be less than the term of the first charge loan).

279. Lenders asked the Scottish Government to consider guaranteeing that its equity loan would extend as long as the term of the first charge loan. However, by granting such a guarantee Scottish Ministers would be committing themselves to agreements which would be longer than 20 years and would, therefore, incur the risk of Scottish Ministers foregoing significant receipts (as set out further below).

280. The proposed amendments will, therefore, enable Scottish Ministers to remove the 19-year payment requirement, thus facilitating lender participation in the new Help to Buy scheme and continued lender participation in the existing LIFT schemes. For the Help to Adapt scheme, the provisions simplify the delivery of the scheme and are likely to improve take-up. There may also be schemes run by other organisations which could benefit from such a designation, since these would be able to run for more than 19 years. Making it viable for equity loans to run for longer than 19 years will also make it easier to match the duration of such loans with the duration of any other loans over the property.

Costs on the Scottish Administration, local authorities and other bodies, individuals and businesses

281. There are no significant costs for the Scottish Administration, local authorities and other bodies and individuals associated with the 20-year security rule provisions.

Savings

282. As explained above, without amendment to the 20-year security rule, for its Help to Buy (Scotland), Help to Adapt and LIFT schemes, the Scottish Government would have to require repayment of loans in year 19 in order to avoid the risk of receiving the original value

52 The Mortgage Market Review guidance is at http://www.fca.org.uk/your-fca/documents/fsa-ps-12-16-mortgage-market-review
of equity loans rather than the market value of those loans which remain in existence after 20 years. Any other lenders would be in the same position.

283. There are a number of benefits from avoiding the need for a year 19 repayment requirement. Firstly, it removes the need for households to enter into discussions and draw up new securities. This will result in direct savings by avoiding the associated time and legal costs. Each affected household could save around an estimated £900 by not having to enter into new securities after 19 years has elapsed. Although the majority of households are likely to have sold their house (or tranch up to full ownership) by year 19, a significant proportion is likely to still be in their house.

284. With the risk of decreased or no lender participation, another option for the Scottish Government would be not to include a year 19 repayment requirement, thus taking the risk of receiving no equity uplift on loans which last beyond 20 years. In such a case, the benefits which would arise from the proposed designations would be that the Scottish Government would no longer forego these receipts.

285. Modelling work undertaken for the relevant Scottish Government schemes can help illustrate the likely range of these foregone receipts. Their potential explains why, in the absence of the proposed designation powers, in practice the Scottish Government would be likely to insist on a year 19 repayment requirement. The savings given below are the net loss in nominal cashflow to the Scottish Government for as long as the equity loans are in existence.

**Help to Buy (Scotland)**

286. Based on a three-year scheme financed by £220 million of financial transactions, the range of potential foregone receipts can be illustrated by varying key parameters, particularly house prices and equity loan duration.

287. If it is assumed that in the absence of the 20-year security rule, all participants would repay the equity loan at year 25 (a common duration for a residential mortgage) and if it is assumed that house prices follow the UK OBR forecasts, then if the owners were instead able to exercise their rights under the 20-year rule the Scottish Government would forego receipts of around £250 million. The baseline of all repayment at year 25 is an extreme case however. If instead equity redemption is assumed to be constant over the 25-year period (i.e. people sell their houses or tranche up at a uniform rate over the 25 years), then foregone receipts would be around £100 million. Higher house prices would mean even larger foregone receipts. If instead of following the OBR forecasts, future house prices rise at the same rate as they did between 1985 and 2010, foregone receipts could be in the range of £220 million to £690 million. In this case and if there was no repayment requirement at year 19, there would be a considerable incentive for homeowners to exercise the right to redeem a security after 20 years, meaning a loss towards the higher end of the range would be more likely.

288. In summary, if the Scottish Government went ahead with the Help to Buy scheme without inserting a year 19 repayment requirement for the operation of the scheme, the
proposed designation power could save the Scottish Government up to £690 million in receipts which would otherwise be foregone if house prices were to increase as rapidly as they have in the past. A more realistic estimate based on lower house price rises is for savings in the region of £100 million to £250 million.

**LIFT**

289. A similar modelling process has been undertaken for the LIFT programme, with results based on funding of £50 million for the financial year 2014/15. If the LIFT schemes become subject to the 20-year security rule, this could result in forgone Scottish Government revenue of between £20 million and £55 million, but, subject to high house price growth, this could be as much as £150 million.

**Help to Adapt**

290. Savings to the Scottish Government as a result of use of the provisions to designate the Help to Adapt scheme have been calculated for an initial pilot and a national scheme. Under the Help to Adapt scheme, repayment is due when the home owner dies or sells the property. Modelling indicates that around 26% of loans will be outstanding at year 20. In calculating savings, it is assumed that everyone in this position exercises the right to redeem at year 19. As the scheme includes a repayment cap to protect home owners from the impact of high house price inflation, the level of savings is based on zero real house price inflation and a 2% general inflation rate.

291. In an initial pilot scheme (running over three and a half years and distributing £6 million in loans), the expected reduction in income returned to the Scottish Government, compared with the scenario where a designation is made, would be around £700,000.

292. For a full national scheme (running over five years and distributing £26 million in loans), the expected equivalent reduction would be around £3 million.

**Summary**

293. There are no costs to the Scottish Government or stakeholders associated with the change to the 20-year security rule. There are potential savings for each affected household relating to avoiding the negotiating and legal costs of putting a new security in place in year 19 (with avoided legal costs estimated at around £900 per property), as well as reducing the uncertainty to the owner and third parties of what the future legal position relating to the property will be. In particular, the proposed changes will facilitate the participation of lenders in Scottish Government schemes. In their absence, the economic and social benefits from the Scottish Government schemes would be lost.

294. In a situation where the Scottish Government does not require a year 19 repayment, and the 20-year security rule continues to operate, the foregone receipts could be considerable. In this situation, the benefits from the proposed changes stem from the fact that these receipts will no longer be lost. The potential size of these savings has been illustrated for the various Scottish Government schemes. For a £220 million three-year Help to Buy
(Scotland) scheme, the savings could be between £100 million and £250 million based on OBR house-price forecasts.

295. If the LIFT schemes become subject to the 20-year security rule, based on funding of £50m LIFT programme in 2014/15, forgone Scottish Government revenue is likely to be between £20 million and £55 million. For the Help to Adapt scheme the expected benefits to the Scottish Government as a result of the proposed amendment could be around £700,000 for an initial pilot and around £3 million for a full national scheme (running over five years and distributing £26 million in loans). The potential size of these foregone receipts, which involve a redistribution of equity gains from the Scottish Government to the owner merely because the owner has remained in the property for at least 20 years, explains why, in the absence of the proposed designation powers, the Scottish Government would be likely to continue to insist on a year 19 repayment requirement, with the additional costs and foregone benefits associated with this.

DELEGATION OF CERTAIN FUNCTIONS (PRIVATE RENTED HOUSING PANEL)

296. Following consultation with the Scottish Tribunal Service and the president of the private rented housing panel, provisions has been made to allow the president to delegate their duties to the vice president or any other panel member, as the president sees fit. This power of delegation is in addition to the existing powers of delegation which can be exercised during times of absence or incapacity, and is intended to increase flexibility to manage workloads effectively.

Costs on the Scottish Administration, local authorities and other bodies, individuals and businesses

297. There are no other costs or savings identified in connection with these provisions in the Bill.

SCOTTISH HOUSING REGULATOR (SHR): TRANSFER OF ASSETS FOLLOWING INQUIRIES

298. The provisions amend section 67(4) of the Housing (Scotland) Act 2010 (“the 2010 Act”) to give the SHR the power to direct a transfer of all or part of a RSL’s assets without a duty to consult where the RSL’s viability is in jeopardy for financial reasons, there is a risk of imminent insolvency, the proposed transfer of assets would remove the risk of insolvency and the need to direct the transfer is so urgent that it would not be possible to comply with the consultation duty.

299. The provisions also amend section 67(6)(a) of the 2010 Act by removing the requirement on the SHR to obtain an independent valuation prior to it making a direction to transfer some of a RSL’s assets and replacing it with a power to do so in cases where there would be time to undertake a valuation without imperilling an urgently required transfer.
Costs on the Scottish Administration, local authorities and other bodies, individuals and businesses

300. There are no other costs or savings identified in connection with these provisions in the Bill.

REPEAL OF DEFECTIVE DESIGNATION


302. It is estimated that there are approximately 15,000 PRC homes designated as defective in Scotland, of which 3,000 are in the private sector. Almost all of the private housing is ex-local authority stock acquired under the right-to-buy scheme. The designation limits the availability of mortgage finance and restricts house sales and discourages investment to improve the quality of these houses.

303. Part 14 of the 1987 Act provided a grant scheme to assist owners of affected properties. This grant scheme expired in 1994. With the expiry of the grant scheme, the provisions are obsolete and have no benefit to home owners.

Costs on the Scottish Administration, local authorities and other bodies, individuals and businesses

304. There are no other costs or savings identified in connection with these provisions in the Bill.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

ANNEX A

<table>
<thead>
<tr>
<th>Type of Costs</th>
<th>Breakdown of PRHP Costs 2011/12</th>
<th>PRHP Costs £ for 250 cases (a)</th>
<th>Average Cost £ per PRHP Case</th>
<th>Cost Multiplier for Letting Agents Complaints Estimates (Letting Agent Cases / PRHP Cases) (b)</th>
<th>Scenario 1: Low Caseload Turnover – 2 Cases per Committee per day</th>
<th>Scenario 2: Medium Caseload Turnover – 6 Cases per Committee per day</th>
<th>Scenario 3: High Caseload Turnover – 10 Cases per Committee per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Variable Costs</td>
<td>Postal Costs</td>
<td>3,882</td>
<td>16</td>
<td>1.9</td>
<td>7,469</td>
<td>7,469</td>
<td>7,469</td>
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<tr>
<td></td>
<td>General Expenses 2</td>
<td>6,633</td>
<td>27</td>
<td>1.9</td>
<td>12,762</td>
<td>12,762</td>
<td>12,762</td>
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<tr>
<td></td>
<td>Other Legal Costs (inc Appeals)</td>
<td>8,099</td>
<td>32</td>
<td>1.9</td>
<td>15,583</td>
<td>15,583</td>
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<tr>
<td></td>
<td>Members’ Fees 3/6</td>
<td>186,646</td>
<td>747</td>
<td>Costed separately</td>
<td>164,505</td>
<td>54,899</td>
<td>32,556</td>
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<td></td>
<td>Venue Hire</td>
<td>15,087</td>
<td>60</td>
<td>1.9</td>
<td>29,028</td>
<td>29,028</td>
<td>29,028</td>
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<tr>
<td></td>
<td>Members Expenses 6</td>
<td>25,017</td>
<td>100</td>
<td>Costed separately</td>
<td>17,642</td>
<td>5,858</td>
<td>3,515</td>
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<tr>
<td></td>
<td><strong>Sub Total</strong></td>
<td><strong>245,364</strong></td>
<td><strong>981</strong></td>
<td><strong>n/a</strong></td>
<td><strong>246,988</strong></td>
<td><strong>125,598</strong></td>
<td><strong>100,912</strong></td>
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<tr>
<td>Fixed Costs</td>
<td>Staff Costs (PRHP 1 X B3 and 3 X A3)</td>
<td>86,557</td>
<td>346</td>
<td>1.9</td>
<td>166,537</td>
<td>166,537</td>
<td>166,537</td>
</tr>
<tr>
<td></td>
<td>Training 6</td>
<td>879</td>
<td>4</td>
<td>Costed separately</td>
<td>21,959</td>
<td>7,288</td>
<td>4,372</td>
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<tr>
<td></td>
<td>Computer Charges / Website Costs</td>
<td>3,286</td>
<td>13</td>
<td>1.9</td>
<td>6,322</td>
<td>6,322</td>
<td>6,322</td>
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<tr>
<td></td>
<td>Accommodation</td>
<td>92,483</td>
<td>370</td>
<td>Costed separately</td>
<td>35,335</td>
<td>35,335</td>
<td>35,335</td>
</tr>
<tr>
<td></td>
<td>Staff Expenses</td>
<td>3,884</td>
<td>16</td>
<td>1.9</td>
<td>7,473</td>
<td>7,473</td>
<td>7,473</td>
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<tr>
<td></td>
<td><strong>Sub Total</strong></td>
<td><strong>187,089</strong></td>
<td><strong>748</strong></td>
<td><strong>n/a</strong></td>
<td><strong>237,626</strong></td>
<td><strong>222,955</strong></td>
<td><strong>220,039</strong></td>
</tr>
<tr>
<td></td>
<td><strong>GRAND TOTAL</strong></td>
<td><strong>432,453</strong></td>
<td><strong>1,730</strong></td>
<td><strong>n/a</strong></td>
<td><strong>484,613</strong></td>
<td><strong>348,553</strong></td>
<td><strong>320,952</strong></td>
</tr>
</tbody>
</table>

Sources: PRHP Annual Report 2011, Scottish Tribunals Service 2013 and Scottish Government Communities Analytical Services Division.
Notes: n/a – not applicable.
1. Cost multipliers are derived by dividing the estimated number of letting agent complaints by the actual number of PRHP cases.
2. Includes stationery, printing, minor purchases of ACTS etc.
3. Based on three panel members per hearing (on average). In 2011 the PRHP had 40 panel members. Total fees include the variability of fees for different types of cases as they progress through the tribunal process. Some cases will take longer and cost more and vice versa. This fees variability has been accounted in the fee figures quoted above.
4. The PRHP currently employed 1 x B3 and 3 x A3s in to manage an average of 250 cases per annum.
5. Includes the costs associated with rejecting cases at the start of the process. It would be expected that these costs would be mainly covered by the President’s fees but also members’ fees in some more complex cases of rejection.
6. These items of expenditure have been uprated to incorporate 3 panel members on 20% of panels and 2 panel members on 80% of panels.
ANNEX B

FINANCIAL MEMORANDUM - GLOSSARY

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AHSP</td>
<td>Affordable Housing Supply Programme</td>
</tr>
<tr>
<td>ARHAG</td>
<td>Affordable Rented Housing Advisory Group</td>
</tr>
<tr>
<td>ARTL</td>
<td>Automated Register of Title to Land</td>
</tr>
<tr>
<td>ASB</td>
<td>Antisocial behaviour</td>
</tr>
<tr>
<td>BRIA</td>
<td>Business and Regulatory Impact Assessment</td>
</tr>
<tr>
<td>CFCR</td>
<td>Capital expenditure from current revenue</td>
</tr>
<tr>
<td>DWP</td>
<td>Department for Work and Pensions</td>
</tr>
<tr>
<td>FTT</td>
<td>First-tier Tribunal</td>
</tr>
<tr>
<td>HSfS</td>
<td>Housing Statistics for Scotland</td>
</tr>
<tr>
<td>HOHP</td>
<td>Homeowner housing panel</td>
</tr>
<tr>
<td>HMO</td>
<td>Houses in multiple occupation</td>
</tr>
<tr>
<td>JABS</td>
<td>Judicial Appointments Board for Scotland</td>
</tr>
<tr>
<td>LIFT</td>
<td>Low-cost Initiative for First-time Buyers</td>
</tr>
<tr>
<td>MMR</td>
<td>Mortgage Market Review</td>
</tr>
<tr>
<td>OS:P</td>
<td>Ombudsmen Services: Property</td>
</tr>
<tr>
<td>PRHP</td>
<td>Private rented housing panel</td>
</tr>
<tr>
<td>PRC</td>
<td>Pre-cast reinforced concreted</td>
</tr>
<tr>
<td>PRS</td>
<td>Private rented sector</td>
</tr>
<tr>
<td>PWLB</td>
<td>Public Works Loan Board</td>
</tr>
<tr>
<td>RTB</td>
<td>Right to buy</td>
</tr>
<tr>
<td>HRA</td>
<td>Housing Revenue Account</td>
</tr>
<tr>
<td>RICS</td>
<td>Royal Institution of Chartered Surveyors</td>
</tr>
<tr>
<td>RSL</td>
<td>Registered social landlord</td>
</tr>
<tr>
<td>SCORE</td>
<td>Scottish Continuous Recording System</td>
</tr>
<tr>
<td>SCJIC</td>
<td>Scottish Civil Justice Council</td>
</tr>
<tr>
<td>SCS</td>
<td>Scottish Court Service</td>
</tr>
<tr>
<td>SHCS</td>
<td>Scottish House Condition Survey</td>
</tr>
<tr>
<td>SHR</td>
<td>Scottish Housing Regulator</td>
</tr>
<tr>
<td>SPSO</td>
<td>Scottish Public Services Ombudsman</td>
</tr>
<tr>
<td>SST</td>
<td>Scottish secure tenancy</td>
</tr>
<tr>
<td>Short SST</td>
<td>Short Scottish secure tenancy</td>
</tr>
<tr>
<td>STS</td>
<td>Scottish Tribunals Service</td>
</tr>
<tr>
<td>TPO</td>
<td>The Property Ombudsmen</td>
</tr>
</tbody>
</table>

“the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62)
‘the 1987 Act’ means the Housing (Scotland) Act 1987 (c.26)
‘the 2001 Act’ means the Housing (Scotland) Act 2001 (asp 10)
‘the 2006 Act’ means the Housing (Scotland) Act 2006 (asp 1)
‘the 2010 Act’ means the Housing (Scotland) Act 2010 (asp 17)
‘the 2011 Act’ means the Property Factors (Scotland) Act 2011 (asp 8)
“First-tier Tribunal” means the First-tier Tribunal for Scotland.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 21 November 2013, the Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Housing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 21 November 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Housing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Housing (Scotland) Bill introduced in the Scottish Parliament on 21 November 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 41–EN.

BILL CONTENT

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

GLOSSARY

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

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

OVERVIEW OF THE BILL

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

4. This Bill will contribute to that vision through its main policy objectives of:
   - safeguarding the interests of consumers,
   - supporting improved quality, and
   - delivering better outcomes for communities.
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

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

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

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

8. Achieving those objectives will contribute to the Scottish Government’s overarching purpose “to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth” and in particular to the following National Outcomes:
   - “We live in well-designed sustainable places where we are able to access the amenities and services we need,
   - We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others,
   - Our public services are high quality, continually improving, efficient and responsive to local people’s needs.”

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1 Scotland Performs, National Outcomes, Scottish Government
   http://www.scotland.gov.uk/About/Performance/scotPerforms/outcome
9. In addition, meeting the Bill’s objectives will achieve some of the commitments and actions set out in the Scottish Government’s Strategy and Action Plan for the 10 years to 2020, *Homes Fit for the 21st Century*.*

**Right to buy**

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

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

**Social housing**

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

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

**Private rented housing**

*Private rented sector tribunal*

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

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

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

**Third party reporting to the private rented housing panel**

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

**Enhanced enforcement areas**

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

**Landlord registration**

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

**Regulating letting agents**

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

20. In bringing forward provisions to regulate letting agents, the Scottish Government has two aims. The first is to promote high standards of service and levels of professionalism across the country and the second is to provide landlords and tenants with easy access to a mechanism that will help to resolve disputes where these arise.
21. To achieve these aims, the Bill provides for the creation of
   - a mandatory register of letting agents in Scotland, with an associated “fit and proper
     person test”,
   - statutory provisions regarding letting agents’ practice, produced in partnership with
     key industry stakeholders, and
   - a mechanism for resolving disputes between letting agents and their customers
     (landlords and tenants).

Mobile home sites with permanent residents

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

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

Private house conditions

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

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

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

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

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

Scottish Housing Regulator: transfer of assets following inquiries

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

Repeal of defective designation provisions

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

ALTERNATIVE APPROACHES

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

CONSULTATION

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

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

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

DETAILED POLICY OBJECTIVES OF THE BILL

PART 1 – RIGHT TO BUY

Policy objectives

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

35. RTB has extended the benefits of home ownership to many families. It has been a major contributor to the change in the number of homes owned in Scotland. Whereas home ownership stood at 36% in 1981, 65% of Scottish homes are now owner-occupied. However, the Scottish Government considers that RTB is outdated and has no place in Scotland because when it was introduced there were no other routes into low-cost home ownership. That is not the case now. The impact of RTB goes beyond tenants to their landlord and the wider community. Around 455,000 houses have been sold in Scotland since right to buy was introduced. It has severely reduced the number of homes available to rent from social landlords at a time demand exceeds supply in many areas. The Scottish Government set out its priorities for housing in *Homes Fit for the 21st Century*, its Strategy and Action Plan to 2020. This made clear its intention to increase supply across all tenures. The continuing depletion of social housing stock is unsustainable in the face of continued high levels of need for this form of housing in Scotland. For example, on 31 March 2013 there were 184,887 people on local-authority waiting lists.5

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

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

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

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

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

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

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6 [http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/SalesSittingTenants](http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/SalesSittingTenants) - Sales to sitting tenants, August 2013 - The Scottish Government


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

Notice period

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

Alternative approaches

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

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

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

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

Consultation

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

50. The Scottish Government asked for views on two main options:

- Move all tenants with preserved right to buy onto modernised terms. This would end the discounts of up to 70% and give tenants a maximum discount of £15,000.
- End all right to buy entitlements in Scotland.

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

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

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

Effects on equal opportunities

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

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

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

Effects on island communities

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

Effects on local government

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

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

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

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

Effects on sustainable development

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

Environmental effects

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

Social effects

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

Economic effects

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

PART 2 – SOCIAL HOUSING

Policy objectives

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

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

Increasing local flexibility

64. Research by the Scottish Government indicated existing priority groups for allocating social housing were outdated and needed to be revised11. The provisions would do this by replacing specified groups with a broader definition of housing need. Under this new definition, social landlords would have to determine which groups they will prioritise. Landlords would also be able to take more factors into account when deciding on an applicant’s priority for housing such as the applicant’s conduct at their previous tenancy. These flexibilities would help landlords respond to the housing needs of people in their local areas and ensure that affordable rented housing goes to people who need it most.

65. If some groups are consistently overlooked by social landlords, Ministers would have a power under the Bill to require all landlords to include these groups in their allocation policies. It would be up to landlords to decide what priority they give to any groups specified in regulations.

Allowing landlords to make best use of available affordable rented housing

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

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

Tackling antisocial behaviour

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

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

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

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

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

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

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

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

Clarifying existing legislation

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

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

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

**Alternative approaches**

**Do nothing**

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

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

**Other possible changes**

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

**Making best use of affordable rented housing**

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

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

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13 Christie Commission Report on the Future of Public Services
http://www.scotland.gov.uk/Publications/2011/06/27154527/0
Creating local flexibility

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

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

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

Consultation

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

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

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

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

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


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

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

87. In total, 237 consultation responses were received.\(^17\) The Scottish Government commissioned independent analysis\(^18\) of the consultation responses, which showed that over 50% of respondents supported eight of the 10 proposals. To refine the proposals further, the Scottish Government set up the Affordable Rented Housing Advisory Group (ARHAG)\(^19\) inviting key stakeholders to help develop and consider the original proposals and additional suggestions made by those who responded to the consultation.

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

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

\(^17\) Consultation responses to the Affordable Rented Housing Consultation: Creating Flexibility for Landlords and Better Outcomes for Communities - The Scottish Government, June 2012

\(^18\) Consultation on Affordable Rented Housing: Analysis of Consultation Responses – The Scottish Government, August 2012

\(^19\) Affordable Rented Housing Advisory Group – Scottish Government, Housing, Housing Management web pages
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

- Regional Tenant Organisations (RTOs),
- Scottish Court Service,
- Scottish Federation of Housing Associations (SFHA),
- Shelter Scotland.

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

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

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

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

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

Equal opportunities

93. The impact of these provisions on equality groups will depend on whether, and how social landlords use the additional flexibilities. Safeguards are, however, in place. These require social landlords to take account of the impact and needs of equality groups in any change to their policies or procedures. These include requirements under the Housing (Scotland) Act 2001, the Equality Act 2010 and the Scottish Social Housing Charter. As the provisions in the Bill focus on enabling social landlords to better meet housing need, it is anticipated that these would be likely to impact positively upon some equality groups. For example, the broader definition of priority for housing may be of particular benefit to disabled or older people who are more likely
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

to need to move because they are in unsuitable housing. The provisions also provide social landlords with additional tools to tackle antisocial behaviour which may positively impact on those who have been victims of hate crime, a particular issue for some equality groups. The Scottish Government does not consider that there would be a negative impact on any equality group.

Human rights

Increasing local flexibility and ensuring best use of affordable rented housing

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

Tackling antisocial behaviour

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

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

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

Non-discrimination

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

Island communities

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

Local government

99. All of the provisions in the Bill around social housing relate to social landlords (local authorities and RSLs). The provisions will be of direct relevance to local authorities in their role as landlords. The provisions will give all social landlords greater freedom around the allocation and management of their housing, and more tools to tackle the difficulties that communities are
facing from antisocial behaviour. Local authorities and COSLA are very supportive of this greater local flexibility.

Effects on sustainable development

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

Environmental effects

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

Social effects

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

Economic effects

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

PART 3 - PRIVATE RENTED HOUSING

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

Policy objectives

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

Background

Private rented sector tenancies

105. The number of households in the PRS has increased over recent years, partly as a result of the economic downturn. The sector now accounts for 11% of homes and is characterised by a large number of individual landlords, most of whom own one or two properties.
106. There are some basic rights which affect all PRS tenancies. In general, the rights and responsibilities of tenants and landlords depend on the type of tenancy and the terms of the individual tenancy agreement.

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

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

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

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

Landlord/tenant disputes

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

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

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

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

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

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

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

Landlord registration

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

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

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

Licensing of houses in multiple occupation

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

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

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

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

Problems with the current dispute resolution system

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

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

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

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

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

Recent debate

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

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

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

Scottish tribunals reform

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

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

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

Potential for future development

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

Overview of the Bill

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

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

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

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

135. The Bill will transfer repossession cases including:

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

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

137. The Bill also includes provision to transfer non-repossession cases under the 1984 and 1988 Acts. These include:
   - certain cases about rent under the 1984 Act,
   - applications for compensation where landlords seek repossession on false pretences,
   - applications for a sheriff to draw up a tenancy agreement if the landlord fails to provide one,
   - applications for damages for unlawful eviction,
   - applications to contract out of the repairing standard, and
   - challenges to refusals by landlords to allow adaptation for disabled tenants or for the purposes of energy efficiency.

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

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

140. The Bill contains provisions to transfer civil cases in relation to landlord registration under the 2004 Act. These include:
   - challenges to refusals and revocations of registration, and
   - challenges to notices suspending payment of rent.

141. The Bill also contains a power which would allow Scottish Ministers to transfer civil cases in relation to the licensing of HMOs from the sheriff courts to the FTT. These cases include:
   - Appeals against decisions by local authorities to grant or refuse licences, and
   - Appeals against orders issued by local authorities to suspend payment of rent or require landlords to carry out works on HMO properties.
How were these cases selected for transfer?

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

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

Operating principles

Internal organisation

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

Tribunal members

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

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

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

Powers

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

Appeals

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

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

Fees

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

**Alternative approaches**

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

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

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

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

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

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

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

Consultation

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

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

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

Equal opportunities

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

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

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

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

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

\textit{Human rights}

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

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

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

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

\textit{Island communities}

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

\textit{Local government}

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

\textsuperscript{32} The Scottish Government, \textit{Equality Impact Assessment Record – PRS and Housing Tribunal}
Sustainable development

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

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

Social effects

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

Economic effects

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

Business and Regulatory Impact Assessment

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

LANDLORD REGISTRATION

Policy objectives

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

174. The system of landlord registration was established by Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. Registration is designed to protect tenants by ensuring that only people who are fit and proper to let out residential property can operate legally as private landlords. Unless exempt, owners of privately rented property are required to register with the local authority in the area where property is let.

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

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

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

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

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

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

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

**Alternative approaches**

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

**Consultation**

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

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

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

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

**Sustainable development**

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

**Environmental effects**

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

**Social effects**

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

**Economic effects**

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

Policy objectives

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

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

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

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

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

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

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

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

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

Consultation

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

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

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

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

Sustainable development

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

Environmental effects

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

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

Economic effects

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

ENHANCED ENFORCEMENT AREAS

Policy objectives

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

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

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

PART 4 – LETTING AGENTS

Policy objectives

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

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

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

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

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

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

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

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

**Alternative approaches**

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

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

**Expansion of landlord registration**

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

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

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

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

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

**Consultation**

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

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In addition to action on tenancy deposits and illegal premiums – what more can be done to address the problems identified from poor letting agent practice?

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

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

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

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

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

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

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

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

Effects on sustainable development

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

Environmental effects

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

Social effects

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

Economic effects

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

Policy objectives

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

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

Background

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

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

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

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

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36 As part of UK-wide government reforms, Consumer Focus was abolished in May 2013, and replaced with Consumer Futures, a new body representing consumers in the regulated markets of energy, post, and (in Scotland) water.  
37 Consumer Focus Scotland, *Stories To Be Told, 2013*.  
38 See Consumer Focus Scotland, *Stories To Be Told, 2013*.  

43
The role of legislation

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

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

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

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

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

Statutory minimum information to be provided with a site licence application

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

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

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

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

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

A “fit and proper person” test

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

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

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

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

Set site licence terms

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

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

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

Process and timescales for issuing site licences

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

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

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

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

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

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

**Enforcement powers**

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

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

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

Alternative approaches

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

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

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

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

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

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

Consultation

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

264. The analysis of the consultation responses found that:

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

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

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

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

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

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

**Equal opportunities**

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

**Human rights**

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

268. The Bill would require applicants to provide additional information when applying for, or renewing, a mobile home site licence so the Scottish Government has considered the privacy implications that could arise from the mobile home provisions in the Bill. The Government has considered whether a Privacy Impact Assessment is required and has concluded one will not be necessary as the information collected will not be intrusive, the policy will not require the use of new technology, and multiple organisations are not involved in handling the information.
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

Island communities

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

Local government

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

Sustainable development and environmental issues

Environmental effects

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

Social effects

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

Economic effects

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

PART 6 – PRIVATE HOUSING CONDITIONS

Policy objectives

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

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

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

Alternative approaches

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

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

Consultation

278. The Scottish Government conducted a public consultation on a sustainable housing strategy (Homes That Don’t Cost the Earth, 2012).\(^{43}\) Chapter 2 of that consultation sought views on proposals:

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

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

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

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

Effects on equal opportunities

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

Effects on human rights

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

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

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

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

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

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

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

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

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

Policy objectives

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

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

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

Alternative approaches

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

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

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

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

Consultation

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

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

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

Effects on human rights

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

Effects on sustainable development

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

Environmental effects

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

Social effects

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

Economic effects

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

DELEGATION OF CERTAIN FUNCTIONS

Policy objectives

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

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

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

**Consultation**

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

**SCOTTISH HOUSING REGULATOR: TRANSFER OF ASSETS FOLLOWING INQUIRIES**

**Policy objectives**

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

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

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

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

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

Alternative approaches

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

Consultation

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

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

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

Policy objectives

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

Background

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

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

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

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

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

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

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

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

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

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

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

Alternative approaches

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

326. It would also be possible to amend the designation, by removing some or all of the classes of buildings. However, the Scottish Government considers that it is preferable to include the repeal in primary legislation because this would be a clearer statement of the need to move
beyond the existing designation towards treatment of individual properties on their actual physical condition.

Consultation

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

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

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

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

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

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

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

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

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

HOUSING (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Housing (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by Parliament.

OUTLINE OF BILL PROVISIONS

3. The purpose of the Housing (Scotland) Bill is to abolish the right to buy social housing; to provide additional safeguards for tenants in the private rented sector (PRS) and permanent residents of mobile home sites; to introduce a regulatory framework for letting agents to help improve overall levels of service and professionalism within the industry; to support improvements in housing quality in the private rented and privately-owned sectors; to make better use of the existing stock of social rented homes; and to provide more efficient access to justice for landlords and tenants in the private rented sector.

4. The Bill is structured in the following parts:

- **Part 1** contains provisions which will abolish the right to buy.
- **Part 2** makes provision in relation to social housing allocations; the extension of the term of the short Scottish secure tenancy; the right to assign or sublet a tenancy, to establish a joint tenancy and to succeed to a secure tenancy.
- **Part 3** and schedule 1 transfers jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal. Part 3 also contains some further changes to private rented housing legislation, containing provisions which deem a landlord as being registered on the landlord register where an application has not been determined by a local authority within 12 months; which allow third party reporting to the Private Rented Housing Panel (PRHP); and for enforcement of landlord’s repairing standard.
- **Part 4** makes provision for the registration of letting agents (including a fit and proper person test); creates an offence of operating as a letting agent without being registered; sets out the process for handling disputes between letting agents and landlords or tenants and allows Scottish Ministers to provide for a Letting Agent Code of Practice by regulations.

- **Part 5** makes provision for the licencing of permanent mobile home sites in Scotland; (including a fit and proper person test); offences relating to permanent sites and local authority enforcement of statutory requirements, including powers of entry and recovery of expenses in relation to enforcement action.

- **Part 6** amends local authority powers to enforce repairs and maintenance in private homes.

- **Part 7** makes a number of miscellaneous amendments: granting Ministers powers to exempt certain schemes, such as shared equity schemes from the right to redeem a heritable security after 20 years in relation to private dwellings; providing for delegation of certain functions of the president of the Private Rented Housing Panel; amending the Scottish Housing Regulator’s powers to transfer assets following inquiries; and repealing provisions in the Housing (Scotland) Act 1987 that permit designation of certain houses as defective.

- **Part 8** sets out various supplementary and final provisions.

**APPROACH TO USE OF DELEGATED POWERS**

5. The Scottish Government has had regard, when deciding where and how provisions should be set out in subordinate legislation rather than on the face of the Bill, to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- the need to make proper use of valuable Parliamentary time; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

**DELEGATED POWERS**

6. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

**PART 2 – SOCIAL HOUSING**

Section 4(2) –inserts new subsections (3A) to (3C) into section 21 of the Housing (Scotland) Act 1987 – subsection (3B) Power to prescribe persons of a description or type who social landlords must include in their allocation policy.
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

7. Section 4(2) inserts subsections (3A) to (3C) into section 21 of the Housing (Scotland) Act 1987 (“the 1987 Act”). New subsection (3B) provides that Ministers may by regulations prescribe persons of a description or type who social landlords must include in their allocations policies.

Reason for taking the power

8. The Scottish Government wishes to give social landlords more flexibility in the allocation of their housing. New section 20(1) to (1AB) as inserted into the 1987 Act by section 3 of the Bill replaces a prescriptive list of persons to whom social landlords must give reasonable preference when allocating their housing, with a more general requirement to give reasonable preference to persons who are homeless or threatened with homelessness and persons who are living under unsatisfactory housing conditions, in both cases where they have housing needs which are not capable of being met by other housing options which are available.

9. The Scottish Government considers that there may, however, be a need to ensure that social landlords have regard to groups or categories of persons that are routinely being omitted from allocation policies. The regulation making power seeks to allow for a prompt and effective change to be made to the list of types of persons who should be in landlords’ rules governing the priority of allocation of housing in order to respond to changes in future practice in the social housing sector.

Choice of procedure

10. It is considered appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given the potential effect of the use of the power on those types of person who must be included in landlords’ rules governing the priority of allocation of social housing.

Section 7 inserts new section 20B into the Housing (Scotland) Act 1987 – section 20B(4) - Power to prescribe a maximum period preceding the application for which a social landlord may take account of any of the circumstances in subsection (5) and a power to prescribe a maximum period that a landlord may make an applicant ineligible for the allocation of housing as a result of the circumstances in subsection (5).

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

11. Section 7(2) inserts new section 20B into the 1987 Act. New subsection (4) of section 20B provides that Ministers may by regulations prescribe a maximum period preceding the
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

application for which a social landlord may take account of any of the circumstances in subsection (5) and a power to prescribe a maximum period that a landlord may make an applicant ineligible for the allocation of housing as a result of the circumstances in subsection (5). The regulations may make different maximum periods for different circumstances.

Reason for taking the power

12. The Scottish Government considers that it may be appropriate to make certain applicants ineligible for the allocation of housing for a period of time where the circumstances set out in new section 20B(5) of the 1987 Act apply. However, it is considered that the time for which such circumstances are relevant should be limited. The Scottish Government, therefore, may wish to prescribe a maximum period of time preceding the application that the circumstances in section 20B(5) may be taken into account by a social landlord, if it appears that such landlords are inappropriately using the discretion that section 20B provides. The Scottish Government may also wish to prescribe a maximum period of time during which an applicant can be considered ineligible for an offer of housing.

Choice of procedure

13. The Scottish Government considers that the maximum periods for the purposes of this provision should merit a higher level of Parliamentary scrutiny, as they may significantly affect the use of the discretion being given to social landlords. They also could significantly affect the rights of applicants, with historical conduct issues, to be considered for allocation of housing. The Scottish Government therefore considers that affirmative procedure is appropriate for any regulations.

Section 7 inserts section 20B into the Housing (Scotland) Act 1987 – section 20B(7) - Power to modify the circumstances under which social landlords may make an applicant ineligible for the allocation of housing

Power conferred on:  Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

14. Section 7 inserts section 20B into the 1987 Act. New section 20B(7) provides that Ministers may by regulations modify the circumstances under which social landlords may make an applicant ineligible for the allocation of housing and allows modification of the definitions in subsection (6).

Reason for taking the power

15. The Scottish Government may wish to vary the circumstances which may cause applicants to be made ineligible for the allocation of housing. Section 7 of the Bill inserts new section 20B into the 1987 Act which sets out these circumstances, these include antisocial behaviour, rent arrears, tenancy abandonment and making a false statement in applications for housing. The regulation-making power in subsection (7) will allow prompt change to be made to these
circumstances if that is required to meet changing needs and future practice in the social housing sector, or to take account of changes in the legislation referred to in the subsection.

**Choice of procedure**

16. It is considered appropriate that this power should be subject to affirmative procedure both because of the significance of the provision that could be made for social landlords and applicants for tenancies with such landlords, and because the power is to modify primary legislation.

**Section 12 – amends section 36 of the Housing (Scotland) Act 2001 – section 36(4C) - Power to make provision about the procedure to be followed by social landlords in connection with a review of a decision to seek recovery of possession of a property**

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** Regulations made by statutory instrument
- **Parliamentary procedure:** Negative procedure

**Provision**

17. Section 12(c) amends section 36 of the Housing (Scotland) Act 2001 by inserting subsections (4A) to (4C). New subsection (4C) provides that Ministers may by regulations make provision about the procedure that social landlords should follow when reviewing a decision to seek recovery of possession of a property.

**Reason for taking the power**

18. The Scottish Government considers that regulations are required to make provision about the procedure to be followed in reviewing a decision to seek recovery of possession of a house which is subject to a tenancy, following an application by the tenant, given the level of detail that is likely to be required. It is considered that regulations should include provision for who should be involved in the review, oral hearings, timescales for the review and communication with tenants.

**Choice of procedure**

19. The Scottish Government considers that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The making of procedural rules for social landlords to follow when reviewing their decisions to seek recovery of possession is an administrative matter.

**PART 3 – PRIVATE RENTED HOUSING**

**Section 21 – Power to transfer civil cases relating to Houses in Multiple Occupation from the sheriff to the First-tier Tribunal.**

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** Regulations made by statutory instrument
- **Parliamentary procedure:** Affirmative procedure
Provision

20. Section 21 provides that Ministers may by regulations transfer jurisdiction for cases relating to Houses in Multiple Occupation (HMO) from the sheriff to the First-tier Tribunal (FTT). The cases which could be transferred under the power arise under specific provisions in Part 5 of the Housing (Scotland) Act 2006. These cases relate to:

- Appeals by landlords against decisions of local authorities regarding HMO licensing (for example, decisions to grant, revoke or refuse licences);
- Requests by local authorities to extend the 12 month period for considering applications for HMO licences; and
- Powers to ensure that work required under an HMO amenity notice can go ahead.

Reason for Taking Power

21. The Scottish Government wishes to improve the consistency and efficiency of decision making for cases relating to the private rented sector by transferring civil cases from the courts to the FTT.

22. The HMO licensing regime plays an important role in the regulation of the private rented sector and, given that most other PRS cases are to be transferred to the FTT, the consistent approach would be to transfer HMO licensing cases to the FTT as well. However, the possible transfer of cases relating to HMOs was not explored in the consultation ‘Better Dispute Resolution in Housing’. The Scottish Government view is that further consideration is required before a decision is taken on whether jurisdiction for these cases should be transferred.

23. In addition, the HMO licensing regime is also relevant to properties under different tenures, including some social rented sector properties. Consideration needs to be given to whether it would be appropriate to transfer all HMO licensing cases to the FTT and whether it would be practicable to transfer only those cases which relate to the PRS.

Choice of Procedure

24. As this power will require the amendment of primary legislation the Scottish Government considers that affirmative procedure would be appropriate. This would allow the Parliament the opportunity for full consideration of provision it is proposed to make.

Section 23(1)(a) amends section 22 of the Housing (Scotland) Act 2006 by inserting new subsection (1B) – Power to specify persons who may make an application to the Private Rented Housing Panel in respect of the Repairing Standard.

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative procedure
Provision

25. New subsection (1B)(b) of section 22 of the Housing (Scotland) Act 2006 (“the 2006 Act”) as inserted by section 23(1)(a) of the Bill provides that the Scottish Ministers may by order specify a person who may make an application to the Private Rented Housing Panel (PRHP) for a determination of whether a landlord has complied with the repairing standard.

Reason for Taking Power

26. The Scottish Government wishes to expand access to the PRHP for the purposes of further enhancing local authority powers to tackle the problem of substandard housing. Subsection (1B)(a) therefore allows local authorities to apply to the PRHP for a determination regarding compliance with the repairing standard.

27. The Scottish Government recognises that there may be parties other than local authorities with an interest in ensuring minimum standards of property condition are met and consider that those parties may seek to enforce the repairing standard through a local authority application to the PRHP. However, the power to specify persons who may apply to the PRHP could be exercised in the future if there is evidence that there are such interested parties, that might require a direct route of access to the PRHP to enforce the repairing standard.

Choice of Procedure

28. The Scottish Government considers that the power to specify those persons, other than local authorities, who may apply to the PRHP for a determination of whether a landlord is meeting their repairing standard duties would not warrant Parliamentary debate. The power does not allow for the amendment of primary legislation and therefore, negative procedure is appropriate.

Section 24(7) amends paragraph 8(1) of schedule 2 to the Housing (Scotland) Act 2006 by inserting reference to new subsection 22(1A) - Power to make further provision about the making or determination of applications made under section 22(1) and 22(1A).

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure

Provision

29. Paragraph 8(1) of Schedule 2 to the 2006 Act, as amended by section 24(7) of the Bill, provides that the Scottish Ministers may, by regulations, make further provision about the making or determination of applications made under section 22(1A) of that Act. Section 22(1A) enables an application by a third party to be made to the PRHP to enforce the repairing standard.

Reason for Taking Power

30. The Scottish Government wishes to expand access to the Private Rented Housing Panel (PRHP) by enabling third party applications for the purpose of determining compliance with the
repairing standard. Section 22(1A) provides that local authorities and other persons specified by order may make such applications to the PRHP.

31. The existing power under paragraph 8(1) of Schedule 2 to the 2006 Act to make provision about repairing standard applications to the PRHP is extended so that the Scottish Ministers may, by regulations, make further provision about the making or determination of applications made by local authorities and third party applicants.

Choice of Procedure

32. The Scottish Government considers that the making of further provisions on the procedure relating to determination of applications made under section 22(1A) is an administrative matter which should not merit a higher degree of scrutiny than that which already applies to applications under section 22(1). Therefore negative procedure is appropriate.

PART 4 – LETTING AGENTS

Section 26(2)(b) – Power to prescribe the information that is to be contained in the public register of letting agents in relation to each person on the register.

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure

Provision

33. Section 26 requires Scottish Ministers to establish and maintain a register of letting agents. The register must contain an entry for each person in the register. The entry must set out the letting agent’s name and address. Section 26(2)(b) confers upon Scottish Ministers a power to prescribe further information that will appear on the public register relating to the letting agent, if they consider this information appropriate.

Reason for Taking Power

34. The power allows flexibility when developing the detail of the register. The purpose of making the register publicly available is so that all interested parties can see if a letting agent has been entered on the register. It will be important for the register to provide sufficient information so that each entry can be clearly identified. Section 26(2)(a) provides that at present this should be the name and address of the person. However, as the detail of the register is developed it may be considered appropriate to include additional information.

Choice of Procedure

35. In the Bill, it is provided that the information contained in the register of letting agents should be publicly available. What, if any, further information requires to be contained in the register and made publicly available is an administrative matter to provide flexibility on the
detail of the register for which the Scottish Government considers that negative procedure is appropriate.

**Section 27(2)(f) – Power to prescribe further information that must be supplied in an application for registration in the register of letting agents.**

*Power conferred on:* Scottish Ministers  
*Power exercisable by:* Regulations made by statutory instrument  
*Parliamentary procedure:* Negative procedure

**Provision**

36. Section 27 sets out a list of information that must be supplied in an application for registration in the register of letting agents. Section 27(2)(f) confers upon the Scottish Ministers a power, by regulations, to prescribe additional information that must be supplied.

**Reason for Taking Power**

37. Section 27(2) sets out the basic information that must be supplied in an application for registration. However, as the operational detail of the register is developed, it may become apparent that certain additional information would assist the administration of the register. This power allows this to be required. Any additional information which the Scottish Ministers prescribe does not require to be made publicly available, unless it is also prescribed in regulations under the section 26(2)(b) power.

**Choice of Procedure**

38. The Scottish Government considers that the power is concerned with operational matters relating to the administration of the register and does not merit any scrutiny higher than negative procedure.

**Section 30(4) – Power to modify the material that must be taken into account when deciding if a person is a fit and proper person to be entered on the register of letting agents.**

*Power conferred on:* Scottish Ministers  
*Power exercisable by:* Order made by statutory instrument  
*Parliamentary procedure:* Affirmative procedure

**Provision**

39. Section 30 sets out the material which the Scottish Ministers must take into account when determining if a person is a fit and proper person to be a registered letting agent. These materials include convictions for certain offences, contraventions of housing law, statutory codes, and failures to comply with the regulatory regime set up by this Bill. Section 30(4) confers upon the Scottish Ministers a power, by order, to modify the list of materials.
Reason for Taking Power

40. The power enables the list of relevant convictions, contraventions and failures to comply to be modified if this is considered appropriate in light of experience. If the nature of the letting agency industry and its practices change over time, it may be appropriate to alter the list of relevant offences, contraventions and failures. In addition, future legislation which creates new offences or modifies existing ones may be considered relevant, and this power would allow adaptations to reflect such relevant changes.

Choice of Procedure

41. As the power involves the modification of primary legislation, the Scottish Government considers that affirmative procedure is appropriate for any adaptation of the requirements.

Section 32(2)(c) – Power to specify any additional type of document or communication in which a registered letting agent must include their letting agent registration number.

Power conferred on: Scottish Ministers  
Power exercisable by: Order made by statutory instrument  
Parliamentary procedure: Negative procedure

Provision

42. Section 32(2) requires registered letting agents to include their letting agent registration number in certain documents and communications. The power at section 32(2)(c) allows the Scottish Ministers to add to the list of types of documents or communications in which the registration number must be included.

Reason for Taking Power

43. The register of letting agents is likely to be in place for many years. This power will allow flexibility in the future, in relation to potential changes in the way that letting agents carry out communications with clients and the public – for example in relation to changes in communications technology and methods or in industry practices.

Choice of Procedure

44. The basic principle that requires the inclusion of the letting agent registered number in communications is set out in the Bill. This power relates only to the detail of which documents and communications are included and therefore the Scottish Government considers that negative procedure is appropriate.

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

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Negative procedure
Provision

45. Section 41 provides for Scottish Ministers to set out, by regulations, a code of practice with which all persons carrying out letting agency work must comply. Before finalising the code, Ministers must carry out consultation on a draft of it under section 41(3).

Reason for Taking Power

46. The code of practice will contain standards to which all persons carrying out letting agency work must adhere. This may require a detailed set of requirements to be developed, which the Scottish Government considers is most appropriately dealt with by regulations, rather than in the Bill itself. This will also allow for flexibility should the code of practice need to be adjusted in light of experience and having regard to any changes within the industry.

Choice of Procedure

47. The Scottish Government considers negative procedure is appropriate, particularly in view of the obligation to consult with key stakeholders on a draft version of the code before regulations are made under section 41(3).

Section 47(1) – Power to provide that the functions and jurisdictions of the sheriff in relation to actions between letting agents and landlords/tenants are transferred to the First-tier Tribunal.

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<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision

48. Section 47(1) provides that the Scottish Ministers may, by regulations, transfer jurisdiction for cases relating to letting agents from the sheriff courts to the First-tier Tribunal. The cases which could be transferred are those between letting agents and tenants or letting agents and landlords, relating to the carrying out of letting agency work.

Reason for Taking Power

49. The Scottish Government wishes to improve the consistency and efficiency of decision making for cases relating to the private rented sector by transferring civil cases from the courts to the First-tier Tribunal. Section 43 of the Bill provides that cases relating to alleged breaches of the code of practice (established by section 41) will be heard by the First-tier Tribunal. It is therefore consistent that other cases relating to letting agency work, which are currently within the jurisdiction of the sheriff courts, may also be transferred to the First-tier Tribunal at an appropriate point. Consideration needs to be given to matters of timing, volume and type of cases to be transferred before final decisions about transferring cases are taken.
Choice of Procedure

50. The Scottish Government considers that negative procedure is appropriate for the section 47(1) power, because the principle that letting agency disputes will be considered in the First-tier Tribunal is contained in the Bill, and therefore will have been subject to full Parliamentary scrutiny. The power to regulate transfers is an administrative matter and is in keeping with the principle that the First-tier Tribunal is the appropriate place for letting agency disputes.

Section 51(3) – Power to modify the meaning of “letting agency work” in relation to Part 4 of this Bill.

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

51. Section 51(1) and (2) defines “letting agency work”. Section 51(3) confers upon the Scottish Ministers a power to modify, by order, this meaning.

Reason for Taking Power

52. The provisions in Part 4 of the Bill are likely to regulate the letting agency sector for many years. The private rented housing sector has changed over time, and may continue to change in the future. This power provides flexibility to adapt in light of these changes or other experience the definition of what is considered as “letting agency work” and therefore who and what is covered by the regulatory regime.

Choice of Procedure

53. The meaning of “letting agency work” is central to the provisions of Part 4. In effect, it defines which persons are considered to be letting agents, and therefore which persons are required to comply with the regulatory regime set out. For that reason, the Scottish Government considers that affirmative procedure is appropriate.

PART 5 – MOBILE HOME SITES WITH PERMANENT RESIDENTS

Section 54 - (inserts section 32C into the Caravan Sites and Control of Development Act 1960) – Power to make regulations concerning fees for site licence applications

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

Provision

54. New section 32C of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") gives a local authority the power to charge a fee for a site licence application for a permanent caravan site. Subsections (3) and (4) allow the Scottish Ministers to make regulations about the charging of such fees, which can include specifying matters a local authority must take into account when setting such a fee, and specifying the maximum fee that can be charged.

Reason for Taking Power

55. It is expected that local authorities will charge a fee that reflects the cost of processing and deciding on site licence applications, including carrying out a routine inspection during the licence period. The Scottish Government is aware that stakeholders have a range of views on whether fees should be fixed nationally or at local level. It is likely that the costs of carrying out licensing functions will vary between local authorities. It is therefore considered appropriate for the fee level to vary between different authorities. However, there should be clarity and consistency in the matters to be taken into account by all local authorities in setting reasonable fees. Excessively high fees could have a significant impact on site owning businesses. It is therefore considered appropriate to take the power to make more detailed provisions about the factors that a local authority must take into account when deciding on such a fee and a power set a maximum fee if that should prove necessary.

Choice of Procedure

56. It is considered appropriate that this power is subject to negative procedure. The principle that such fees can be charged is contained in the Bill, and therefore will have been subject to full Parliamentary scrutiny. Any regulations made under this power will provide details that supplement the operation of the fee provided for in the Bill, and are therefore appropriately dealt with through the negative procedure.

Section 56 - (inserts section 32J into the Caravan Sites and Control of Development Act 1960) – Power to make an order to change the time period for which a site licence, when issued, is valid.

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

57. Section 56 inserts section 32J into the 1960 Act. This section makes provision for the duration of site licences for relevant permanent sites. Under subsection (1)(b)(ii) a site licence remains in force for 3 years. Subsection (2) allows the Scottish Ministers to change that period to a different number of years.
Reason for Taking Power

58. The Bill replaces the existing system where site licences are valid in perpetuity with one where site licences are valid for a fixed number of years. A 3 year licence period received significant support in consultation responses and is considered an appropriate period between reviews of whether a licence holder continues to meet the fit and proper person test. However, there are also reasonable arguments in favour of longer licensing periods. The move from perpetual to fixed term licences is a significant change from previous practice and, once the new licensing regime becomes established, it may be desirable to review whether 3 years remains the most appropriate licence period. It is considered appropriate to take the power to vary the licence period in secondary legislation, rather than requiring a further Bill to adjust licence periods.

Choice of Procedure

59. This power allows the Scottish Ministers to change the period for which a site licence, when issued, is valid. As this would change the licence period set out in the Bill, exercise of this power would be a significant measure. It is therefore considered appropriate that it is subject to the level of Parliamentary scrutiny that the affirmative procedure would provide.

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

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure

Provision

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

61. Regulations can include provision in relation to the procedures to be followed by a person following the transfer of a licence, information to be provided by a person making an application for a site licence application or an application for renewal of the same, and the procedure to be followed after an application is determined. It allows the Scottish Ministers to set in regulations time limits relating to a site licence application, a transfer of a site licence, the determination or consideration by the local authority, and appeals. It enables the Scottish Ministers to set out the circumstances in which the notification of a decision on an application for a site licence or on an application for consent to transfer a licence must include reasons. It further allows the Scottish Ministers to make provision regarding the procedure to be followed by the person making the appeal and the determination and consequence of appeals.
Reason for Taking Power

62. This provision enables Ministers to set out the procedures and time limits to be followed in relation to parts of the site licensing system. It is considered that this level of procedural detail is best dealt with through regulations, as these procedures will sit within the broad framework for site licensing that is created by the Bill.

Choice of Procedure

63. It is considered appropriate that this power is subject to negative procedure because it will be used to set details of procedure and timescales. These will supplement the overarching framework for handling site licences set out in the Bill.

Section 61 - (inserts section 32O into the Caravan Sites and Control of Development Act 1960) – Power to make an order varying the material a local authority must have regard to in applying the fit and proper person test.

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

64. Section 61 inserts section 32O into the 1960 Act. This section sets out the material a local authority must have regard to when deciding if someone is a fit and proper person when considering issuing, renewing, or transferring a site licence. This material includes convictions for specified offences, and breaches of specified areas of law (such as the law relating to caravans). Subsection (6) allows the Scottish Ministers to make an order subject to the affirmative procedure to amend the list of material a local authority must take into account.

Reason for Taking Power

65. The Scottish Government wants to ensure that a local authority is able to take into account all the relevant information when applying the fit and proper person test. It is therefore appropriate to allow for a mechanism to amend that test, to reflect developments in the law and to take into account material that in the future is deemed relevant to the decision on whether someone is a fit and proper person to hold a site licence.

Choice of Procedure

66. The Scottish Government believes the affirmative resolution procedure is appropriate in this case. It gives the Scottish Ministers power to vary the list of material without the need for another Bill, but with a level of Parliamentary scrutiny which is suitable to amending primary legislation.
Section 63 - (inserts section 32T into the Caravan Sites and Control of Development Act 1960) – Power to make regulations concerning maximum fines for having a site without a licence, and breaching licence conditions.

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative procedure

Provision

67. Section 63 of the Bill inserts new sections 32R and 32S into the 1960 Act and section 64 inserts section 32V. These set the maximum fine on conviction of operating a caravan site without a licence (£50,000), the maximum fine on conviction of breaching licence conditions (£10,000), and the maximum fine on conviction of failure to comply with an improvement notice (£10,000). New section 32T of the 1960 Act gives the Scottish Ministers the power to amend these maximum fine levels, through an order subject to the affirmative procedure.

Reason for Taking Power

68. The Bill specifies maximum fine levels which are significantly above level 5 on the standard scale set under the Criminal Procedure (Scotland) Act 1995. These maximum fines are not expressed by reference to a point on the standard scale and will therefore be unaffected by future changes to the fines on that standard scale. It is therefore considered appropriate to allow for maximum fines under these Bill provisions to be amended by order in the future. The licensing system established by the Bill may potentially be in place for many years (the previous system was established in 1960), and it is considered sensible to provide a mechanism to change the fine levels, enabling them to be adjusted in line with inflation and other relevant factors without the need for new primary legislation.

Choice of Procedure

69. Changing the maximum fine a court can impose following conviction for an offence is an important measure, and therefore requires a suitable level of Parliamentary scrutiny. The Scottish Government therefore believes the affirmative procedure is appropriate in this case.

Section 66 - (inserts section 32Y into the Caravan Sites and Control of Development Act 1960) – Power to make regulations about the appointment of an interim manager

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure

Provision

70. Section 66 inserts section 32Y into the 1960 Act. This section allows a local authority, in certain situations, to apply to a sheriff to appoint an interim manager for a mobile home site. Subsection (5) allows the Scottish Ministers to make further provision in regulations about the
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

appointment of an interim manager. Subsection (6) lists particular matters which could be covered in such regulations. These include the powers of an interim manager, the qualifications an interim manager must hold, and the actions an interim manager must carry out. Regulations may also make provision for criminal offences which are to apply to failures to comply with any regulations relating to interim managers. This could be used, for example, to make it an offence for a site licence holder to refuse to provide the necessary assistance to an interim manager, or for the interim manager to be prevented from entering a site.

Reason for Taking Power

71. The Bill includes provisions on the appointment of an interim manager. However many of the issues that flow from an interim manager’s appointment, such as an interim manager’s powers, qualifications, and the way they handle property in their care, are areas that are likely to require detailed provisions. It is considered that this level of detail is most appropriately dealt with in regulations, rather than in the Bill itself. This will also allow greater flexibility to adjust procedural requirements in relation to the appointment of interim managers.

Choice of Procedure

72. The Scottish Government believes the negative procedure provides the appropriate level of scrutiny for these measures, as they will set out detailed matters that are likely to be necessary as a result of the Bill’s provisions around interim managers. Many of the matters such regulations would be likely to cover are also explicitly set out in section 32Y(6), which would be inserted into the 1960 Act by the Bill.

PART 7 – MISCELLANEOUS

Section 77 – inserts subsections (3D) to (3F) into section 11 of the Land Tenure Reform (Scotland) Act 1974 – new subsection (3D) - Power by order to disapply the right conferred under section 11 of the Land Tenure Reform (Scotland) Act 1974 to redeem a heritable security after 20 years, in relation to securities of debts of specified descriptions.

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative procedure

Provision

73. Section 77 confers on the Scottish Ministers a power by order to disapply the right to redeem a heritable security after 20 years conferred by section 11 of the Land Tenure Reform (Scotland) Act 1974 in relation to a heritable security which is in security of a debt of a description specified in the order.

Reason for taking the power

74. Section 11 of the Land Tenure Reform (Scotland) Act 1974 (“the 1974 Act”) gives the debtor under a heritable security over a dwelling house the right to redeem the security from 20 years
after the date of its creation. The statutory redemption terms allow borrowers to redeem a loan at its original value. They therefore do not fit situations where the creditor wishes to secure payment of a share in the equity value of the property.

75. Existing equity share schemes run by the Scottish Government have a break clause at year 19 of the agreement. If a shared equity owner fails to grant a replacement standard security in favour of the Scottish Ministers (a new agreement which is essentially the existing agreement agreed between parties afresh), the break clause obliges the shared equity owner to repay the Scottish Ministers’ equity share.

76. However, the Council of Mortgage Lenders and some of its members have expressed an unwillingness to participate in the Scottish Government’s new Help to Buy scheme and its Low Cost Initiative for First Time Buyers (LIFT) shared equity schemes. This is because an impending change to Financial Conduct Authority rules will require them to consider the affordability of their first charge loans taking into account any break clauses. Without lender participation in these schemes, they will not be viable.

77. The current power in section 11 of the 1974 Act to allow borrowers to waive the right of redemption could not be used to address this problem, because it relates to bodies of debtors (such as registered social landlords), as opposed to types of creditors or types of heritable securities. The new order making power being inserted into the 1974 Act by the Bill will allow the Scottish Ministers to disapply the right to redeem a heritable security over a dwelling house, in relation to specified securities and specified creditors (for example the Scottish Government) under particular schemes.

Choice of procedure

78. It is considered appropriate that this power is subject to negative procedure following the same approach as the order making power under section 11(3C) of the 1974 Act. It is not considered that using the power to disapply the right to redeem heritable securities in relation to descriptions of debt specified in the order requires more detailed scrutiny by Parliament on each occasion the power is used.

PART 8 – GENERAL

Section 83 – Ancillary provision

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative procedure if adding to, replacing or omitting text in an Act, otherwise negative procedure

Provision

79. Section 83 confers a power on the Scottish Ministers, by order, to make such supplementary, incidental, consequential, transitional, transitory or saving provision as they
This document relates to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

consider necessary or expedient for the purposes of, or in connection with, the provisions in the Bill.

Reason for taking power

80. As with any new body of law, the Bill may give rise to a need for a range of ancillary provision. The power to make ancillary provision is considered necessary in order to ensure that the policy intentions of the Bill are achieved. For example, it is possible that unforeseen issues will arise which require further provision to be made or the further modification of the existing law. This power would allow such provision to be made without the need to make further primary legislation.

81. The Bill already includes a number of consequential amendments to related legislation (see schedules 1 and 2) but the power would allow the Scottish Ministers to make further changes should a need be identified, or change be expedient. It may, however, be that further provision is necessary in order fully and properly to implement the Bill’s provisions. The Scottish Government considers that the order-making power is necessary to allow for this flexibility, especially in light of previous operational experience. Without this power, it might be necessary to make further primary legislation to deal with a matter which is clearly within the policy intentions of the Bill. The Scottish Government considers that this would not be an effective use of resources by the Parliament or the Scottish Government.

82. The power, while potentially wide, is limited to the extent that it can only be exercised if the Scottish Ministers consider it necessary or expedient for the purposes of, or in connection with, provision made by the Bill.

Choice of procedure

83. Any order made under section 83 which textually amends any Act is subject to the affirmative procedure. Where such an order does not seek to textually amend any Act, it is considered by the Scottish Government that negative procedure provides an appropriate degree of scrutiny.

Section 85(3) – Commencement of the Bill

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Provision

84. Section 85(3) confers a power on the Scottish Ministers, by order, to bring the provisions of the Bill into force on such day or days as the Scottish Ministers appoint. Section 85(5) provides that such an order may include any necessary or expedient transitional, transitory or saving provision. It is usual to allow such provision in conjunction with a power to commence the provisions of a Bill.
Reason for taking power

85. Some formal sections of the Bill are commenced on the day of Royal Assent. The Scottish Ministers consider it appropriate for the substantive provisions of the Bill to be commenced at such a time as they appoint to be suitable. It is usual practice for such commencement provisions to be dealt with by subordinate legislation.

86. An exception is made for an order-making power at section 77 of the Bill, which it is intended to exercise soon after the Bill receives Royal Assent. A limitation is imposed in relation to commencement of the abolition of the right to buy social housing, to ensure that those who are in a position to exercise the right have an opportunity to do so.

Choice of procedure

87. As is usual for commencement orders, the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies.
Infrastructure and Capital Investment Committee

4th Report, 2014 (Session 4)

Stage 1 Report on the Housing (Scotland) Bill

Published by the Scottish Parliament on 3 April 2014
## Infrastructure and Capital Investment Committee

### 4th Report, 2014 (Session 4)

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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
The Committee reports to the Parliament as follows—

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.

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*, 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*. 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.”


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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\(^5\). The Scottish Government estimates that, by ending RTB, around 15,500 houses could be kept in the social sector over a ten year period.\(^6\)

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.\(^7\)

**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.\(^8\)

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.”\(^9\) 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.” 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.”

23. The Committee noted that statistical information produced during its scrutiny of the Bill 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. 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.

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.”

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

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

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


perhaps also limit the period in which there might be some peaking of sales.”

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.

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.”

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.”

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.

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.

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.**

**Pressured 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."

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.

**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 indicates that these provisions are intended to provide “better outcomes for communities” by—

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

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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.\(^\text{42}\)

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.\(^\text{43}\)

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."\(^\text{44}\) David Bookbinder of CIH also indicated support for the proposals, stating that the "amendment to the reasonable preference

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\(^{42}\) 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.”

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.” 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.”

52. The Committee heard from both Shelter and the GWSF, and from Homeless Action Scotland in written evidence, 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”.

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
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”. 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”. 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.” 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.” 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.” 58

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

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 to, should it chose to do so, 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.  

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.”

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.”

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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\(^{69}\).

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.\(^{70}\)

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”.\(^{71}\) 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.\(^{72}\)

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.\(^{73}\)

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.\(^{74}\) 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.”\(^{75}\)

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\(^{70}\) North Ayrshire Council. Written submission, page 3.

\(^{71}\) Scottish Federation of Housing Associations. Written submission, page 5.

\(^{72}\) Legal Services Agency. Written submission, page 2.

\(^{73}\) Scottish Federation of Housing Associations. Written submission, page 5.


\(^{75}\) 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

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Infrastructure and Capital Investment Committee, 4th Report, 2014 (Session 4)

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.\textsuperscript{99} 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.”\textsuperscript{100}

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.”\textsuperscript{101}

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.”\textsuperscript{102}

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

\textsuperscript{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.\(^\text{103}\)

**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.”\(^\text{104}\)

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...”\(^\text{105}\)

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”\(^\text{106}\).

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—

“For example, 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:

\begin{itemize}
\item General tenancy cases
\item Eviction cases
\item Rent arrears cases
\item Anti-social behaviour orders
\item Disrepair cases
\end{itemize}

\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.\(^{110}\)

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”.\(^ {111}\)

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.\(^ {112}\)

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.”\(^ {113}\)

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.”\(^ {114}\)

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.”\(^ {115}\)

\(^ {110}\) Policy Memorandum, paras. 135-137.
\(^ {111}\) Citizens Advice Scotland, Written Submission, page 7
\(^ {113}\) Scottish Independent Advocacy Alliance. Written Submission, page 1.
\(^ {114}\) Scottish Parliament Infrastructure and Capital Investment Committee. Official Report, 5 March 2014, Col 2724
\(^ {115}\) 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—

> “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. The CIH sought assurance that a future extension of the tribunal system to the social sector “is not closed off forever.”^130

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. 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

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^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…

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137 Policy Memorandum, para. 154.  
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.”

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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.”

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;
- to make the provision of suitable mains smoke alarms mandatory in private rented properties, as battery operated smoke alarms are unreliable;
- and to make the installation of carbon monoxide alarms mandatory for all private rented accommodation.

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.”

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
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.” ¹⁵⁷ LetScotland “would not support simply replicating the process and principles established for the Property Factors Register.” ¹⁵⁸

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.” ¹⁵⁹

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;

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.\textsuperscript{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.”\textsuperscript{165} ARLA has raised similar concerns.\textsuperscript{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.\textsuperscript{167}

\textsuperscript{164} Policy Memorandum, para. 209.
\textsuperscript{165} Royal Institute of Chartered Surveyors Scotland. Written submission, page 4.
\textsuperscript{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.\(^{168}\)

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.\(^{169}\) 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\(^{170}\), where withdrawal of financing has been experienced.\(^{171}\)

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.\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 12 March 2014, Col 2811.}

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.

\textit{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.\footnote{British Home & Holiday Park Association. Written submission, page 7.}

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.\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 19 February 2014, Cols 2625 – 2626.}

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.”\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 12 March 2014, Col 2811.}

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’,

\begin{itemize}
\item\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 12 March 2014, Col 2811.}
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.  

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.”

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.”

207. Local authorities and COSLA 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.

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—

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177 Angus Council. Written submission, page 3.
178 Angus Council. Written submission, page3.
179 Angus Council. Written submission, page3.
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.”\textsuperscript{182}

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.\textsuperscript{183}

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.\textsuperscript{184}

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.\textsuperscript{185}

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.\textsuperscript{186}

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.\textsuperscript{187}

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


\textsuperscript{184} Policy Memorandum, para 251.

\textsuperscript{185} Citizens Advice Scotland. Written submission, page 13.

\textsuperscript{186} British Home & Holiday Park Association. Written submission, page 3.

\textsuperscript{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.”

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.

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.

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?”

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.
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 unlimited\(^{204}\), 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

\(^{203}\) Policy Memorandum, page 47.
\(^{204}\) Citizens Advice Scotland. Written submission, page 14.
\(^{205}\) British Home & Holiday Park Association. Written submission, page 10.
\(^{206}\) 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.”212

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.”213

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.”214

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.”


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

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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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”.228

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.229

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.”230

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.”231

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....”232

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

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228 Policy Memorandum, pages 57-58
229 Policy Memorandum, page 58.
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.”235 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.

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 Couldridge, 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: ORAL 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
  Chartered Institute of Housing
  Scottish Federation of Housing Associations
  Glasgow and West of Scotland Forum of Housing Associations
  Legal Services Agency
  The Law Society of Scotland
Oral Evidence

3rd Meeting, 2014 (Session 4) Wednesday 29 January 2014
Written Evidence
  Scottish Association of Landlords and Council of Letting Agents
Oral Evidence

4th Meeting, 2014 (Session 4) Wednesday 5 February 2014
Written Evidence
  Royal Institution of Chartered Surveyors (RICS)
  Association of Residential Letting Agents
  Let Scotland
Oral Evidence

5th Meeting, 2014 (Session 4) Wednesday 19 February 2014
Written Evidence
  British Holiday and Home Parks Association
Oral Evidence
6th Meeting, 2014 (Session 4) Monday 24 February 2014

Written Evidence

Tenants Information Service (TIS)
TPAS Scotland
Highland and Argyll & Bute Tenants Organisation

Oral Evidence

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

Written Evidence

ALACHO
COSLA

Oral Evidence

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

Oral Evidence
Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 15 January 2014

[Housing (Scotland) Bill: Stage 1]

The Convener (Maureen Watt): Good morning, and welcome to the Infrastructure and Capital Investment Committee’s first meeting in 2014. I remind everyone to switch off any mobile devices, as they affect the broadcasting system. Having said that, I note that some members will be working from tablets, as their committee papers are on the devices.

The only item of business is evidence on the Housing (Scotland) Bill at stage 1 from Scottish Government bill team representatives. We have 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, communities and education division. Would Ms Leslie like to make any opening remarks?

Linda Leslie (Scottish Government): Yes, if that would be all right. The Housing (Scotland) Bill is a wide-ranging bill with provisions that affect all types of housing. Its policy objectives can be summed up as being to safeguard consumers’ interests, support improved quality and achieve better outcomes for communities.

To take each of the main topics in turn, the bill will end all right-to-buy entitlements; increase flexibility in the allocation and management of social housing so that landlords can deliver improved outcomes for their tenants and the communities that they live in; introduce a regulatory framework for letting agents to tackle those who do not meet industry standards of professionalism and conduct; create a new specialist private rented sector housing tribunal; give local authorities greater enforcement powers to improve the quality of houses in the private sector by requiring owners to carry out work to repair or maintain their properties; and improve and strengthen the licensing regime that applies to mobile home sites on which people live permanently. There are also miscellaneous provisions, as well as technical amendments to previous housing legislation.

Many of the provisions form part of the Scottish Government’s housing strategy in “Homes Fit for the 21st Century”. Since that document was published in 2011, we have developed the detail of the provisions through extensive consultation and discussion with stakeholders. Between 2012 and 2013, we held seven public consultations that covered each of the main policy areas in the bill. The Minister for Housing and Welfare continues to engage with stakeholders through her housing policy advisory group, which includes representatives from across the housing sector, and she is keen to reflect on stakeholders’ evidence and the committee’s views as the bill goes through stage 1.

We understand that the committee wishes to focus the session on four main areas: the private rented sector tribunal, which Dan Couldridge will cover; mobile homes, which Claire Tosh will cover; letting agents, which Barry Stalker will cover; and social housing allocations and tenancies, on which I will answer questions. I will answer general questions on the bill and I will try to answer any questions that members have on other areas but, if necessary, we will provide more detailed answers in writing. The final member of our team is our solicitor, Colin Brown.

The Convener: Adam Ingram will start with some general themes of the bill.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): The bill aspires to contribute to realising the Scottish Government’s housing vision, which, as you helpfully laid out in the slide that you provided to us, is that “All people in Scotland live in high-quality sustainable homes that they can afford and that meet their needs.”

To what extent will the bill’s provisions support that vision?

Linda Leslie: As that slide shows, the separate policy areas in the bill feed into the supporting outcomes that underpin the vision. Those outcomes are a well-functioning housing system, high-quality sustainable homes, homes that meet people’s needs and sustainable communities. Each policy area does not map directly on to only one of the outcomes—some contribute to more than one outcome—but, taken as a whole, the provisions will contribute to those outcomes and therefore to the vision that ministers have for housing.

Adam Ingram: I will focus on one element of the vision—sustainability. Paragraph 32 of the policy memorandum states that the provisions have no adverse effect on sustainable development. Through what process was that determined?

Linda Leslie: The policy areas in the bill were assessed individually and collectively for their effect on sustainable development. We considered
the effects in relation to the environment, society and the economy. In essence, the bill is concerned with property rights, processes and powers, none of which directly impacts on the environment.

We carried out a strategic environmental assessment pre-screening for the bill and concluded that, under section 7 of the Environmental Assessment (Scotland) Act 2005, a full SEA was not needed. We set out in the policy memorandum the possible effects of the various areas on the basis of existing evidence and discussions with key stakeholders as we developed the policies. For example, extending local authority discretionary powers to enforce repairs and maintenance in the private sector should indirectly have a positive effect. That was developed through consultation on our sustainable housing strategy.

Adam Ingram: You mentioned consultations and your discussions with stakeholders. Will you summarise the nature and extent of the consultation exercises and provide an overview of how you engaged with the stakeholders in the process?

Linda Leslie: We started discussions back in 2010, when we asked stakeholders whether any legislative changes could be made to help the housing system to work better. That formed part of our discussion paper “Housing: Fresh Thinking, New Ideas”. The outcome of that discussion fed into the strategy in “Homes Fit for the 21st Century”, and we identified a number of areas where legislative change might be appropriate and which we would explore in more detail. Based on that, we undertook over 18 months the seven consultations that I mentioned.

The approach of undertaking individual consultations reflected the fact that many of those areas have a discrete set of stakeholder interests, so each consultation was targeted at those interests and used methods that were appropriate to the relevant stakeholders. We did not just rely on publishing a consultation document. For example, officials who are leading on the right to buy met tenants groups across the country through the regional networks of registered landlords, so there has been a mix of approaches to our consultations.

The Convener: How many replies did you get via Facebook and social media?

Linda Leslie: I do not have that data here, but I can certainly write to you to let you know.

The Convener: We shall move on to part 1, on the right to buy.

Alex Johnstone (North East Scotland) (Con): What views were expressed during the consultation on the proposed end to the right to buy?

Linda Leslie: There was a range of views. On the whole, landlords supported ending the right to buy, and the majority of tenants who responded to the consultation also supported ending the right to buy.

Alex Johnstone: You described the consultation a moment or two ago, and it is obvious that work was done to consult tenants as well as landlords. Was any special effort made to consult directly the tenants who have a right that they will lose?

Linda Leslie: That would have been done through the discussions with tenants groups, because the tenants groups that my colleagues met contained a mix of people who have the right and will lose it and of those who do not have a right.

Alex Johnstone: Why will there be a three-year notice period before the right to buy is ended, rather than a shorter notice period, as some social landlords suggested?

Linda Leslie: 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.

Alex Johnstone: That is a reasonable argument, which I would accept. However, a complication is that the right to buy has already been suspended in a number of areas, and that suspension could continue through to the end of the three-year period. What consideration was
given to the position in which tenants in those areas find themselves?

Linda Leslie: 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.

Alex Johnstone: The answer to a previous question was based on human rights. The answer to the question that followed was based on the balance of responsibilities. Is it possible or conceivable that challenges will be brought by tenants in pressured areas who are not allowed to exercise their right?

10:15
Linda Leslie: My colleague Colin Brown will answer that.

Colin Brown (Scottish Government): There is always a possibility of legal challenge, and someone can bring one if they so wish. My advice is that I would not expect such a challenge to succeed.

Alex Johnstone: I have one other thing to ask about the right to buy. The number of houses that have been bought by their tenants has dropped in recent years, but that remains a source of income and resource for social landlords. Has any assessment been made of the financial implications for social landlords of abolishing the right to buy?

Linda Leslie: Yes. The financial memorandum goes into quite a lot of detail about that impact. Landlords who responded to our consultation felt that, on balance, the impact of losing those capital receipts would be neutral or positive. They cannot predict when they will sell the properties and receive the capital receipts whereas, if the stock is retained in their ownership, they can predict the rental income that they will receive, so they can base their business planning on that rental income stream.

The Convener: Will you clarify how legislation on the right to buy might come up against human rights legislation?

Colin Brown: Under article 1 of protocol 1 to the ECHR, the right to buy is part of a package of rights that a tenant has under a secure tenancy. The tenant has a right to buy; that is a possession in ECHR terms, and to interfere with the person's possession, which is that right, and which the person might or might not be able to exercise in practice, needs some sort of justification. Whether that interference is justified has to be considered in a social context. It is slightly arcane, because it is not a very obvious right and it is only one of a package of rights, of which the remainder are unaffected.

The Convener: So the right to buy is part of the tenancy agreement.

Colin Brown: It is a right that a tenant has in the same way as they have the right to have certain repairs carried out, the right to assign in certain circumstances and the right not to be evicted except through certain processes and in certain situations.

The Convener: Did you seek advice about the issue from the Equality and Human Rights Commission?

Colin Brown: The Government sought no external advice on the matter. The Government's legal directorate considered it as part and parcel of developing the proposals.

The Convener: We will move on to part 2, which is on social housing.

Mark Griffin (Central Scotland) (Lab): What changes will the bill make to the existing reasonable preference provisions for the allocation of social housing and how will those changes give social landlords more flexibility than they currently have?

Linda Leslie: As you say, the purpose of the reasonable preference provisions is to give social landlords greater flexibility in allocating their housing. The bill will replace the current reasonable preference categories of failing the tolerable standard, overcrowding and large families, all of which are contained in the Housing (Scotland) Act 1987, and it will introduce new categories of being homeless or threatened with homelessness, unsatisfactory conditions and underoccupancy.

The unsatisfactory conditions category will cover a range of housing needs, such as housing that is unsuitable for an applicant's health condition because, for example, they live in a top-floor flat but require ground-floor access. It might include social reasons, such as the property being in the wrong location to allow the occupant to receive support or the person being a victim of domestic violence.

The bill will require landlords to set out in their allocation policies what those conditions are. They will have to consult tenants, applicants and registered tenants organisations when they create or revise their allocation policies and report on that consultation.

Mark Griffin: Can you give a bit more detail on why the categories of occupying overcrowded houses and large families have been dropped? Is
there a shift away from giving priority to those who live in overcrowded conditions?

Linda Leslie: I do not have the detail of that, but I would be happy to write to you with it.

Mark Griffin: Thank you. Are there any other ways in which the bill would allow social landlords to make best use of social housing?

Linda Leslie: Yes. The bill will make a number of other changes, one of which is to allow landlords to take account of an applicant’s age in the allocation of housing, subject to equalities legislation. The intention behind that is to allow landlords to make best use of their stock in light of local circumstances. That suggestion came from responses to our consultation on affordable rented housing. We felt that removing the ban on taking age into account could allow landlords to develop policies that better meet the needs of people from different age groups. For example, a landlord might use a particular block of housing specifically for older people instead of having a mixed group of people whose different lifestyles could cause issues to arise. There were some concerns that the shift to allow landlords to take age into account might lead to young people being discriminated against, but the bill extends protection under the Equality Act 2010 to 16 and 17-year-olds to ensure that that does not happen.

Mark Griffin: I note from the Scottish Parliament information centre briefing that there was some support for allowing allocations policies to include consideration of whether an applicant was from the local area. Why was that not taken forward?

Linda Leslie: The bill makes no changes to existing legislation in relation to local connection. Existing legislation allows landlords to take into account whether an applicant has a local connection—for example, whether they work in the area or need to move to the area because of special medical or social needs. However, in order to ensure that housing is allocated on the basis of need, landlords cannot take into account the length of time that someone has been in an area. There is no change to that.

Alex Johnstone: I am sorry for raising this point, which is a bit cheeky, although it is relevant. A number of people on significantly above-average earnings continue to occupy social rented housing. There has been publicity in the past few days about attempts south of the border to end that practice. It was suggested to me that such a provision might appear in the bill, but it does not. Was one ever considered? If so, why was it dropped?

Linda Leslie: Ministers consulted on whether income should be taken into account, but they decided that, on balance, that should not be taken forward because they want social housing to remain accessible to all.

The Convener: You have mentioned various factors that were taken into account. Did they include economic conditions in a particular area? I ask because I am from Aberdeen, which is a very pressured area for housing, with lots of people moving into the area to take up jobs.

Linda Leslie: As I said, existing legislation allows such local connections to be taken into account, so no change has been made to that.

Mark Griffin: Can you explain how the bill will provide social landlords with additional tools to tackle antisocial behaviour and what impact such provisions will have in practice?

Linda Leslie: Yes. There are a number of provisions in the bill that will help social landlords deal with antisocial behaviour more effectively, the first of which is to allow them to suspend an applicant with a history of antisocial behaviour from the waiting list for a period. The hope is that the ability to take past behaviour into account and to allow a period of time before an applicant is eligible for housing will encourage tenants to think about their behaviour and recognise the impact that it has on their ability to access housing.

We understand that landlords already suspend applicants for a variety of reasons. The latest figures indicate that 10,000 applicants on the housing list are ineligible for housing. That is mainly because of existing rent arrears or because the applicant has refused what a landlord considers to be a reasonable number of offers of accommodation. The evidence from landlords suggests that they take into account behaviour over up to three to five years. In effect, the bill puts into legislation something that is done in practice by some landlords now.

Mark Griffin: I will ask about suspending applicants because of antisocial behaviour. Is there any clash at all with social landlords’ responsibility to make offers of housing to those who are homeless?

Linda Leslie: The provision will not affect those who are unintentionally homeless.

Mark Griffin: So there will be no suspension in those cases. That is fine.

What is the Government’s thinking on the types of evidence that social landlords would require to make use of the proposed powers to issue a short Scottish secure tenancy?

Linda Leslie: That is one of the other provisions that would allow landlords to tackle antisocial behaviour. The intention is that it would help to reduce antisocial behaviour. Landlords would need evidence of antisocial behaviour on at least
two occasions before they could convert a secure tenancy into a short Scottish secure tenancy, which would limit the tenant’s security of tenure to 12 months. A short secure tenancy currently lasts for six months, so we are extending its length from six to 12 months.

Alongside that, the landlord would have to provide housing support services to help the tenant to change their behaviour during the period for which they had a short secure tenancy. That is not only about tackling antisocial behaviour but also about giving people a second chance to sustain their tenancy. At the end of the 12 months, if the tenant has demonstrated that they can meet the requirements of a secure tenancy, the tenancy would convert back to that. Alternatively, two months before the end of the short secure tenancy, the landlord could serve a notice to extend it for another six-month period, as long as they provided additional housing support during that time.

Mark Griffin: Are there any other protections for tenants who are placed on a short SST or who have their SST converted to a short SST?

Linda Leslie: Yes. The landlord would have to serve a notice to let the tenant know the grounds on which it was considering ending the short secure tenancy if the behaviour had not changed—that is not necessarily a requirement at the moment—and they would have to set out the reasons why they wished to recover possession. That is also a new measure.

Mark Griffin: What would be the right of appeal for a tenant who had their tenancy converted to a short SST?

Linda Leslie: I think that they would have a right of appeal to the social landlord and that the bill will allow ministers to set the requirement for that appeal process in regulations, but I will clarify that in writing.

The Convener: Jim Eadie has some questions on private rented housing.

Jim Eadie (Edinburgh Southern) (SNP): Thank you, convener. I will ask about the transfer of jurisdiction from the sheriff to the first-tier tribunal. There is a proposal to transfer certain types of civil court actions in relation to the private rented housing sector from the jurisdiction of the sheriff court to the jurisdiction of the first-tier tribunal, which is a new body that will be established under the Tribunals (Scotland) Bill. Can you set out the rationale for that change? What will be the benefits for tenants and landlords? Can you also explain to the committee why social rented sector cases are not being transferred from the sheriff’s jurisdiction to that of the first-tier tribunal, despite that having been flagged up as a possible option during the consultation process?

10:30

Daniel Couldridge (Scottish Government): Yes. The social rented sector is very different from the private rented sector. For example, the Scottish Government’s 2009 review of the private rented sector showed that 75 per cent of private rented sector landlords have only one property, and half the properties surveyed were managed wholly by the landlords themselves. We have heard that private rented sector tenants and landlords can be reluctant to take cases to court and have difficulty accessing justice.

The social sector is different. For example, tenants have recourse to an ombudsman and landlords have pre-action requirements that they must fulfil before they can take eviction action against tenants. Social sector cases tend to proceed to court when that is absolutely necessary.

Ministers have decided that, on balance, private rented sector cases should transfer to a tribunal that will deal with issues that are specific to that sector, to enable tenants and landlords to access justice. The proposals will create a specialist, efficient and accessible forum so that tenants and landlords can access justice.

Jim Eadie: You have outlined the reasons for excluding the social rented sector from the proposal for the private rented sector. Can you tell me in a little bit more detail what benefits the proposal will have for landlords and tenants?

Daniel Couldridge: Tribunal procedures are less formal than court procedures, legal representation is not always required before tribunal proceedings, and a tribunal judiciary tends to be more active in asking questions and getting to the root of the issues involved in a case. The rationale behind transferring such cases to a tribunal is that that will enable tenants and landlords to access justice. They will have a more accessible forum in which to bring cases in situations in which they might have been reluctant to bring cases previously.

Jim Eadie: Can you clarify whether one of the advantages is that tenants who want to bring an action to the tribunal will not face the legal costs and barriers that they would have faced if they brought an action through the civil courts?

Daniel Couldridge: Parties that come before the tribunal could be represented if they wished, by a family friend or someone to speak on their behalf, who could be legally qualified. The tribunal’s advantage over the courts is that the tribunal judiciary has the expertise and time to ask
questions, investigate the matter in question and get to the root of an issue. That should enable parties who are generally unrepresented in court proceedings at the moment to make the best of their case.

Jim Eadie: Are there any specific proposals regarding legal aid for tenants who will appear before the tribunal and what the tribunal fees are likely to be?

Daniel Couldridge: There are two elements to that. There would be scope for the tribunal to charge a fee under general powers provided for in the Tribunals (Scotland) Bill, which ministers want to consider further. That would involve balancing the interests of seeking to recoup a percentage of the tribunal’s overall running costs against those of ensuring accessibility for tenants and landlords, which we have said is a key issue. Any proposal to charge a fee for the private rented sector tribunal would require secondary legislation, so the Parliament would have the chance to scrutinise such a proposal.

Tribunal procedures are designed to be accessible and understandable, and generally parties do not require legal representation. However, we are aware 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.

Jim Eadie: I want to confirm that I have understood you correctly. Is the motivation for transferring jurisdiction from the sheriff court to the first-tier tribunal to do with strengthening tenants’ rights and rebalancing the relationship between the tenant and the landlord? Is that the motivation, rationale and justification for the move?

Daniel Couldridge: Partly. It is about improving the quality of and access to justice, for both tenants and landlords in the sector. Tenants will be able to bring cases on various issues to the tribunal, and landlords will also be able to bring cases to the tribunal.

Jim Eadie: You touched on tribunal fees being a source of income to offset the costs of setting up the tribunal. Do you have any information at this stage about what the expected cost of setting up the new process will be? Is there anything further that you can tell us about the staffing arrangements that would be required to get the service up and running and to sustain it?

Daniel Couldridge: We have provided cost estimates in the financial memorandum. Our estimates are that there would be one-off set-up costs of between £90,000 and £140,000 and ongoing operational costs of between £580,000 and £880,000 a year. Those costs are based on data from other existing tribunal jurisdictions. The Private Rented Housing Panel is the only other dedicated housing tribunal that operates in Scotland.

Jim Eadie: We will come on to that in a second.

Daniel Couldridge: In the process of producing the costs, we visited some of the larger tribunal jurisdictions in Scotland—the social security and child support tribunal and the employment tribunal—to look at practice in those jurisdictions so that we could accurately model the costs.

We estimate that the tribunal will need up to 60 members to deal with the projected caseload of around 700 cases a year. Again, that is based on what happens in other tribunal jurisdictions and how many members they have in their pool to deal with their caseloads.

Jim Eadie: Sixty employees is not an insignificant number of people. That suggests to me that there is an unmet need in terms of tenants being able to access justice through the current legal system, which might be addressed through the new tribunal system. Is that a fair assessment?

Daniel Couldridge: In consultation and during the development of the proposals, we have heard that, sometimes, tenants and landlords in the private sector can be reluctant to bring cases to court. The tribunal is intended to help parties who may have been reluctant to bring cases. A requirement for 60 members is not significant for tribunal jurisdictions of comparable size, because members are paid fees and generally tend to give around 15 days a year to tribunal work.

Jim Eadie: I would like to move on to other provisions in the bill on private rented housing matters. In sections 23 to 25, there is provision to expand access to the Private Rented Housing Panel, which you mentioned earlier, by enabling third-party applications by local authorities to enforce the repairing standard. The policy memorandum also makes reference to providing “additional discretionary powers for local authorities that would enable them to target enforcement action at an area characterised by poor conditions”.

Could you say a little more about each of those?

Barry Stalker (Scottish Government): The overall outcome that we seek to achieve through those provisions is to continue to improve the quality and condition of houses in the private rented sector that require improvement.

Currently, only tenants can make an application to the Private Rented Housing Panel to seek to enforce the repairing standard, which is a condition standard that the landlords have to meet in order to rent out their property—it is a legal
obligation. The broadening out to local authorities of the ability to report to the panel, which was based on stakeholder feedback, aims to give local authorities additional means to report properties where the condition is thought to be below that standard. We hear of circumstances in which tenants might be reluctant to report to the Private Rented Housing Panel—you mentioned the panel's work in previous years—and one of the reasons for expanding reporting rights is to give local authorities the ability to do that instead of only tenants. That should help to protect tenants who might feel vulnerable and might not want to take the action that is required.

Jim Eadie: What will that mean in practice? How will the change benefit tenants?

Barry Stalker: There should be more of an opportunity for properties that do not meet the repairing standard to be brought to the panel's attention and for the panel to do its job in assessing whether those properties meet the standard. If they do not, the panel can take action by issuing repairing standard enforcement orders to ensure that landlords bring properties up to the appropriate standard.

Jim Eadie: So that change could be quite significant and strengthen tenants' rights.

Barry Stalker: Yes. The change is based on feedback from stakeholders, including local authorities, which felt that they would benefit from it. Ministers certainly felt that the move would help to improve properties out there that still do not meet the standard, and it increases opportunities for such properties to be brought to the PRHP's attention.

Jim Eadie: What about the introduction of enhanced enforcement areas?

Barry Stalker: That is another means of seeking to improve the condition of properties where required and, again, is based on feedback that we received through the consultation that Linda Leslie mentioned and on-going dialogue with stakeholders.

Some local authorities, particularly urban ones, have discussed with us their current range of powers and other powers that they might need to tackle problems with the condition of accommodation in the private rented sector. The objective of enhanced enforcement areas, which we intend to introduce in a stage 2 amendment, is to provide, where appropriate, local authorities with additional powers to deal with areas where the issues might be complex. We intend to set out in the amendment that local authorities will make an application to Scottish ministers and that, if the application is approved, they will have additional powers for a set period of time to deal with that area.

The powers that we are currently considering include mandatory disclosure checks for landlord registration purposes. At the moment, when a local authority carries out its fit and proper person test it can ask an applicant whether they have reasonable grounds for receiving a disclosure certificate. However, as a result of the proposed provision, the authority will not need reasonable grounds and will simply be able to ask for a full disclosure check on a mandatory basis.

In addition, there will be inspection rights with regard to private rented properties, to check whether they are complying with all statutory obligations. In response to your previous question I mentioned local authorities' ability to report to the PRHP, and our intention with the enhanced enforcement area measure is to give local authorities the ability to inspect a property to find out whether it complies with the repairing standard.

Jim Eadie: That is very helpful. I understand that the intention behind the measure is to allow local authorities, if they so wish, to target enforcement action in areas where the conditions in the private rented sector are poor. Were the views that you received from stakeholders in the consultation process unanimous in their support for such a measure, or was there a range of views? Were there any conflicting views?

Barry Stalker: As we have discussed with stakeholders, the measure is designed for a particular context and we envisage its being used predominantly in urban areas. Local authorities, particularly urban ones, see it as being helpful because of the complex nature of the conditions that they might have to deal with. For example, a certain area might have a high proportion of private landlords or there might be issues with the make-up of the housing stock, and it was felt that such a power would help in those situations. Some stakeholders are particularly keen to have the measure as it will enable them to take further action to improve conditions in those areas.

10:45

Jim Eadie: Have you had any representations that suggest that we need to go further than that provision, or is it considered adequate to achieve the improvements that are sought?

Barry Stalker: That is the position at present, but because the amendment will not be lodged until stage 2 we can continue to discuss matters with stakeholders, and we will do that over the next wee while.

Jim Eadie: I am trying to establish whether you have received any early indication from stakeholders that they are satisfied that the proposed provision goes far enough or whether it
Barry Stalker: The early indication is that an ability to inspect properties would be a significant and helpful power.

Jim Eadie: Thank you.

The Convener: We move to part 4 of the bill, which is on letting agents. Mary Fee has some questions.

Mary Fee (West Scotland) (Lab): I apologise for my hoarseness—I hope that my voice lasts.

From the evidence that you gathered and the consultation that you carried out, can you explain what benefits the customers of letting agents will gain from the regulation of letting agents?

Barry Stalker: I am happy to do so. Your question is about the benefits of further regulation of the industry. We are on a journey, and we describe the process that we are going through as the further regulation of letting agents. We have taken measures to tackle some of the problems to do with letting agents that have been brought to our attention over recent years. Those measures will help, but they will not address the issue entirely. I will quickly set out the journey that we are on.

Some of the problems that have been raised with us relate to the situation in which a letting agent—which, currently, anyone can set themselves up as—folds and the tenant’s deposit money or the landlord’s rent money is lost. To an extent, the tenancy deposit scheme will address the issue of deposit money, which is now protected under that scheme. In addition, in November 2012—as I am sure that you are aware—the Scottish Government clarified the legislation on the charging of premiums by letting agents. From a tenant’s perspective, in particular, those measures seem to be helpful from the point of view of a customer engaging with the services of a letting agent. However, feedback from the private rented sector strategy group, which consulted on the strategy and continues to have a dialogue with stakeholders, indicated that there continue to be problems with some letting agents regarding the service that landlords or tenants might receive. Interestingly, the industry and groups that represent it were quite keen for a consistently high-quality service to be provided by letting agents.

The benefit of the further regulation of letting agents is that it will address the basic problem that any organisation can set itself up as a letting agent. There are no compulsory standards and no compulsory code of practice governing what a letting agent should do. There are some voluntary schemes but joining them is optional, and although some form of redress is available it is limited to circumstances in which a letting agent is a member of a particular redress scheme. There should be benefits for tenants and landlords in its being clear and transparent what standards of service they can expect from a letting agent. In the event that those standards are diverged from, there will be an ability to seek redress.

Mary Fee: Can you give me a bit more detail about how the regulatory regime would work in practice and what the enforcement provisions would be? In the explanatory notes there is no definitive number of letting agents across Scotland; there is just an estimate.

Barry Stalker: Yes.

Mary Fee: When a regulatory regime is set up, how will people who we do not know exist be brought on board? That is my concern. How will that work in practice?

Barry Stalker: I will start with what our intentions are in the bill. Put simply, there are three elements, the first of which is a register of letting agents. You are quite right that we do not have a definitive number of letting agents at present, but the register should give us that. It will be a legal requirement for a letting agent to register, and they will need to pass a fit-and-proper-person test. Our intention is that the Scottish Government will maintain the register. That should give a letting agent’s customers an assurance that it is indeed a letting agent, and there will be the assurance that a fit-and-proper-person test has been taken.

The second element is the code of practice that we intend to develop through secondary legislation, which we will need to consult on. We intend to work with the industry on that. I mentioned previously that different organisations have codes of practice, but we are looking to put the code of practice on a statutory basis. The intention is to ensure that it is very clear and transparent to customers what standards of service they should expect.

The third element is a means of redress. If a letting agency’s customers feel that there has been a transgression of the code of practice, they will be able to seek redress through the first-tier tribunal. That provision is currently in the Tribunals (Scotland) Bill, which is also in the parliamentary process, and links to what Dan Couldridge talked about with regard to the PRS-specific tribunal.

Those are the three elements: a register, a code of practice and a redress mechanism.

Mary Fee’s second question was about enforcement. There will be a legal requirement for a letting agent to register to be able to practise. If they do not, that will be a criminal offence set at, I
think, level 3—I would be happy to write to the committee to confirm the detail of that.

There are provisions in the bill that mean that letting agents who are not registered should not be able to incur costs. If a letting agent has failed the test or been revoked or refused, they should not, on the final date of that decision, be able to charge costs for their work.

On consumer empowerment, we hope that if unregistered letting agents were operating out there that would be brought to the attention of the appropriate authorities.

Mary Fee: The onus would be on customers.

Barry Stalker: The onus will be on letting agents to register because it will be an offence if they do not do so.

Mary Fee: I am still not completely clear about how letting agents that operate under the radar and have only one or two properties will be brought on board. If we do not know that they exist, they cannot be asked to register, so how will they be got on board?

Barry Stalker: The first and most obvious way is through the legal requirement for them to get on board. When ministers looked at the approach to letting agents, they were keen to ensure that we took a pragmatic and proportionate approach. That is one of the reasons why we set out the options that we set out. For example, we set out in the financial memorandum that we envisage that the cost to a letting agent would be £250 for a three-year membership. Therefore, the cost to a business of registering would be relatively small. There could have been further costs if we had chosen to go down another route. For example, we could have insisted on a proportion of staff having compulsory qualifications.

There has been consideration of the best approach to ensure that all letting agents, beyond the legal requirement, feel that they are able to register and participate in the new regime to achieve the aim that the sector is looking to achieve, which is to improve the overall consistency and standards of service of their businesses for their customers.

Mary Fee: There is a view across many letting agents that they are happy with the bill and that it will help their sector. Are you confident that the proposals in the bill will be enough to bring on board every private letting agent?

Barry Stalker: Scottish Government ministers are confident that the provisions in the bill will achieve the aims that we have set out. In particular, the fact that the bill makes it an offence not to be registered should send a strong signal to any letting agent out there who feels that they would be able to avoid their legal requirement to register.

Mary Fee: As you said, it will be a level 3 offence not to register. If someone registers and you then find that there is a breach of what they should be doing, will it be possible to remove them from the register?

Barry Stalker: Yes. Just to clarify, I said that it will be a level 3 offence, but it will actually be a level 5 offence. I apologise.

As part of the fit-and-proper-person test, we have set out a range of considerations that can be taken on board, which include contraventions of housing law and other law that relates to housing. That can also include consideration of whether a letting agent has been taken to the first-tier tribunal for a breach or infringement of the code of practice.

The intention is that that will act as an incentive to letting agents to meet their obligations—first, because no letting agent would want to be put out of business because they have been deregistered and, secondly, because there is a cost implication in that they will not be able legally to charge or recover costs if they have been deregistered. Also, the decisions will be made public, so there is a business risk. If a letting agent is looking to attract landlords and tenants as customers, they will want to avoid having decisions made against them and put out in the public domain.

The Convener: I know of a situation in which a property that was to let was in such poor condition that, in order to get a letting agent, the owner had to get one from Manchester. I presume that, if a letting agent works in Scotland, they will have to register here even though their head office may be outwith Scotland. Is that correct?

Barry Stalker: Yes. For a letting agent to operate in Scotland, they need to be registered.

The Convener: Alex Johnstone has a supplementary question.

Alex Johnstone: For a letting agent to be registered, they will be required to pass a fit-and-proper-person test. I take it that there is no plan to introduce a similar register of tenants.

Barry Stalker: No.

The Convener: We will move swiftly on to mobile home sites with permanent residents. What evidence is there that the site licensing regime for permanent residential mobile homes needs to be improved?

Claire Tosh (Scottish Government): Just to set the scene, I note that the current licensing regime is set out in the Caravan Sites and Control of Development Act 1960, which is now relatively old, and Scottish ministers are aware that an
increasing number of people are living on mobile home sites, including many older people. The survey that Consumer Focus carried out—I think that it was in 2012—found that the majority of interviewees were aged over 61. Such sites are marketed as desirable and affordable retirement communities.

The aim of the provisions in the bill is to improve and strengthen the licensing regime to ensure that quality is maintained and that mobile home sites meet an acceptable standard. A consultation was carried out prior to the bill’s publication, in which some mobile home residents stated that they were concerned about the standards on some sites. As I said, there was also a Consumer Focus report in 2012, which indicated that some residents were concerned about problems with maintenance and security, problems with electricity supply, pitch fees and written statements under the Mobile Homes Act 1983.

Within the licensing regime that is in place under the 1960 act, a licence for a mobile home site can run in perpetuity. The only point at which a licence can be revoked is when the local authority applies to a court to have it revoked because the mobile home site owner has received a third conviction for an offence under the 1960 act. Ministers think that, as an older licensing regime, it appears not to fit the current mobile home site sector or the provision of mobile homes. Also, the range of enforcement tools that are available to local authorities under the current licensing regime seems not to be broad enough to enable them to improve the quality of sites.

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11:00

The Convener: What key changes does the bill make to the site licensing regime, and what benefits will that bring for mobile home residents?

Claire Tosh: The key change is the introduction of a fit-and-proper-person test akin to those that are used in other licensing regimes. A person who owns a mobile home site and applies for a licence will have to pass such a test under the new provisions. The bill sets out what material must be taken into account in considering whether somebody is a fit and proper person, which includes convictions for quite serious offences and, similar to tests for other licensing regimes in the housing sector, whether the person has previously contravened housing law. Somebody who runs a site on behalf of somebody else will also have to be a fit and proper person to do so.

The Convener: Both the owner of a site and the person who runs it will have to be licensed.

Claire Tosh: That is correct. For the owner to obtain a licence, the person who runs the site will have to be considered a fit and proper person as well.

An additional measure is that, under the bill, the licences will have a fixed three-year term. Currently, licences run in perpetuity and, as I said, the only time that a licence can be revoked is on the licence holder’s third conviction for an offence, when the local authority can ask the court to revoke the licence.

In addressing enforcement measures that might be lacking in the current framework, the bill seeks to introduce a range of measures to give local authorities tools to intervene at an earlier stage. First, a local authority will be able to issue an improvement notice that will require a site owner to take steps to improve something if, for example, they fail to comply with a condition of the site licence. Secondly, a local authority will be able to issue a penalty notice. That power could be used by a local authority when a site owner does not have a licence or if an improvement notice has been served but the site owner has failed to comply with it. Under a penalty notice, the site owner would lose their income from the site for a certain period.

The Convener: The site owner would lose their income from the rents.

Claire Tosh: Yes.

The Convener: Where would that money go? Would the residents stop paying?

Claire Tosh: The site residents would be told that they did not have to pay on-going pitch fees. That is part of a range of enforcement measures that could be used if a person did not have a licence and continued to operate without one or if there was a failure to comply with an enforcement notice. It is anticipated that local authorities would engage with site owners prior to taking enforcement measures, but local authorities will be able to use a range of options for on-going enforcement on a site. A local authority will also be able to revoke a licence if a site owner is no longer considered to be a fit and proper person to own the site or they fail to continue to comply with the fit-and-proper-person test.

As I said, the intention is to provide local authorities with a range of tools that they can use. That is different from the current situation, in which there is only revocation and the criminal offence of operating a site without a licence. Ministers consider those to be quite blunt tools that do not really allow for proper enforcement.

The Convener: A few mobile home owners and residents in my constituency have been alerted to the bill and have had quite a lot of discussion about it. When you were drawing up the bill, did you get an impression that some local authorities...
have more of a handle, shall we say, on mobile home sites than others, and that the regimes in some local authority areas are very different from those in others?

Claire Tosh: There is on-going consultation with local authorities on the regime and how it is operated. The policy memorandum indicates that, in the consultation responses, there was a varied reaction from local authorities, with some perhaps not responding and others being in favour of enhanced enforcement measures. In the continuing discussions with local authorities, the Scottish Government is making them aware of the bill’s provisions and the new enforcement powers that local authorities will have.

The Convener: What views did mobile home site owners and residents express in the consultation on the proposed revised licensing regime?

Claire Tosh: The responses to the formal consultation that was done before the bill’s provisions were drafted indicated that mobile home residents generally supported the proposed changes and an enhanced licensing and inspection regime.

The mobile home site owners had some concerns about there perhaps being an additional burden on them. Particular concerns were expressed during the consultation regarding the effect on the industry as a whole. As a consequence, although the proposals indicated that the new licensing regime should apply across the board to all sites, ministers decided, having looked at the consultation responses, that it would be appropriate and proportionate to change the regime in respect of those sites on which people live permanently—those that have a residential aspect. The concerns were listened to and taken on board in the development of the proposals.

The Convener: Why did you alight on three years, as opposed to five years, for the term of a licence?

Claire Tosh: We consulted on the term being three years, and more than half of the 129 consultation responses supported that. Ministers consider that that term is similar to the terms for other types of licensing regime in the housing sector—for example, landlord registration—and that it takes account of residents’ desire for an effective, on-going review process that requires site owners to apply and local authorities to consider the fit-and-proper-person test.

The Convener: How will permanent residents be protected in respect of on-going service provision and so on if the owner’s licence is refused or revoked?

Claire Tosh: It might be helpful if I set out a bit of background to the measures. The proposals in the bill deal almost exclusively with the licensing regime. The law that underpins mobile home sites and the rights of site residents is covered in various pieces of legislation, so this is part of a package of measures. The rights of people who live on mobile home sites and own the homes in which they live are protected under an act of 1983, which includes a set of terms relating to their residency. There is a provision in the bill to make it clear that those rights will not be affected by the provisions on the licensing system.

In addition, there is a provision in the bill to allow local authorities to appoint an interim manager if a licence is revoked, which will enable the on-going provision of maintenance.

The Convener: What have local authorities said about the resource implications for them of enforcing the new licensing regime?

Claire Tosh: In developing the proposals, it was considered that there should be an element of cost recovery. There is a provision that enables local authorities to charge a fee for licence applications as long as it relates to what is required to be carried out under the licensing process. There are also provisions that enable local authorities to cover any expenses that they incur from carrying out enforcement action.

The Convener: That would be from the site owner.

Claire Tosh: Yes.

The Convener: Do you have a ballpark figure for the cost of a licence?

Claire Tosh: Costings were carried out for the financial memorandum. It is estimated that the cost of a three-year licence will be £600. However, local authorities will be given the power to charge fees on the basis of costs to the individual local authority, so the figure may or may not be £600.

The Convener: That is quite a lot if the mobile home site is not a terribly big one. I have some idea of pitch fees and they are not that much. That could be quite a lot in respect of the site owner’s income.

Claire Tosh: The £600 would be over three years, and it is anticipated that local authorities will take into account the size of the site and the general inspection costs. As I said, the fee must not exceed the reasonable cost to the authority of deciding on the application—it is tied to that. Moreover, Scottish ministers will have a power to make regulations on fees if it becomes apparent that issues are arising in respect of the bill. Such regulations could state that the fee must not exceed a certain amount and set out the factors that local authorities would have to take into...
account. However, it is expected that local authorities will look at the actual costs of processing licence applications.

Alex Johnstone: As a result of work on a different committee, Mary Fee and I visited Travelling people’s sites, which, as you would realise from visiting them, fall under the criteria that are covered in the bill. In the preparation of the bill, was its impact and effect on Travelling people’s sites, or its interaction with them, taken into account?

Claire Tosh: The provisions in the bill will not affect Travellers sites that are maintained or operated by local authorities. However, it will affect privately-run Travellers sites, so there will be implications for them. People who own or run such sites will be required to have a licence under the provisions in the bill.

11:15

Alex Johnstone: Will it basically apply in those circumstances as it will anywhere else?

Claire Tosh: Yes, but it is my understanding—if I am wrong about this, I will write to correct what I have said—that the provisions will not affect sites that are provided by local authorities. I am not sure whether the sites that were visited were local authority sites or not.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Part 6 of the bill amends local authorities’ powers to enforce repair and maintenance of private homes. Will you explain the policy objectives behind that?

Linda Leslie: I will try, but it is an area that I am not so familiar with, so we may have to write to you with some further details.

The provisions on house condition enforcement powers are intended to clarify the existing power to pay missing shares on behalf of owners who are unwilling or unable to pay their shares, and to ensure that local authorities are able to use the power to support majority decisions by owners under the tenement management scheme for repair works. They also allow local authorities to issue maintenance orders where they have issued a work notice or a previous maintenance order. They are intended to reduce the administrative burden of maintenance orders and address a number of other issues around safety and security notices.

Gordon MacDonald: We have had a situation in Edinburgh in which, under the statutory notice system, the City of Edinburgh Council could intervene to organise repair work on private properties when the owners of shared buildings could not reach agreement. The system was accused of being open to bribery, overcharging and unnecessary work being done, and police later charged 15 people. What safeguards are in place for home owners to ensure that we do not replicate the problems that existed in Edinburgh?

Linda Leslie: My understanding is that the provisions in the bill do not replicate the system in Edinburgh. I can write to you about the safeguards and how they fit with the previous legislation in the Tenements (Scotland) Act 2004.

Gordon MacDonald: I have two other questions that relate to that. If a council ends up paying an individual’s share, what recovery methods will be available to the council, especially in a situation where the householder or house owner has limited resources, perhaps because they are retired or unemployed?

Linda Leslie: We will have to write to you about that, to ensure that we give an accurate answer.

Gordon MacDonald: The City of Edinburgh Council has £22 million of repairs outstanding for which it has not yet recovered the costs from home owners. Given the financial pressures on councils, how will they be able to manage such situations?

Linda Leslie: The powers are discretionary, so it will be up to the council to decide whether it wishes to use them.

Gordon MacDonald: Moving on to part 7, will you provide a brief overview of the bill’s miscellaneous provisions? I am particularly interested in hearing about the changes to shared equity schemes, as I have a number of Orlit homes in my constituency. What are the practical changes with the repeal of the defective designation provisions? That is one of the four areas that are covered in part 7.

Linda Leslie: Colin Brown will answer that.

Colin Brown: The heritable security stuff is fairly technical. It stems from legislation from 1974, which was part of a scheme to address the feudal tenure system. Those with long memories who know arcane details of feudal systems will know that people were able to redeem feu duties by paying 20 years’ worth of feu duties. In 1974, there was a concern that securities might create a form of feu duty in perpetuity when they ceased to be able to be created. The legislation for that covers all heritable securities and states that a person who has a debt or a property as security—the debtor on a security—has the right to redeem that security come year 20, as long as they pay what they originally borrowed plus the interest less what they have already paid.

For a conventional security, that works perfectly normally—I am sure that my bank would be perfectly happy if I wanted to pay off my security in year 20—but it does not work properly for shared
equity, where the loan is advanced on the basis that the recovery will not be through on-going interest but will be linked to the value of the property in a number of years. In theory, it opens up the possibility that a person could redeem a security come year 20 and pay back only a percentage of the value when they initially received it.

Existing shared equity schemes get round that problem by entering into only a 19-year security, so that people never reach the year-20 question, and they can then enter into a new security if they want to do so. As certain provisions were developed around the right to repair and assistance to repair, it became apparent that lenders would experience difficulty with that, because there are changes to the background mortgage legislation and good practice regulations that they have to operate. The gist of it is that there would be a break event in year 20, and they would have to take that into account, and for certain people they would not be happy to advance a commercial mortgage on those terms.

The intention behind the provision in the bill is simply that there will be types of loans that can be prescribed by order, to which the 20-year rules will not apply. They are intended to be used for shared equity-type loans to get round that difficulty and avoid the emerging problem that has arisen because of changes to practice. It is fairly technical stuff, but I am happy to bore you for longer on it if you want.

What else is in the miscellaneous provisions? For completeness, section 78 allows the president of the Private Rented Housing Panel to delegate various functions to the depute. That is essentially just a pragmatic change; it was sought, and it seems entirely sensible. Section 79 affects the Scottish Housing Regulator’s powers to transfer assets. It addresses some practical difficulties that were found in a particular emergency situation where there was simply not time to do various things that appeared to be needed.

On the repeal of the defective designation provisions, there was a scheme to assist owners of defective housing that allowed them to seek assistance over a period of years. The scheme has now run its course and is closed to business. It served its time, but a redundant decision remains on the statute book.

**Gordon MacDonald:** So the bill just removes the provision.

**Colin Brown:** Yes. It removes stuff that no longer has any practical significance.

**Gordon MacDonald:** Thank you.

**The Convener:** We have had a good run through the generalities of the bill. I thank all the witnesses for attending, and we look forward to receiving written information from you shortly.

The committee’s next meeting will be on 22 January, when we will consider a draft report on the Procurement Reform (Scotland) Bill and take evidence from two panels on the Housing (Scotland) Bill.

*Meeting closed at 11:23.*
Shelter Scotland welcomes the opportunity to submit evidence to the Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill at Stage 1. Shelter Scotland supports the broad aims of this Bill: to “enhance housing conditions, retain much needed social housing for the people of Scotland and safeguard social and private tenants”.

Shelter Scotland has been involved in the consultations and advisory groups which have fed into this Bill and supports many of the intentions of the proposed legislation. However, we feel strongly that all legislative changes must help to ensure that the housing sector functions as effectively as possible so that everyone has access to a safe, secure and affordable home and the right to a fair, transparent service.

This evidence is in three parts:

1. **A summary of Shelter Scotland’s key positions**

2. **Shelter Scotland’s proposals for the Housing (Scotland) Bill**

   This section covers Shelter Scotland’s proposals for additions to the draft Housing (Scotland) Bill. These proposal are in line with the overall aims of the bill and are opportunities to strengthen the bill.

3. **Shelter Scotland’s response to the draft Housing (Scotland) Bill**

   This section covers Shelter Scotland’s main points in relation to the draft Bill showing the areas which we support and where we have significant concerns.

1. **Summary of Shelter Scotland’s key positions**

   **Shelter Scotland proposals for the Housing (Scotland) Bill:**

   - **Unsuitable Accommodation Order:** Strengthen current legislation to make sure that households with children or expectant mothers have a right to challenge being placed in homeless temporary accommodation that is of a very poor standard.

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1 Scottish Government press release (Nov 2013)
standard of physical repair.

- **Homelessness referrals:** All referrals for settled accommodation for statutory homeless households from councils to registered social landlord (RSL) partners should be made through mandatory use of a ‘Section 5’ referral. This would make all housing allocations and partnerships transparent, comparable and measurable.

- **Carbon monoxide alarms (PRS):** Shelter Scotland would like to see carbon monoxide alarms become mandatory in all privately rented property in Scotland. This could be achieved by an amendment to the Repairing Standard in the Housing (Scotland) Act 2006.

### Shelter Scotland’s response to the draft Housing (Scotland) Bill:

- **Age and allocations:** The draft Bill includes an amendment to existing legislation which would remove the current prohibition on taking age into account when allocating social housing. We strongly oppose this unfair and discriminatory measure and want to see this removed from the Bill.

- **Right to buy:** Shelter Scotland supports the abolition of Right to Buy (RTB) in order to protect existing social rented housing stock. We would, however, like to see a commencement date sooner than the proposed three years.

- **Social housing:** There are many proposals in this section, some of which will make detailed but important changes and improvements to the management and allocation of social housing. Some of the proposals however, could have serious unintended consequences and Shelter Scotland feels these need to be considered in more detail or removed entirely:
  - increased use of Short Scottish Secure Tenancies (SSSTs) for antisocial behaviour
  - a simplified eviction process after a criminal conviction

2. Shelter Scotland’s proposals for the Housing (Scotland) Bill

   In addition to what is proposed in the draft Bill, Shelter Scotland believes that an opportunity has been missed to strengthen existing legislation, specifically around housing for homeless people and families to improve outcomes for
those experiencing the crisis of homelessness, and safety in privately rented homes.

Proposal 1: Strengthening the Unsuitable Accommodation Order

Strengthen current legislation to make sure that households with children or expectant mothers have a right to challenge being placed in homeless temporary accommodation that is of a very poor physical repair.

Shelter Scotland wants to see an amendment to existing legislation which would mean that families with children in sub-standard temporary accommodation have a legislative right to challenge the local authority which has provided it.

The Unsuitable Accommodation (Scotland) Order 2004 was introduced to restrict the use of bed and breakfast (B&B) as temporary accommodation (TA) for households with children and pregnant women. This Order has been very successful in eliminating the use of unsuitable types of accommodation for these households, with a reduction of 92% in the use of B&B over the past 10 years. However in a minority of cases, the temporary accommodation that is provided to these groups can still fall below an adequate physical standard of repair. Shelter Scotland regularly helps clients who come to us after being placed in TA which is in poor repair, damp and or with inadequate heating\(^2\). This specific issue is not covered by existing legislation and although the Code of Guidance defines good practice around TA accommodation, this is not legislative and currently vulnerable families have no recourse to challenge the conditions they face.

Shelter Scotland wants to see an additional clause added to the Unsuitable Accommodation Order that explicitly covers poor physical repair.

\(^2\) ‘Temporary accommodation Standards: Campaign briefing’ (Shelter Scotland, November 2013)
http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/temporary_accommodation_standards_campaign_briefing
• A legislative amendment to the existing Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 to add a clause(s) relating specifically to minimum physical standards for families with children or pregnant women in temporary accommodation.

This change to existing legislation would ensure that the standards of repairs in temporary accommodation are the same for those with a Scottish secure tenancy (SST) and those in the private rented sector (PRS) have, but would be explicitly to help households with children and pregnant women placed in temporary accommodation.

Proposal 2: Homeless referrals

| All referrals for settled accommodation for statutory homeless households from councils to registered social landlord (RSL) partners should be made through mandatory use of a ‘Section 5’ referral. This would make all housing allocations transparent and measurable. |

With local authorities increasingly working in partnership with RSLs to meet their duty to house homelessness households, we must ensure that the provision of that accommodation is fair, transparent and measurable and people understand how allocations are made.

Across all social housing, the allocation of housing to households classified as statutorily homeless households is 35%. Currently, local authorities have 54% of all social housing stock while RSLs have 46%. Yet, local authorities allocate 42% of their annual lets to homeless households whereas RSLs only allocate 27% on average. There is a wide range of practices across Scotland and different partnerships and protocols have been established. Given the increasingly significant role that RSLs are playing in housing homeless people, Section 5 of the Housing (Scotland) Act 2001 introduced a formal process for the referral of homeless households by councils to RSLs. More than ten years after commencement, this legislation there is still mixed practice and little consistency.

4 Data from 2012/13 shows that, of homeless referrals housed by RSLs, 65% are described as section 5 referrals with 29% described as ‘LA nominations’ and 8% described a ‘other’, which are generally informal nomination arrangements RSL statistics from Scottish Housing Regulator: http://www.scottishhousingregulator.gov.uk/publications/benchmarking-tables.
Shelter Scotland has been monitoring the use of section 5 referrals and believes that in some areas RSLs are doing more work to respond to and prevent homelessness than these figures portray but this cannot be tracked because of the inconsistent use of Section 5 referrals. Although 65% of all homeless households accommodated by RSLs are housed using a Section 5 referral, the data shows that some RSLs/councils use Section 5 referrals in 100% of their allocations while some don’t use section 5 referrals at all, meaning there is very little consistency for the individuals involved. In order to ensure that we are making best use of resources, we need to understand more about homeless allocations and have a standard process in place.

Shelter Scotland believes that the Housing (Scotland) Act 2001 should be amended to require a Section 5 referral to be used in all instances where a RSL let is sought to meet a statutory homelessness duty. Data from 2012/13 shows that, of homeless referrals housed by RSLs, 65% are described as ‘Section 5 referrals’ with 29% described as ‘LA nominations’ and 8% described as ‘other’, which are generally informal nomination arrangements. We need to ensure greater transparency and make referrals easier to track and monitor which in turn, would improve partnership working.

Proposal 3: Improving tenant safety in the Private Rented Sector

Mandatory carbon monoxide alarms for all private rented homes

Shelter Scotland would like to see carbon monoxide alarms become mandatory in all privately rented property in Scotland. This could be achieved by an amendment to the repairing standard in the Housing (Scotland) Act 2006.

Carbon monoxide (CO) gas is known as the ‘silent killer’ because it is invisible and has no smell. CO can be emitted by any faulty appliance which burns a carbon based fuel such as gas, petrol, oil, coal and wood, and as little as 2% in the air can kill within one to three minutes. Children, elderly people, pregnant women and people with respiratory problems are particularly at risk from carbon monoxide poisoning.

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6 RSL statistics from the Scottish Housing Regulator: http://www.scottishhousingregulator.gov.uk/publications/benchmarking-tables
7 A briefing on this proposal to improve Section 5 referrals is available on the Shelter Scotland website http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/housing_scotland_bill_2013_policy_proposal_on_section_5_referrals
According to Department of Health figures for England and Wales, 50 people a year die from CO poisoning, and around 4,000 are taken to A&E\textsuperscript{8}. All private landlords in Scotland must provide a valid gas safety record and annual checks for the appliances in the property they rent out\textsuperscript{9}, but there is currently no legal requirement for them to provide a carbon monoxide detector and alarm. From October 2013, building regulations in Scotland were changed to require CO alarms to be fitted whenever a \textit{new or replacement} boiler, heater, fire or stove is fitted to residential property. Shelter Scotland would like to see carbon monoxide alarms become mandatory in \textit{all} privately rented property in Scotland. This could be achieved by an amendment to the Repairing Standard in the Housing (Scotland) Act 2006.

**Safety of electrical wiring installations**

This Bill also presents an opportunity to protect tenants in the PRS from the dangers posed by unsafe electrical installations. Shelter Scotland fully backs the call from the Electrical Safety Council, as detailed in their written evidence, for mandatory five yearly checks by a registered electrician, of both fixed electrical installations in all privately rented property and any electrical appliances supplied with lets.

3. Shelter Scotland’s position on the draft Housing (Scotland) Bill

**Part 1: Right to Buy [Section 1 & 85(4)]**

Shelter Scotland supports the abolition of the Right to Buy (RTB) in order to protect existing social rented housing stock. The Scottish Government estimates that removing the Right to Buy would retain 10,000 houses that might otherwise be sold in the period 2015 to 2020.

Given the current pressures on social housing, it is regrettable that the Scottish Government has set a 3 year delay before implementation. The process of legislating to end RTB will bring with it publicity and therefore plenty of opportunity for tenants who wish to purchase to exercise their right. \textbf{We argue that abolition should take effect immediately from the date of commencement which might be, for example, 6 months or a year after the Bill receives Royal Assent.} There is a need to balance allowing people

\textsuperscript{8} Reliable data for deaths from CO poisoning in Scotland is not available since inquests for unexplained deaths are not routinely held, unlike in England where the coroners system investigates all unexplained and sudden deaths.

\textsuperscript{9} Under the The Gas Safety (Installation and Use) Regulations 1998
to take time to properly consider the option of buying, with the potential for less-than-scrupulous commercial companies having the opportunity to persuade people to “buy before it is too late”.

**Part 2: Changes to social housing - allocation and management**

This section of the Bill proposes a series of detailed changes to the allocation and management of social housing. These have been consulted on and discussed at the Scottish Government’s Affordable Rented Housing Advisory Group (ARHAG) of which Shelter Scotland is a member\(^\text{10}\).

Shelter Scotland agrees that more needs to be done to ensure that social landlords make best use of the limited supply of existing stock. While some of these proposals are welcome – enhancing tenants’ rights and technical amendments to clarify existing legislation, other proposals, especially around eviction processes, have potentially negative consequences as currently drafted. It is important that responses to anti-social behaviour are strong, consistent and effective. But we do not want to see detrimental changes to housing law and tenancy rights in response to concerns over anti-social behaviour which may not be effective and could cause serious problems for some vulnerable tenants.

**There are three proposals that we do not support and believe should be removed from the Bill altogether:**

<table>
<thead>
<tr>
<th>Taking age into account when allocating social housing:</th>
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<tr>
<td><strong>Bill proposal [section 5]:</strong> This proposal seeks to remove the prohibition on social landlords taking someone’s age into account when allocating housing.</td>
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</table>

**Shelter Scotland position:** This proposal would mean social landlords can take the age of an applicant into account when allocating housing. This goes against the principle that the need of the household should dictate any allocation. We feel this change is potentially discriminatory and there is already sufficient flexibility in the national framework and legislation to allow landlords to make sustainable, common sense allocations. We are not aware of any evidence to suggest that the current legislation is inhibiting good practice in allocations. **We want to see this proposal removed from the Bill entirely.** We strongly believe that:

- The allocation of social housing must be determined by the needs and circumstances of the household and age in itself is not a need category.
- By removing this important safeguard there is a very real danger that vulnerable groups will be unfairly penalised and will not be allocated the homes they need and are entitled to. In particular, we feel that young people will be discriminated against as potentially less attractive tenants.
- Current legislation and guidance means that there is sufficient flexibility when allocating homes to ensure tenancies are suitable and sustainable in the long term, for example if there are accessibility requirements or if someone needed a specially adapted property.

Increased use of the SSST for antisocial behaviour

Bill proposal [Section 8]: This proposal would extend the circumstances when a social landlord can allocate or demote a secure Scottish tenancy (SST) to a short Scottish secure tenancy (SSST) where “tenants (or any one of joint tenants) or a person residing or lodging with, or a subtenant of, the tenant” has acted anti-socially in or near their home within the past 3 years.

Shelter Scotland position: Shelter Scotland believes that antisocial behaviour (ASB) which blights communities and causes misery and distress should be tackled quickly and effectively. We do not believe that this proposal will be effective and do not think that linking behaviour to tenancy rights is the correct approach. We need changes to practice to compliment the raft of existing legislation and partnerships to tackle ASB and its causes.
Specifically, we want to see this proposal removed from the Bill entirely because:
- We are concerned about what constitutes ‘anti-social behaviour’ in this provision and the low burden of proof that is required to result in someone losing their security of tenure and possibly their home.
- The 3 year time limit in this proposal would mean people could be penalised for actions a long time ago even if they have taken steps to turn their lives around. This means they could be over-zealously penalised for the previous bad behaviour of a joint tenant or family member.
- we are concerned about the inequity between existing and new tenants under this proposal. Existing tenants would have the right to review the demotion of their tenancy while new tenants granted a SSST would have no rights to challenge the decision to give them an unsecure tenancy.
**Simplified eviction process after criminal conviction**

**Bill proposal [15]:** This proposal effectively simplifies the eviction process once a tenant has a conviction for an offence punishable by imprisonment, or for using the property for illegal purposes within the previous 12 months. This proposal would mean the court does not have to consider whether it is ‘reasonable’ to evict: effectively an ‘auto-eviction’ in certain cases.

**Shelter Scotland position:** Shelter Scotland understands there may be frustrations for landlords when they have to go through a court process for an eviction order, when the tenant has already been convicted of a criminal offence. However, we have concerns about how this proposal could be used to penalise tenants who have sought to change their behaviour since an initial conviction, or who were convicted of a low level offence which did not impact or harm other tenants. **We believe this could have serious unintended consequences and would like this measure to be removed from the Bill.** Our specific concerns are:

- This measure will remove the test of ‘reasonableness’ that Sheriffs currently apply during eviction cases. This takes the power away from the courts to decide if in each case, a person losing their home is a ‘reasonable’ outcome. This is often where judgements can be made on whether the person has made efforts to change their behaviour or if there are mitigating circumstances. As a consequence we are extremely concerned that by removing this option, sheriffs will have no option but to make someone homeless when it is not reasonable to do so\(^\text{11}\).
- We do not believe that this measure will be effective in tackling anti-social behaviour and may have a range of negative consequences including homelessness for vulnerable tenants who are effectively being punished twice – through a criminal conviction and then loss of their home.
- We also believe this could increase litigation in general and potentially court costs in challenges and appeals.

The remaining proposals in this section dealing with a range of allocation and social housing management tools are non-contentious and we broadly supports these. It will be crucial once the legislation is amended, that the right regulation and statutory guidance is put in place to ensure good, consistent practice by social landlords using these measures and to make sure there are no unintended consequences.

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\(^{11}\) While ‘proportionality’ can be considered under European Convention on Human Rights (ECHR) this does not cover reasonableness and there is no guarantee that every Sheriff will be willing to hear proportionality arguments.
Part 3: Private Rented Housing

Shelter Scotland believes that greater security is the key to ensuring that private tenancies provide stable and secure homes for Scotland’s private renters. This is increasingly important as 12% of all households in Scotland now rent privately, double the number ten years ago, and 26% of households renting privately in Scotland have children.

Greater security of tenure would also empower tenants to be active consumers and use their rights effectively. A review group established by the Scottish Government is currently considering possible changes to the tenancy regime in the private rented sector. The group, of which Shelter Scotland is a member, is submitting its recommendation for reform to the tenancy regime in the PRS to Ministers in early March 2014.

Establishing a Private Rented Sector Tribunal

This provision proposes taking civil housing disputes in the private rented sector – both eviction and non-eviction – out of the sheriff court, and into a dedicated private rented sector tribunal.

Shelter Scotland supports the creation of a private rented sector tribunal. We believe this will improve dispute resolution for private tenants and landlords, making dispute resolution more accessible, cheaper, less time-consuming and less intimidating for all parties. Decision-makers in a tribunal would also have a higher degree of specialisation, potentially giving a higher quality of decision.

Importantly, the tribunal should be free-to-access for vulnerable tenants and those on low incomes. It is also important that free legal advice and representation be made available for these groups through the Scottish Legal

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13 Housing Statistics for Scotland, published 26th August 2013
15 As set out in the Scottish Government’s strategy for the private rented sector: ‘A place to stay, a place to call home’ published in May 2013
Aid Board, exploring the possibility of rolling out lay representation across the tribunal. This would ensure that everyone is able to navigate the dispute resolution process effectively. The panel should also be designed to encourage participation by tenants. We believe that a less adversarial approach to housing related disputes would encourage tenants to assert their legal rights.

Third party reporting to the Private Rented Housing Panel

The Bill contains a provision for local authorities to make applications to the Private Rented Housing Panel (PRHP) where a landlord has failed to meet the repairing standard.¹⁷

Shelter Scotland supports this proposal; currently the PRHP is not working as an effective mechanism for tenants to force improvements in private properties. However, it must be implemented in such a way as to not create conflict between tenant and landlord which put the tenancy at risk.

The proposal allows local authorities to address poor conditions in private rented housing, without the need for private tenants to take forward applications. Shelter Scotland regularly advises private tenants experiencing problems with poor repair in their homes. Many who are unwilling to apply to the PRHP because they fear it will have a detrimental effect on their relationship with their landlord, putting them at risk of losing their tenancy.

It is important that third party reporting to the PRHP does not in any way lead to a tenant fearing that their tenancy will be ended by their landlord. Tenants should be made fully aware of the implications of a third party application to the PRHP. To guarantee that private tenants’ security of tenure is not affected, and to encourage more tenants to pursue their right to repair through the PRHP, the Scottish Government should act to increase security of tenure for private tenants.¹⁸

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¹⁷ The full repairing standard is contained in s.13 Housing (Scotland) Act 2006
Part 4: The regulation of letting agents in Scotland

The Bill creates a requirement for letting agents to register as an agent, adhere to a statutory code of practice and sets up a dispute resolution process for landlords, agents and tenants.

Shelter Scotland supports this approach to regulating letting agents. We have long argued for regulation of this industry – alongside landlord and agent representative bodies. Regulation would benefit tenants, landlords and good letting agents. It is critical that any regulatory system has sufficient power to force positive changes in practice.

Regulation is important to drive elements of poor practice out of Scotland’s lettings industry, including: the charging of unlawful upfront fees to tenants, the failure to register tenants’ deposits and the failure to carry out important safety checks.

The code of practice must set a high standard for the conduct of all lettings professionals, driving poor practice out of the market. It should be clear about what constitutes a failure under the code of practice and, where tenants and landlords believe they have been treated unfairly, it should be clear what action they can take under the code of practice. Importantly it should also apply to all professionals in the lettings industry, ensuring consumers – both landlords and tenants – are clear about what standards and forms of redress apply.

The dispute resolution process must be easy to understand and access by both landlords and tenants. The cost should not be prohibitively expensive. Applications from vulnerable tenants or those on low incomes, should be free. This is particularly important where tenants or landlords have experienced a financial loss as a result of the actions of an agent – for example where unlawful pre-tenancy fees have been required.

Shelter Scotland
28 February 2014

CHARTERED INSTITUTE OF HOUSING

WRITTEN SUBMISSION

A tabular summary of CIH Scotland’s provisional views on each of the main measures in the Bill is attached in the second part of this submission. Our Board is meeting in early February to consider the measures in detail.

In December we published a detailed briefing on the Bill, which can be seen here.

To complement the summary table, below we make some general comments on the Bill and then highlight some particular areas on which we are especially keen to highlight our views to the Committee.

General comments

Overall there is much to welcome in this wide-ranging Bill. As a member of key Scottish Government working groups, CIH Scotland has been closely involved in the development of some of the main provisions, particularly in relation to social sector allocations and tenancies and the private rented sector.

The social sector allocations and tenancy changes are broadly welcome. Some are aimed at helping landlords tackle anti social behaviour (ASB): CIH Scotland supports all of the proposed measures, but no-one should overplay the extent to which they will make ASB easier to deal with. Serious ASB will always be very challenging to deal with, as in most cases there are few, if any, speedy remedies.

CIH Scotland welcomes the changes relating to the private rented sector, including the creation of a new Housing Tribunal to consider all landlord/tenant disputes. We are disappointed, though, that the Tribunal is to cover only the private rented sector and not the social sector, as the current shortcomings of the court system impact much more significantly on social sector tenants and landlords.

Comments on specific provisions

Sections 1 and 85(4) – Abolition of the right to buy

CIH Scotland warmly welcomes the measures to abolish the right to buy. We recognise that when an existing right is being withdrawn, a reasonable notice period is required. However, we believe that a period of three years from the date of Royal Assent is longer than is necessary. A shorter period will help social landlords plan for the future with greater certainty, and will limit the size of a peaking of sales in the period before abolition. CIH Scotland believes that a period of two years would be more than sufficient to enable tenants to consider their options, plan ahead and make the purchase if that is what they decide to do.
Section 5 – Removal of prohibition on taking age into account in social sector allocations

This measure was requested by CIH Scotland, as it removes an unnecessary and unhelpful barrier to landlords wanting to allocate to particular groups in specific situations, as recently suggested to us with the following example from a local authority:

“Lifting the age restriction would be very useful to us in dealing with fairly complex neighbourhood issues where, say, we may have a higher than average concentration of young, inexperienced, complex or vulnerable households within close proximity to each other and where an interim policy not to allocate anyone under 40 may achieve a more balanced community.”

We are aware that some organisations appear to believe that this measure could result in younger people being unfairly discriminated in social landlords’ allocations policies, but we cannot see that this will be the case. The Bill makes it explicit that removing this age bar does not mean that landlords can discriminate against particular age groups – such as younger people – within their overall allocations policy as this would contravene the Equality Act 2010. The Bill promises to provide greater flexibility for councils and housing associations and this is a common sense measure which will enable landlords to deal with very specific situations without impacting on the overall spread of allocations they make across the age groups.

Section 7 – Suspensions

This part of the Bill, which applies to housing list applicants and not to those being housed as a result of homelessness, helpfully clarifies the circumstances in which an applicant can be temporarily suspended from receiving an offer of housing. The measure provides for regulations to set out (a) how long a suspension can remain in force and (b) how far back previous conduct can be considered. CIH Scotland has reservations about the latter, as this will mean that a landlord has no discretion at all in any case to consider conduct which goes back more than the specified period. So, for example, the actions of a former tenant may have led to him been imprisoned for a period which is longer than the period specified in the regulations and so a landlord has no way of knowing if the applicant’s conduct has changed and improved.

CIH Scotland produced good practice guidance on suspensions in 2010, in which we emphasised the importance of landlords not unduly punishing tenants for poor conduct many years ago, and we have every reason to believe that landlords currently act very reasonably in assessing how far back previous conduct should be taken into account. But for legislation to completely remove a landlord’s capacity to exercise discretion is an unhelpful straitjacket and we do not support this measure.

Section 10 – Increase in minimum term of a Short SST

This provision extends from six to 12 months the minimum term of a Short Scottish Secure Tenancy given for on grounds of anti social behaviour. This is to enable a
longer period in which to address any conduct issues prior to conversion to a full
 tenancy. As now, housing support must be offered to the tenant during this period.

CIH Scotland has reservations about this measure. Whilst it is well intended, it will
mean that where serious anti social behaviour occurs at an early stage, the landlord
will normally have to manage the situation until 12 months has elapsed and will not
be able to end the tenancy any earlier, even if the behaviour is causing difficulty and
distress for neighbouring tenants and residents. With good intent, the Bill amends
the 2001 Act to enable a landlord to take recovery action through the courts as if the
tenancy were a full tenancy. However, with all the inherent delays in the current court
system, it is highly unlikely that this process could be completed before the point at
which the landlord could automatically end the Short SST.

Section 15 – Grounds for eviction – anti social behaviour

This introduces a new requirement for the court to grant a possession order made
within 12 months of a tenant’s conviction for using the property for illegal purposes or
for an offence in or near the property punishable by imprisonment. This measure
could make a significant difference in those long standing and difficult cases
where landlords have not been able to secure eviction, for example because of
lack of willing witnesses.

Some reservations have been expressed about the possibility that landlords might
seek eviction after a tenant has been convicted of a relatively minor offence, such as
possession of a drug where no other household was involved or harmed. CIH
Scotland does not believe that landlords are interested in seeking eviction in such
cases, and any concerns about this should be considered in the context of the key
aim of this measure, which is to address more serious cases of anti social behaviour.

Sections 17 to 21 – New housing tribunal for the private rented sector

CIH Scotland very much welcomes the prospect of a new, specialist and more
modern approach to dispute resolution in the private rented sector (PRS). Neither
tenants nor landlords in the PRS see the current sheriff court system as user friendly
or efficient, and so we recognise the Scottish Government’s wish to introduce the
new system into this sector initially.

However, having instigated the case for a tribunal system across all housing tenures
as long ago as 2004, we remain disappointed that the social rented sector in
particular is not to benefit from all the advantages that the tribunal approach can
bring. It has always been the case that the greatest impact of a tribunal system
would be on this sector, where there is immense scope for a quicker, expert and
more user friendly redress system for tenants and landlords alike.

Whilst it would not be practicable to seek to amend the Bill, we will be seeking
reassurances from the Minister that the door has not been closed on a future
extension of the tribunal system to the social sector.
Section 23 – the Repairing Standard in the private rented sector

The Bill’s amendments to the Repairing Standard all relate to the very welcome proposal for third parties to apply to the Private Rented Housing Panel to enforce the Repairing Standard.

CIH Scotland has long supported calls led by the Electrical Safety Council for the Repairing Standard to be amended to introduce a requirement for five-yearly electrical safety checks by a registered electrician, covering both fixed electrical installations and any electrical appliances supplied with the let. Over two thirds of accidental fires in residential property in Scotland are caused by electricity, and private tenants are more likely to be at risk than any other tenure.

We recognise that the Scottish Government has not consulted on such an amendment to the Repairing Standard, and so may feel that it might not be appropriate to legislate at this stage. If this is the case, we would want to see an indication from the Minister that consultation on this issue will be undertaken at the earliest opportunity.

Stage 2 amendments on the private rented sector

The Committee will be aware of the Scottish Government’s intentions to table amendments at Stage 2 to enhance local authority enforcement powers, including strengthened rights of inspection. CIH Scotland very much welcomes this, as powers to inspect individual property are currently very limited.

Chartered Institute of Housing
28 February 2014
<table>
<thead>
<tr>
<th>Bill section</th>
<th>Proposed measure</th>
<th>CIH Scotland provisional comment/view</th>
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</thead>
<tbody>
<tr>
<td><strong>Abolition of right to buy</strong></td>
<td>Abolition proposed to come into force three years from the date of Royal assent, i.e. probably around summer 2017.</td>
<td>CIH Scotland strongly welcomes abolition. We recognise that a reasonable notice period is needed but can see a case for a period which is shorter than three years.</td>
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<tr>
<td>1 and 85 (4)</td>
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<tr>
<td><strong>Social sector allocations</strong></td>
<td>Amending ‘reasonable preference’ categories in allocations to allow more flexibility - adds under occupying tenants to existing homelessness and badly housed categories.</td>
<td>A relatively minor change, and in practice very little change to the flexibility which already exists.</td>
</tr>
<tr>
<td>3</td>
<td>New duty to consult applicants and tenants when reviewing allocations policies, and to report on the outcome (jointly with others, if appropriate).</td>
<td>This is probably in recognition of the flexibility landlords have had for some time over who is prioritised. Will be resource implications for landlords but hard to argue with the measure.</td>
</tr>
<tr>
<td>4</td>
<td>Removal of prohibition on taking age into account in allocations, along with reassertion of landlords' Equality Act duties not to discriminate on age grounds.</td>
<td>This measure was requested by CIH Scotland, as it removes an unnecessary and unhelpful barrier to landlords wanting to allocate to particular groups in specific situations. It does not mean landlords can discriminate against particular age groups within their overall allocations policy.</td>
</tr>
<tr>
<td>5</td>
<td>New power to take an applicant’s ownership of property into account, subject to certain (sensible) exceptions such as where occupying the property could lead to abuse.</td>
<td>This will enable landlords to take into account property ownership which, for example, enables applicants to make profit from renting property out.</td>
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<td>6</td>
<td>Clarification of circumstances in which an applicant can be suspended from receiving an offer. Doesn't apply to homeless referrals or nominations. Regulations will set out how long a suspension can remain in force, and how far back previous conduct can be considered. New right of appeal against suspension.</td>
<td>Clarifications are welcome, though little change in practice, unless the regulations on suspension period etc. lead to landlords needing to significantly amend policies. New right of appeal will mean landlords need to be very clear on reasons for suspension. Regulations specifying exactly how far back previous conduct can be taken into account will remove all discretion from landlords in this difficult area, and CIH Scotland does not support this aspect of the provisions.</td>
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<td></td>
<td><strong>Social sector tenancies</strong></td>
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<td>8</td>
<td>Makes more flexible the existing power to give, or demote an existing full tenancy to, a Short SST for ASB: will now apply where there has been ASB in or near the property in last 3 years. [Note – this is already subject to a right of appeal to the court.]</td>
<td>Enhanced flexibility helpful, but landlords will need robust evidence of ASB and this may not always be easy to obtain, particularly in relation to new applicants.</td>
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<tr>
<td>10 and 11</td>
<td>Increases minimum term of Short SSTs given for ASB from 6 to 12 months, and allows for a further 6 months (making 18 in all) where landlord is not ready to make a decision on making tenancy a full tenancy or ending it.</td>
<td>Allows a longer period of engagement and support before decision. But will mean that where serious anti social behaviour occurs at an early stage, the landlord will have to manage the situation until 12 months has elapsed and is unlikely to be able to end the tenancy any earlier, as court action (as if the tenancy were a full tenancy) is unlikely to be completed before the 12 month period of the SSST has elapsed.</td>
</tr>
<tr>
<td>12</td>
<td>New duty to give tenants reasons why a Short SST given on ASB grounds is being ended, and a statutory right of review (by the landlord) for the tenant.</td>
<td>Sensible and fair measure, but will need to be handled efficiently by landlord and other parties so that process can be completed prior to the end date of the Short SST.</td>
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<tr>
<td>13</td>
<td>New 12 month qualifying period before tenant can assign or sublet tenancy, and any beneficiary of an assignation, sublet or application to join the tenancy must have lived in property for 12 months and must have notified landlord when they moved in. Also stronger landlord rights to refuse assignation.</td>
<td>Sensible tightening up of the law to prevent abuse such as assignation to people not in housing need. Landlords will still be able to use discretion in cases where minimum requirements are not met. [CIH Scotland had wanted to see the right to assign a tenancy scrapped, creating instead a landlord power to allow it where it fitted with best use of stock.]</td>
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<tr>
<td>14</td>
<td>New 12 month qualifying period for all level 2 and 3 successors, i.e. family members and carers, and increase from 6 to 12 months in qualifying period for co-habiting partners. Person claiming succession must have notified landlord when they moved in.</td>
<td>As above, sensible changes to address abuse such as children moving in just prior to a relative’s death. Landlords can still use discretion where it is felt appropriate.</td>
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<tr>
<td>15</td>
<td>New requirement for court to grant possession order made within 12 months of tenant’s conviction for using the property for illegal or immoral purposes or for an offence in or near the property punishable by imprisonment.</td>
<td>This could make a significant difference in those long standing and difficult cases where landlords have not been able to secure eviction, for example because of lack of willing witnesses.</td>
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<tr>
<td>Private rented sector</td>
<td>17 to 21</td>
<td>Introduction of a new Housing Tribunal for the PRS, removing all disputes cases from the sheriff courts.</td>
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<td>23 to 25</td>
<td>Measure to allow third party application to the Private Rented Housing Panel.</td>
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<td></td>
<td>26 to 52</td>
<td>Regulation of letting agents: a national registration scheme, dispute resolution scheme and statutory code of practice.</td>
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<tr>
<td>Regulation of mobile home sites</td>
<td>53 to 71</td>
<td>A range of measures aimed at strengthening the licensing regime covering sites on which people live permanently, including a ‘fit and proper person’ test for site owners.</td>
</tr>
<tr>
<td>20 year rule – shared equity schemes</td>
<td>77</td>
<td>Technical, but important, amendment to the 20 year rule to facilitate provision of the SG’s £220m Help to Buy new build shared equity scheme.</td>
</tr>
<tr>
<td>Scottish Housing Regulator – transfer of RSL assets</td>
<td>79</td>
<td>Removes requirement on SHR to consult tenants and lenders before a transfer of assets to another RSL, where there is an imminent threat of insolvency. Also removes duty on SHR to always obtain a valuation, and to direct a transfer at an open market valuation in insolvency cases.</td>
</tr>
<tr>
<td>Defective property designation</td>
<td>80</td>
<td>This measure removes the ‘defective property’ tag from 12 types of PRC houses classed as such in the 1980s so that owners qualified for grant assistance.</td>
</tr>
</tbody>
</table>
Introduction

1.1 As the national representative body for housing associations and co-operatives in Scotland, the SFHA welcomes the opportunity to follow up our oral evidence on the Housing (Scotland) Bill 2013 with this written submission to the Infrastructure and Capital Investment Committee.

1.2 To provide context, housing associations and housing co-operatives in Scotland own and manage 46% of the country’s affordable rented housing stock. This represents 274,996 homes across Scotland, concentrated in some of the poorest communities in our country.

1.3 There are some important and distinctive features of associations which differentiate us from other public bodies. Our members are:

- Independent businesses with goals aligned to the Scottish Government in providing and managing high quality affordable accommodation and housing services;
- Responsible for accessing and managing some public resources for house building, but mostly reliant on our tenants’ rents for income and expenditure;
- Managing businesses imaginatively and inventively to benefit housing and communities through our not-for-profit ethos;
- Accountable to our members and tenants, who live or have other interests in the communities and places which they create;
- Regulated by an independent Scottish Housing Regulator;
- Able to demonstrate added value in terms of care and support, wider role and financial inclusion.

1.4 At the same time, it would be misleading to think of housing associations as a homogeneous group. They were formed from a variety of different circumstances and come in all shapes and sizes, ranging from large ex-local authority stock transfer organisations with tens of thousands of properties, to small community-controlled organisations owning a couple of hundred homes. There are also various group structures and other constitutional arrangements in place within the sector, increasingly so.

2 Executive Summary

2.1 The SFHA commends the Scottish Government for having the courage to abolish the Right to Buy in Scotland. However, it is our view that a
three year notice period is excessive and we would wish to see this
reduced to one year.

2.2 The SFHA broadly supports the proposals for social housing
allocations and the changes to tenancy agreements. However, in our
view, some of their impacts are being slightly overstated, particularly in
relation to increasing flexibility within allocations policies. It is our view
that it would be more accurate to say that the Bill’s proposals will
increase landlords’ confidence to better utilise flexibility. While the
proposals around short tenancies, suspensions and streamlined
evictions processes are welcome, they are not a panacea to combat
antisocial behaviour. This will still require a multi-agency approach –
social landlords are not solely responsible for ‘tackling’ antisocial
behaviour - and a less congested court system. There is a danger that
the expectations of those tenants whose lives are blighted by the
thoughtless actions of their neighbours will be raised to unrealistic
levels by some of the language being used by the Scottish
Government. The measures contained in the Bill are but a small part of
the overall action required to tackle antisocial behaviour properly.

2.3 In respect of the private sector, we would make the general comment
that we welcome any moves to address poor private landlord practice.
However, we note that there is nothing in this Bill that will bring the
private rented sector anywhere near the levels of the social rented
sector in terms of the regulation of management or of physical property
standards. There appears to be nothing in this Bill that would have a
robust impact on driving up standards in the privately owned sector.

2.4 In respect of regulation, while we support the principle underpinning
section 79 (a) (which seeks to enable the SHR to act decisively where
an RSL is in serious financial jeopardy) the practical impact of the
proposed legislative changes is not clear. We do not support section
79 (b) of the Bill and have proposed an alternative to repeal.

2.5 We urge the Committee to establish a requirement for the SHR to
produce a Code of Regulatory Practice and we agree with others that it
would be desirable to establish an appeal mechanism in line with the
current Scottish Government consultation on a draft Strategic Code of
Practice for Scottish regulators.

2.6 It is SFHA’s view that the prospects for achieving more constructive
and productive relationships between SHR and the regulated and
representative bodies would be enhanced by amending section 5 of the
Housing (Scotland) Act 2010.

2.7 Within the spirit of the 2010 Act affecting mergers, there may be merit
in considering the case for a ballot in cases where RSLs seek to join
group structures. We offer alternative views on this matter to assist the
Committee in its deliberations.
Specific Questions on the Housing (Scotland) Bill 2013

3.1 The ICI Committee’s call for evidence asked a specific set of questions. Not all are of direct or significant relevance to our members, and we have therefore limited our responses to those that are.

3.2 As we respond to the individual questions posed by the ICI Committee, we also intend to make comment on some wider principles in relation to how this Bill is likely to impact upon our sector.

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

3.3 The SFHA is pleased that the Bill aims to end all forms of Right to Buy (RTB). We fully support the proposal and have campaigned long and hard for this. It is vital that we protect the existing social rented stock.

3.4 However, we wish to make it clear that we are not against the principle of home ownership or mixed tenure per se. Rather that we are against the principle of high discounts, particularly given the urgent need for more social housing. The SFHA made its position on RTB clear in our response\(^1\) to the 2012 Scottish Government consultation *The Future of Right to Buy in Scotland*. The vast majority of housing associations and co-operatives not already protected by charitable status also successfully made their cases to extend the ten year RSL exemption from the Modernised RTB until 30\(^{th}\) September 2022. All 57 organisations that applied for this exemption were successful.

3.5 During our oral evidence to the ICI Committee we referred to research\(^2\) that tracked what happened to properties purchased under RTB, and suggested that up to £2billion per year is paid out in excess Housing Benefit on ex RTB properties now rented out, at higher rents, in the private sector.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

3.6 It is the SFHA view that 3 years is excessive. While we understand the principle of reasonable notice and the Scottish Government’s concern


at a potential legal challenge under Human Rights legislation, it is our view that there is no real test or precedent as to whether one, two or three years is a fair notice period other than subjective opinion. Moreover, there are many other issues within the complexities of RTB that are more open to legal challenge than this, (e.g. there are those whose RTB is currently suspended that will effectively have their right ended without notice – Pressured Area Status and the RSL ten year suspension from Modernised RTB being two examples). Notwithstanding any of this, almost three quarters of responses to the RTB consultation were in favour of a notice period of less than three years. It is our view that, in the spirit of the credibility of future Scottish Government consultations, it would be reasonable to reflect this when setting the length of the notice period.

3.7 Based on the majority of our members’ views, a notice period of one year from the date of Royal Assent would strike a reasonable balance between giving fair notice to tenants and giving certainty going forward for landlords.

3.8 One or two of our members have made suggestions about how receipts might be utilised during the notice period (whatever its eventual length). Our understanding is that in the main the receipts that are generated from RTB sales go back in to the Scottish Government and are redistributed as part of the HAG programme. This approach is unfair on those organisations that may have lost stock through RTB but who are no longer developing.

3.9 There is a case for any RTB receipts generated between the period of Royal Assent and the Bill’s application to be allowed to be retained by individual RSLs, on the basis that they are ring fenced for re-investment into social housing activities, stock improvements or capital developments. This is the way RTB receipts are dealt with in organisations derived in full or in part from Scottish Homes’ stock transfers.

Part 2: Social Housing

Q4 (there appears to be no Q3). In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

3.10 We welcome and support the aims and principles of the proposals to increase local flexibility within allocations. We do feel that landlords have already had more flexibility than they perhaps realised and in that sense the Bill is simply reinforcing some of that flexibility and perhaps eradicating any concerns that landlords might have had about just how flexible they could be when deciding who should get priority for their houses.
3.11 The Reasonable Preference Categories were introduced as far back as 1966 and their relevance to the 21st century is questionable, particularly in light of the Scottish Government research in 2011 *Reasonable Preference in Scottish Social Housing* which found that they were not widely recognised nor were they widely utilised by landlords.

3.12 That said, despite the need for an overhaul, some of them could and have been used (e.g. living in unsatisfactory housing conditions) to cover a variety of different circumstances. The new category of “Persons living in unsatisfactory housing conditions…” is a very similar catch-all category, and for that reason it may well be that in practice we don’t see major changes to the allocation policies of many housing associations and co-operatives.

3.13 *The redefinition and introduction of locally agreed categories* may give some landlords the confidence to take a broader, more strategic view of their allocations policy and deal with the twin issues of tenancy sustainability and community sustainability. It may also make the introduction of local lettings initiatives more transparent.

3.14 *The duty to take Local Housing Strategies into account* should reinforce the strong partnership work already being carried out across Scotland between housing associations and co-operatives and local authorities, particularly in relation to homelessness and housing options.

3.15 *The duty to consult on changes to allocation policies* ties in with the provisions of the Housing (Scotland) Act 2001. We agree with the non-prescriptive approach being suggested by the Scottish Government and trust that the Regulator will do likewise. There may be resource implications for some landlords, although we get the strong sense that the vast majority of housing associations and co-operatives already consult widely on their allocations policies, in the spirit of the 2001 Act.

3.16 *Taking ownership of a property into account when deciding priority for housing* is a reasonable move, designed to prevent applicants from profiteering. However, owning a house that is clearly unsuitable for the applicant should not prevent an allocation, and reasonable landlords will continue to allocate sensitively and sensibly in this regard. The introduction of the new short tenancy specifically for homeowners who find themselves in particular circumstances may also help to strike the balance between legitimately excluding homeowners who clearly do not need social housing and accommodating those whose owned property is unsuitable or inaccessible.

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Taking age into account - our members were keen for this to be included and it should certainly help in relation to sensitive lettings and avoiding 'lifestyle clashes'. However, because age is a protected characteristic under the Equality Act, we do wonder how this will actually operate in practice, and the inclusion of this proposal – despite it being, on the face of it, slightly at odds with existing legislation – is a bold move. We would suspect that this proposal, if enacted, is every bit as likely to face a legal challenge as any RTB notice period.

The proposals around suspensions are welcome in principle, and build on existing good practice. However, as with many of the Bill’s proposals, the implementation detail will be critical and we will be seeking clear guidance from the Scottish Government as to 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. The same principles – a need for guidance on levels of evidence required etc. – apply in relation to the creation/conversion to a short tenancy for previous antisocial behaviour.

Some tidying up of the drafting of section 7 is required to achieve consistency of approach in relation to taking into account the abandonment, damage or eviction from previous tenancies in other parts of the UK, and not just in Scotland.

Some of our members have expressed 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. The Scottish Government has been very clear in its discussions and consultations with the SFHA that this would go against the spirit of the Bill’s intentions and we would suggest, therefore, that some sort of provision is made to ensure that this is not allowed to happen in practice.

The introduction of a right of appeal for the applicant is fair and balanced, and will mean that landlords will need to be very clear on their reasons for suspension.

One of the aims of the Bill is to clarify previous legislation, and particularly in relation to the existing Housing Acts. With this in mind we would like to highlight a concern that has been raised by several of our members. Prior to the Housing (Scotland) Act 2001 being enacted, housing associations and co-operatives were able to advise applicants that they were not in sufficient housing need to enable them to be placed on a housing list. In other words, they operated a ‘cut-off point’. This served the dual purpose of managing the applicant’s expectations and preventing unnecessary landlord resources (tenants’ rents in other words) being diverted into maintaining lists of people who were never
going to be housed. Then the 2001 Act introduced the ‘right’ for anyone aged 16 or over to be on the housing list of a social landlord. We suspect that the policy aim at the time was to allow anyone over the age of 16 to apply for social housing, rather than simply be kept on a meaningless and expensive list. We therefore feel that it would be in keeping with the aims of the Bill, in respect of both the clarification of legislation and the commitment to introducing more flexibility for landlords, to revert to the pre-2001 position of allowing landlords to set needs thresholds that they can apply when maintaining housing lists, thus managing expectations and creating resource efficiencies. This approach would necessarily include the provision of advice for the applicant on any alternative housing options they may have.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

3.23 Short Tenancies - It is difficult to argue against the principle of any of the proposals. Because of the highly technical nature of some of the proposed changes, there may be some practical implementation difficulties, which will require training for landlords’ staff. Some issues still aren’t clear. For example, short tenancies go hand-in-hand with support, which needs to be resourced. The ‘who’ and ‘how’ this is to be resourced will require clarification. It is also unclear whether there is a limit on how often a tenancy can be converted.

3.24 Full Tenancies - The new 12 month qualifying period for assignations, sublets, joint tenancies, and some successions is welcome. We are confident that landlords will continue to be flexible according to the many different circumstances which present themselves in respect of such tenancy amendments. We are pleased to see the introduction of grounds under which landlords may refuse an assignation request even if the 12 month qualifying period is met. The SFHA and CIH Scotland wanted to go further in this respect and shift the onus by removing the tenant’s right to assign, replacing it with a landlord power to allow it, where it made best use of stock or where the assignee would have been at, or close to, the top of the priority list for housing.

3.25 The SFHA supports the new streamlined evictions process. We were disappointed in Shelter’s reaction to this proposal during the oral evidence to the ICI Committee, which was that, in their view, some social landlords would use the process to evict tenants for very minor criminal offences. Social landlords have made great strides in recent years to reduce the number of evictions they carry out, and can clearly demonstrate that evictions are a last-resort measure. Shelter have
acknowledged this in their annual evictions report, published in March 2013 stating “This plateau in evictions follows a 49 per cent decrease in evictions over the past 4 years which is likely to be due to landlord good practice and work on tenancy sustainment”. Shelter can possibly even take some of the credit for it, in their role as ‘critical friend’, but the notion that social landlords would in some way abuse this streamlined system is not supported by any evidence. The fact of the matter is there are antisocial behaviour cases where the landlord’s hands are tied in respect of eviction because of the understandable reluctance of witnesses to give evidence in a civil case. Our understanding of what is being proposed is that, while the reasonableness test in respect of other social housing evictions is being waived (which is what Shelter are concerned about), there will still be a proportionality test applied by sheriffs, in relation to Human Rights legislation (Article 8; European Court of Human Rights). This ought to allay any fears that Shelter might have around tenants being evicted for very minor offences.

3.26 The SFHA supports amending the eviction grounds for adapted properties. The safeguard of ‘suitable alternative accommodation’ provides sufficient comfort for us that the housing needs of the successor are suitably protected.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

3.27 There appears to be a reasonable balance between allowing landlords to take more robust action and affording more protection for tenants by ensuring that landlords can fully account for any action to end a short tenancy. As with many of the other proposals, we await further detail and guidance on the issue.

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

3.28 The SFHA and others would have preferred to see a pilot housing tribunal covering both private and social sector cases. The delays in the current sheriff court system are likely to undermine some of the proposals in the Bill and raises tenant expectations to unrealistic levels in relation to how swiftly antisocial behaviour can be dealt with. We do acknowledge that there is a civil court review in progress, which may

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address some of the concerns our members have around the congested sheriff court system as it currently operates.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authority discretionary powers to tackle poor conditions in the private rented sector?

3.29 The SFHA will leave detailed comment on this to others, but the private rented sector, while clearly not a homogeneous group, is of interest to many of our members who operate within mixed tenure communities. The private rented sector is increasingly being used as a way of discharging homelessness duties by local authorities, and is being promoted by the Scottish Government as a genuine housing option. The sector is also a strain on the welfare budget, with SFHA’s own 2012 research, Housing Benefit Spending: Busting the Myths\(^5\) estimating Housing Benefit to have increased in the private rented sector by 153\% in the past decade, compared to a 21\% increase in the social rented sector. In light of this, we would therefore make the general comment that we welcome any moves to address poor private landlord practice, though we note that the proposals fall far short of bringing the private rented sector anywhere near the levels of the social rented sector in terms of the regulation of management or of physical property standards. On that last point, there may be a missed opportunity to have included in the Bill an enhanced Repairing Standard.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

3.30 The principle is welcome, though once again we cannot really comment at this stage until more detail on the content of any proposals and how they will be resourced is known. We note that once again the Bill is legislating for discretionary powers, which may not lead to a consistent, Scotland-wide approach across all 32 local authorities.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

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3.31 These proposals are broadly in line with the arrangements for Property Factors (which many of our members are) and it seems a sensible move. We look forward to seeing the detail, particularly in relation to a Code of Practice, as this is where the potential strength of the proposal lies.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

3.32 It would be sensible, and consistent, to allow for third party reporting to the tribunal in relation to the activities of letting agents. This would allow local authorities to raise any concerns they may have, in a similar way that is being legislated for in Part 3 of the Bill.

Part 5: Mobile Home Sites with Permanent Residents

Q12. Do you have any views on the proposed new licensing scheme?

3.33 This proposal will not have a significant impact on our members and we therefore do not intend to make any detailed comment on it.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

3.34 This proposal will not have a significant impact on our members and we therefore do not intend to make any detailed comment on it.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

3.35 SFHA will leave detailed comment on this to others. However, 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.

Part 7: Miscellaneous Provisions

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

3.36 We agree that the introduction of an exemption to the 20 year rule should facilitate the ‘Help to Buy’ scheme.
SFHA’s main interest in this section of the Bill relates to the proposed changes to the powers of the Scottish Housing Regulator (SHR), as described in section 79 of the Bill. We are content with the general principle behind the section 79 proposals which is to ensure that SHR can respond effectively to exceptional circumstances where an RSL may be in serious financial jeopardy.

The section 79 proposals should be seen as a backstop for worst-case scenarios. In practice, it is far more important to prevent the proposed powers having to be exercised at all. A key issue is how SHR uses its existing statutory powers to ensure early detection and an effective response to serious financial problems. SHR has spoken publicly on a number of occasions (including in its evidence to the ICI Committee in December 2013) about its role in “managing three RSLs out of near insolvency” during 2012. In our view, the financial crises that occurred in these cases were not the product of SHR lacking appropriate statutory powers:

- SHR had long-standing involvement in each case;
- For whatever reason, regulatory scrutiny and intervention failed to avert or provide early warning of the financial problems that crystallised in 2012;
- SHR relied on non-statutory methods of engagement, instead of using of its existing formal statutory intervention powers.

On the specific measures now proposed in section 79 of the Bill:

- While supporting the general principle underpinning section 79 (a), the practical impact of the proposed legislative changes is not clear. None of the recent cases involving RSLs in financial jeopardy involved a transfer of assets directed by SHR. Instead, the mechanism used in these cases was for the RSLs in financial difficulty to join a group structure. The arrangements proposed in section 79 would not have applied, since none of the cases involved a directed transfer of assets.
- A number of our members have commented that the wording of section 79 (a) could be strengthened by requiring that the SHR obtains ministerial consent before using these powers. This should include a requirement that the SHR would need to provide a detailed explanation as to how each of the four criteria were met before using the power.
- We do not support section 79 (b) of the Bill. This would repeal the Regulator’s general obligation to base a directed transfer of an RSL’s assets on an independent valuation. Directed transfers are extremely unusual (the last one
occurred more than 10 years ago) and we do not see any value in removing the general requirement for independent valuations.

- Instead, it would be more appropriate to retain as the norm the current requirement for independent valuations set out in section 67 (6) of the Housing (Scotland) 2010, and to amend section 67 (6) so that the obligation to obtain an independent valuation can be set aside in the highly exceptional circumstances where emergency action is needed. In other words, the obligation to obtain an independent valuation would remain, but would be set aside where the four specific conditions relating to financial jeopardy narrated in section 79 of the Bill are met.

- There should be transparency and accountability for exceptional regulatory action that results in a directed transfer of an RSL’s assets. This could be achieved by requiring SHR to publish information about inquiries that result in a direction to transfer an RSL’s assets.

- We have a concern that removing the duty to consult lenders (where all of the four criteria specified in section 79 (a) apply) may have the potential to reduce lenders’ appetite to lend to the sector and/or encourage less favourable borrowing terms. It is our understanding that the current obligation on the SHR under Section 67(4) to consult with secured creditors is not onerous, i.e. there is no minimum consultation period and no specification as to the level of consultation required. There is also no obligation on the SHR to comply with the views of secured creditors. Any decision still rests at the discretion of the SHR. So we are not convinced that there would be too little time to consult lenders in such instances.

Other Issues

**Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?**

3.40 SFHA has had sight of GWSF’s *Housing Regulation in Scotland* paper, which is being submitted to the Committee alongside GWSF’s written evidence on the Bill. SFHA endorses the content of the paper.

3.41 We recognise that the proposed changes set out in section 79 of the Bill are designed to make changes to the housing regulation framework in response to issues that were not foreseen when the Housing
(Scotland) Act 2010 was enacted. SFHA\(^6\) believes that the same principle should be applied to other aspects of housing regulation. In this regard, we have identified three key areas for legislative change, described below:

- Regulatory intervention and the need for statutory mechanisms for reviews and appeals;
- Consultation and involvement requirements;
- Tenant consultation and RSL moves to group structures.

**Regulatory intervention and the need for statutory mechanisms for reviews and appeals**

3.42 The 2010 Act requires the SHR to publish, following consultation, statutory codes of practice on its powers to carry out inquiries and to seek information (section 51 of the 2010 Act) and to exercise statutory intervention powers (section 54 of the 2010 Act).

3.43 These aspects of the current legislation are not operating satisfactorily:

- SHR has not published the codes of practice referred to in the 2010 Act, beyond high level information contained in its April 2012 Regulatory Framework.
- A number of housing associations have expressed strong concerns to representative bodies about the scope and proportionality of regulatory interventions in their organisations. Without commenting on the merits of individual cases, SFHA is concerned that there is such a high level of dissatisfaction with SHR’s activities and approach. The root cause in our view is a lack of transparency and of sufficiently clear ground rules for the kind of intervention approach typically being used by SHR.
- That intervention approach involves non-statutory methods “behind the scenes”, rather than the more transparent and accountable processes set out in the 2010 Act (e.g. published inquiry reports for named organisations and use of the formal statutory intervention powers described in Part 5 of the 2010 Act). To date, SHR has not made any use of those formal intervention powers and it has published only one inquiry report for a named RSL.
- SHR’s Regulatory Framework provides for a review process in the case of published inspection reports, but there are no review processes for other types of regulatory action.

\(^6\) in common with the Glasgow and West of Scotland Forum of Housing Associations (GWSF)
Moreover, there is no appeals process available to RSLs who believe that regulatory actions are disproportionate or inappropriate.

3.44 SFHA and GWSF agree that these issues need to be addressed in the current Housing Bill. We propose that the Bill should:

- Establish a requirement for SHR to publish, following consultation, a consolidated Code of Regulatory Practice that addresses all of its methods for intervening in the affairs of social landlords (i.e. including interventions that are not publicly reported and those that do not involve the use of statutory intervention powers);
- Provide a statutory right for social landlords to request a review by the SHR Board of regulatory decisions or actions;
- Establish a formal external appeals process, which allows social landlords to challenge SHR’s regulatory decisions or actions.

3.45 We wish to highlight to the Committee the current Scottish Government consultation on a Scottish Regulators’ Strategic Code of Practice, which includes a requirement on all Scottish Regulators, including the Scottish Housing Regulator, to offer an independent, impartial and transparent appeals procedure and to regularly publish data on appeals made and the proportion upheld.  

3.46 In putting forward our proposals, it is not our intention to constrain SHR’s ability to take effective regulatory action. Rather the introduction of a review process would enhance SHR’s ability to perform its functions in a fair and transparent manner and would improve confidence in the regulatory system. That confidence is being put at risk by the way in which the regulatory system currently operates, i.e. overwhelming reliance on “offline” non statutory interventions, limited public reporting, and no opportunities for social landlords to question or challenge regulatory action that is often perceived, rightly or wrongly, to be inappropriate, disproportionate or excessive.

3.47 We suggest that the Housing Bill should make provision for an external appeals process, independent of SHR. This would be consistent with statutory arrangements for the charity sector. The Charities and Trustee Investment (Scotland) Act 2005 makes statutory provision for both reviews of decisions made by the Office of the Scottish Charity Regulator (OSCR) and for independent

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consideration of appeals against OSCR decisions by a Scottish Charities Appeal Panel. Members of the Panel are appointed by Scottish Ministers and are independent of OSCR.

3.48 In the absence of an appeals system, the only mechanism currently available to RSLs who have serious concerns about regulatory action is to seek judicial review. This is not in our view in the interests of social landlords, tenants, SHR or the Scottish Parliament.

Consultation and Involvement Requirements

3.49 The Housing (Scotland) Act 2010 places the SHR under an obligation to consult with social landlords and their representative bodies on a range of specific matters. Although there has been some improvement in recent months, these arrangements have not been operating effectively in terms of consultation on regulatory guidance, discussion of the operation of the overall regulatory framework, or how SHR and the sector can work together more effectively to promote good practice for the benefit of RSLs and their tenants.

3.50 The prospects for achieving more constructive and productive relationships between SHR and the housing sector would in our view be enhanced by amending section 5 of the Housing (Scotland) Act 2010. This requires SHR to consult and involve representative bodies in discussions about the performance of its functions. We suggest that section 5 of the 2010 Act should be amended, to add bodies representing social landlords to the list of representative bodies that SHR is required to consult and involve. This would be a more proactive and constructive approach by SHR to working with the housing association sector and would provide a platform for greater partnership working and co-operation on how housing associations can improve standards and meet regulatory expectations.

3.51 We would wish to highlight to the Committee that the current Scottish Government consultation on a draft Scottish Regulators’ Strategic Code of Practice includes a requirement on all regulators, including the Scottish Housing Regulator, to develop effective relationships with those they regulate and to have clear, two-way communication in place.\(^8\)

Tenant consent for RSL moves to group structures

3.52 As our introduction indicates, RSLs should not be thought of as a homogeneous group as they vary in size, focus and geography. Increasingly organisations are looking at group structures and other

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constitutional partnerships as the potential for mergers anticipated in 2009/10 is complicated by pension liabilities. There has been just one merger in the last three years.

3.53 It may help to provide some context. Currently listed on the SHR website are 161 registered housing associations of which 14 registered Scottish housing associations operate as subsidiaries providing housing within group structures and more under discussion. Four housing associations registered in Scotland act as parents with one more to be added shortly. Five Scottish housing associations are part of groups operating under parent bodies registered in England.

3.54 The Housing (Scotland) Act 2010 requires tenant consultation and ballots to take place where RSLs decide to restructure through mergers or transfers of engagements that result in a change of landlord. The 2010 Act does not make equivalent provision for tenant consultation and ballots where an RSL intends to join a group structure.

3.55 The current Bill could provide an opportunity to address this, to ensure proper protection for the interests of tenants. The current Housing (Scotland) Bill could make provision for the protection of tenants’ interests by:

- Amending Parts 8 and 10 of the Housing (Scotland) Act 2010, to expand the statutory definition of restructuring to include the formation or joining of a group structure involving more than one RSL;
- Extending the tenant authorisation provisions in Part 10 of the 2010 Act (including the provisions for tenant ballots) to all restructuring cases falling within the expanded definition, regardless of whether the restructuring proposal would result in a change of landlord.

3.56 We have explored views on the potential to extend formal tenant consultation. Views within the sector on this issue vary and we have tried here to capture the arguments for and against.

The case in support of statutory changes relating to housing association group structures can be summarised as follows:

- Restructuring via group structures is happening on a substantial scale in the Scottish housing association sector with potentially significant implications for the future interests of many thousands of tenants and service users and with no

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9 A total of 145 subsidiaries are listed mostly unregistered and many dormant. The subsidiaries were set up for a variety of reasons, not necessarily housing provision.
requirement for consultation;
- Group structures could have long-term consequences for tenants, because a parent housing association could, potentially, exercise ultimate control over such matters as a subsidiary RSL’s business plan, rent policy, housing investment policy, funding costs and service delivery structures and locations.

The arguments against statutory changes relating to housing association group structures can be summarised as follows
- A group structure is not the same as a transfer of engagements as there is no change of landlord. A ballot of members should be all that is required. Tenants can become members and therefore have a say in whether the organisation becomes part of a group in that way;
- Requiring a ballot of tenants can be onerous, costly and time consuming. The turn-out for any ballot might be low with inconclusive results, particularly dangerous where there is a threat of insolvency;
- A ballot in every case of a proposed group structure is overly prescriptive: it should be up to each individual organisation as to how it communicates and gauges the opinion of its tenants when joining a group.

3.57 If a proposal for extending tenant ballots were to be adopted, it should involve the same exceptions as already apply to other types of RSL reorganisation. For example, tenant ballots are not required in cases where the Scottish Housing Regulator directs an RSL to transfer its assets following a statutory inquiry, and section 79 of the Bill proposes that tenant consultation requirements would be waived in directed transfers where an RSL is at risk of imminent insolvency. These are highly exceptional circumstances and it is appropriate that the same arrangements should be applied in all cases.

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

3.58 As noted in the recent SPICe briefing on the Bill, SFHA and GWSF both argued during the pre-legislative consultation process for clearer, more permissive provisions on how social landlords can incorporate local connection provisions in their allocations policies. This is not reflected in the Bill as introduced and is in our view a significant gap. While Scottish Ministers have in the past made helpful statements about the use of local connection provisions, this does not have any statutory expression beyond the “negative” provisions in existing
4  Concluding Comments

4.1 We have outlined above our views on the content of the Bill and have proposed additional regulation-related issues for inclusion.

4.2 We acknowledge that we have already provided oral evidence to the Committee on the Bill and we wish to thank the Committee for that opportunity. However, at that time, due to ongoing discussions with members and other partners, we were not in a position to comment on the proposed changes to regulatory powers nor to propose additional content. We would be very happy to provide further oral evidence on issues in this written evidence that the Committee did not have the opportunity to explore with us during the earlier oral evidence.

Scottish Federation of Housing Associations
28 February 2014

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10 Housing (Scotland) Act 1987, section 20
GLASGOW AND WEST OF SCOTLAND FORUM OF HOUSING ASSOCIATIONS (GWSF)

WRITTEN SUBMISSION

Introduction

GWSF represents 68 community-controlled housing associations and co-operatives (CCHAs) in 9 local authority areas in west central Scotland. CCHAs provide housing for 75,000 households in the region and own around 28% of all RSL housing in Scotland. This submission sets out our views on the Housing (Scotland) Bill, based on the questions the Infrastructure and Capital Investment Committee has asked in its call for views. We would draw the Committee’s particular attention to our response to question 17. This suggests that amendments to the Housing (Scotland) Act 2010 should be considered in relation to various housing regulation matters, including tenant consent for RSL restructuring through group structures.

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

1. GWSF supports the measures set out in the Bill to abolish the right to buy (RTB). When consulting our members in 2012, almost 90% of GWSF members told us they preferred abolition of the RTB to the alternative policy option of retaining the right to buy and making further changes to discounts and eligibility. We warmly welcome the Scottish Government’s proposals, and support the rationale for the legislative changes as set out in the Policy Memorandum accompanying the Bill.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

2. We do not support the proposed 3-year lead-in period for abolishing the RTB. It means that tenants would be able to exercise their RTB throughout that period under the myriad entitlement/discount schemes that currently exist. In responding to the Government’s pre-legislative consultation in 2012, GWSF made the case for a shorter 1-year lead-in period. This would give fair notice of the end of the RTB while minimising further reductions in housing stock.

3. The introduction of the Bedroom Tax in 2013 has underlined the need to abolish the RTB at the earliest opportunity. Social landlords and tenants affected by the Bedroom Tax need every support in retaining one- and two-bedroom properties. We are also concerned that companies canvassing tenants to buy their homes are likely to exploit a longer lead-in period to abolition.

4. The Policy Memorandum for the Bill states that abolishing the right to
buy could be challenged under the European Convention of Human Rights if tenants are not afforded “reasonable opportunity” to exercise existing RTB entitlements. However, it does not explain why a 3-year notice period is preferable to a shorter notice period. The overwhelming majority of responses to the Government’s 2012 RTB consultation favoured a notice period of 2 years or less. The rationale for the Government’s 3-year proposal is therefore a key area for scrutiny.

5. The Policy Memorandum also states that abolishing the RTB would keep 15,500 additional houses available for social renting over a 10-year period. We suggest the Committee should seek information about how those estimates would change if a shorter notice period of 1 year or 2 years were adopted.

6. If a 3-year notice period is retained, this will undoubtedly lead to calls for exclusions, exemptions and restrictions at Stage 2 of the Bill, for example in relation to:

- Abolishing the RTB immediately or on a shorter timescale for smaller properties (as a result of the Bedroom Tax) and in pressured areas;
- Regulating the activities of companies that promote the RTB to tenants.

7. The Bill does not make any proposals for simplifying the administration of RTB during the 3-year notice period. RTB administration is complex and time-consuming for social landlords, and our members have raised the question about whether they would still be required to give notice to new tenants about RTB entitlements during the lead-in period to abolition. This could be avoided by ensuring that RTB entitlements are safeguarded only for those tenants with an existing RTB at the date on which the Bill receives Stage 1 approval (i.e. RTB would not apply at all to tenancies created after that date).

**Part 2: Social Housing**

Q4. *In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?*

8. The primary purpose of community controlled housing associations and co-operatives is to respond to housing needs in their local neighbourhoods and communities. Accordingly, we welcome the principles of greater local flexibility that underpin this part of the Bill and many of the detailed provisions. We have a number of comments on the specific provisions in the Bill, set out in the paragraphs below.

9. Section 3 of the Bill defines **unmet housing needs** as needs that are “not capable of being met by housing options which are available”. We do not think the meaning of this is clear. We also have some concerns that the proposed definition could allow some landlords to screen out
certain types of applicants (e.g. working households) on the basis that their needs might be met in the private rented sector, even if they have a positive preference for more secure and more affordable housing from a social landlord and in some areas social housing is the predominant tenure. GWSF members wish to frame their allocations policies in a way that balances the wider range of needs within their communities – including those of working households - and achieving sustainable tenancies. We would not wish the Bill to undermine such approaches.

10. The proposals on **consulting on allocations policy priorities and publishing consultation results** (section 4 of the Bill) match existing good practice. Our members will wish the non-prescriptive approach proposed in the Bill to be respected by the Scottish Housing Regulator.

11. The new requirement (section 4 of the Bill) for landlords to have regard to **local housing strategies** is important, particularly in relation to partnership working with local authorities on ensuring access to suitable housing for homeless people. Equally, our members will want local authorities to respect their role in meeting housing needs in their local neighbourhoods, and the involvement of tenants and housing applicants in endorsing local allocations priorities.

12. It is essential that community controlled housing associations should be able to set priorities that are relevant to their own neighbourhoods, as well as taking account of local housing strategies which apply across wider local authority areas. In that regard, we seek assurance that the terms of the Bill will not enable local authorities to impose blanket requirements on RSLs through local housing strategies, for example fixed quotas for lets to homeless households or other types of housing applicants.

13. The proposed additional **flexibility to consider applicants’ ages when letting housing** (section 5 of the Bill) is very welcome. The new provision would help social landlords to make greater use of sensitive lettings and to promote greater tenancy sustainability, for example in letting certain properties to older housing applicants.

14. The Bill would reverse the current prohibition on **taking ownership of property into account** (section 6 of the Bill). The proposals in the Bill are permissive rather than compulsory. This will help landlords to strike a balance between excluding applicants who quite simply don’t need social housing, without resorting to blanket exclusions of people who may own property but who may also still have a legitimate need for social housing. We would welcome greater clarity about the meaning of heritable property (e.g. does it include property owned outside the UK?) and of the term “a person who normally resides with the applicant” (we are assuming that this does not extend to people using “care of” addresses).

15. The provisions on **suspending housing applications** (section 7), and
those on the use of short Scottish Secure Tenancies build on existing practice relating to letting suspensions. GWSF agrees that landlords should have additional flexibility in these areas, to support their efforts to address antisocial behaviour.

16. In relation to section 7 of the Bill, some key aspects of the proposed new arrangements are not fully clear. For example:

- The Bill does not address basic questions such as how long ago antisocial behaviour occurred, or how long suspensions can last for. An early indication of intentions on these matters would be helpful for social landlords.

- It is not clear whether restrictions as a result of past antisocial behaviour would apply equally to households referred under homelessness legislation, as to all other types of housing applicants. We suggest that there should be a level playing field, i.e. similar criteria relating to past antisocial behaviour should apply in local authority decisions about whether a household is intentionally homeless and therefore eligible to be provided with settled accommodation.

- There is no obvious rationale for proposing that abandonment or damage to property must relate only to tenancies in Scotland, particularly when the Bill proposes that provisions on recovery of possession of a tenancy will apply to previous tenancies anywhere in the UK.

- The provisions in the Bill about “using a house for immoral or illegal purposes” should in our view be limited to illegal purposes, since that sets an objective test. A test of “immoral purposes” would be subjective (and somewhat outdated).

17. The Bill does not propose any changes regarding the maintenance of housing lists. Many GWSF members are concerned about the substantial costs associated with maintaining housing lists, where they have large numbers of applicants on their lists who have very limited prospects of ever being rehoused. In our view, the Bill should introduce new flexibilities for landlords to set needs thresholds that they can apply when maintaining housing lists (i.e. they are able to exclude from subsequent reviews housing applicants with no realistic prospects of ever being rehoused, which each landlord would determine itself by setting a cut-off point).

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

18. GWSF supports the principle that social landlords should have greater flexibility to use short SSTs in cases involving antisocial behaviour. However, the proposals in the Bill must be set within a realistic
understanding of the respective responsibilities of social landlords, the Police and other agencies in addressing different types of antisocial behaviour. In scrutinising the Bill, Parliament should have realistic expectations about the likely impact of the changes proposed.

19. The Bill is not sufficiently clear about some of the issues that may arise in implementing the proposals relating to short Scottish secure tenancies. While these are perhaps matters for Stage 2 of the Bill, we highlight the following as examples of the types of issues that need to be addressed:

- Whether the criteria for use of short SSTs as set out in the Bill would apply equally to lets made directly by an RSL and to homeless households referred under section 5 of the Housing (Scotland) Act 2001;
- What action landlords can take during the period of a short SST, if problems occur;
- How the potentially greater requirement for housing support services could be met (given that the provision of such support is often reliant on external funding and/or provision of support services by other agencies);
- Ensuring greater clarity about who is responsible for providing tenancy support and what recourse social landlords have if tenants do not engage with the support provided;
- How many times conversion to a short SST can occur;
- How repossession proceedings would operate.

Q6. Will this part of the Bill meet the Scottish Government's objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

20. The Bill proposes new measures that would enhance the rights of tenants who have short SSTs. These parts of the Bill have been developed in direct response to recent court judgements. Landlords will have a particular interest in the proposal that possession proceedings for short SSTs will be subject to a legal right to request a review, and in the detailed proposals (still to be brought forward) about the procedure for such reviews.

21. The Bill proposes a number of measures relating to assignation, sublet and joint tenancy arrangements, and succession to a Scottish Secure Tenancy. We support these measures provided that landlords remain able to exercise flexibility in individual cases. For example, while the Bill would require a 12-month qualifying period before a person can qualify for succession, it is important that landlords are able to respond sympathetically to circumstances such as the death of a tenant in deciding whether that requirement should always be applied.
Part 3: Private Rented Housing

Introductory comments

22. The Bill proposes a number of improvements relating to the private rented sector (PRS). While the proposed changes impact primarily on local authorities, they are also of significant interest to housing associations because of the difficulties poor private landlord practice creates within mixed tenure neighbourhoods.

23. Overall, the PRS proposals in the Housing Bill are very much around the margins and the Bill will not address more fundamental issues, such as:

- The need for appropriate and legally-enforceable standards of management in the PRS;
- The need for an overall framework of standards, enforcement levers and financial resources to address existing property disrepair and improve housing quality and energy efficiency in the PRS;
- The need for more proactive regulation of the PRS and the severe resource pressures many local authorities are under in seeking to enforce standards;
- The overwhelming disparity between regulation and standards for social housing and those for the PRS.

24. In our view, the scope of the Bill is disappointingly narrow:

- Scottish Government policy is promoting an expanded role for the PRS in meeting housing needs in Scotland, despite poor housing quality and management standards in parts of the PRS (particularly at the lower end of the market). There has been a rapid and uncontrolled increase in housing benefit subsidies for the PRS in Scotland (estimated by SFHA to be a 153% increase for the PRS in the last decade, compared with a 21% increase for social landlords).

- The physical quality and energy efficiency of housing in Scotland are substantially better in the social housing sector than the private sector. Improvements in the social sector have been driven by detailed standards set by the Scottish Government and enforced through scrutiny by the Scottish Housing Regulator. By contrast, house conditions and energy efficiency standards in the PRS are substantially poorer. Private landlords must only comply with a basic Repairing Standard (enforced only in response to tenant complaints) and minimum statutory standards on property disrepair (enforced on a much more limited basis than would be desirable, because of limited local authority financial resources relative to the levels of housing disrepair that exist).

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1 Housing Benefit Spending: Busting the Myths, Scottish Federation of Housing Associations (October 2012)
The Scottish Housing Regulator has extensive statutory powers to enforce management and property standards in the social sector. Standards in the PRS are enforced by local authorities which have far more limited regulatory powers and operate under severe financial pressures.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

25. We support the proposals in the Bill to consolidate responsibility for private rented sector civil cases in a new tribunal. However, the impact and effectiveness of these changes is subject to the bigger question of how tenancy rights in the private rented sector can be improved. This is not addressed in the Bill and the Scottish Government has instead stated a more generalised intention to "consult with all stakeholders to examine the suitability and effectiveness of the current private rented sector tenancy regime, considering legislative change where required."2

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

26. Any measures to improve local authorities’ ability to tackle poor conditions and standards in the PRS are to be welcomed. However, the scope of the Bill means that change will be piecemeal rather than transformational.

27. The Bill proposes minor administrative changes to the private landlord registration system, by introducing statutory timescales for completing consideration of applications for registration. Otherwise, the Bill does not do anything to strengthen the statutory scope or “teeth” of the private landlord registration system.

28. The proposed measures on third party applications relating to the Repairing Standard recognise that tenants – especially vulnerable tenants, or people housed by unscrupulous private landlords - may be reluctant or unable to complain about a landlord’s failure to carry out repairs. However, the Bill does not address the substantive question of the Repairing Standard itself. The present Repairing Standard is extremely basic and the means for enforcing it are reactive.

29. The Policy Memorandum for the Bill states that local authorities “would also be able to make an application based on evidence from others with an interest in ensuring that minimum standards of property condition are maintained (for example neighbours, owners of property in communal buildings, or fire and rescue services)”. This is consistent with what is

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2 Housing (Scotland) Bill, Policy Memorandum, para 108
already happening in Glasgow, where the City Council is seeking to work in partnership with local housing associations to tackle problems created by poor private landlords. However, the Bill does not create any obligations that would encourage all local authorities to adopt such proactive approaches. This creates a weakness in cases where local authorities may be less willing (or less able, due to resource pressures) to act on problems reported by housing associations, as owners of neighbouring properties or as property factors.

30. The Policy Memorandum suggests some different attitudes on the part of local authorities. Glasgow City Council is said to be particularly keen to have statutory third party reporting powers, to help address poor private housing conditions and poor management standards for tenants. The views of other local authorities appear to be more equivocal, with the Government emphasising in the Policy Memorandum that the third party reporting provision in the Bill “does not place any new mandatory duties on local authorities. The discretionary power means that decisions on whether to make an application, or defend any subsequent appeal against a decision of a private rented housing committee, can take into account existing budgets and local priorities”. This reduces confidence in what practical impact the Bill may have unless local authorities (as in the case of Glasgow) decide to make tackling poor management or standards in the private rented sector a priority.

Q9. **Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?**

31. The principle of powers to promote area-based approaches is welcome although it is difficult to comment on the proposals for Enhanced Enforcement Areas until more substantive information is available. While the proposal may have been conceived with particular areas such as Govanhill in Glasgow in mind, we are interested to learn more about what wider application such approaches could have and how they could support partnership working in areas where poor private housing is present on a significant scale.

32. However, this brings us back to the question of resources. As with all other aspects of private rented sector regulation, enhanced area-based statutory powers will only be effective if there are adequate resources available to support the delivery of local enforcement strategies. The risk of displacement effects must also be managed effectively. Intensive action to stamp out the worst effects of private landlordism in areas with a high concentration of problems is important, but the end result should not be that the same private landlords simply move their operations to other neighbourhoods.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?

33. Letting agents are not regulated at all at present and poor practice by some agents is a major contributor to the serious problems the private rented sector is creating in some communities. We therefore support the principle of a statutory registration scheme and a code of conduct with statutory force.

34. The Bill does not include any proposals to strengthen the private landlord registration scheme or how private landlords themselves are regulated. This will limit the effectiveness of the measures proposed on letting agents. Much will also depend on the terms of the proposed Code of Practice for letting agents, to be developed separately from the Bill. It is important that the Scottish Government acts on the available evidence about poor practice by some letting agents and the resulting negative impact on housing and environmental conditions in local communities.

35. As in the case of property factors, it appears that the registration of letting agents would be undertaken by the Scottish Government rather than by local authorities. The Policy Memorandum suggests that some local authorities do not wish to be responsible for the registration scheme. In our view, letting agent and property factoring registration schemes administered by local authorities would provide a much better means for effective enforcement.

36. The Bill makes no provision for third parties to report concerns about letting agents' activities. The Bill provides for this in relation to enforcement of the Repairing Standard. It seems illogical that there should not be equivalent arrangements in relation to concerns about letting agents' activities. The Bill suggests that only private landlords and tenants would be able to refer concerns about a letting agent to the tribunal and there appears to be no role for local authorities to do the same.

37.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

38. The Bill makes relatively minor administrative provisions. Glasgow City Council has already used missing shares funding and maintenance plans on a targeted basis, so we are unsure what substantive changes the Bill would actually introduce. The bigger issue for local authorities will be one of financial capacity to use their powers on the scale that is
39. The Policy Memorandum for the Bill suggests that concerns held by some local authorities have been a major factor in the Government’s reluctance to propose more significant changes. This raises important issues for further scrutiny by the Committee, whether as part of its consideration of the Bill or more generally. There are substantial, unresolved political and financial obstacles to tackling disrepair and improving standards in private housing in Scotland. Despite the measures proposed in the Housing Bill, the bottom line is that:

- No legislative solutions are being proposed to address poor private property condition to a significant degree;
- Legislation, policy and regulation are all being used to drive energy efficiency improvements in the social rented sector (where such standards are already higher). There is no such leverage for the private rented and owner-occupied sectors, aside from funding incentives to owners and private landlords to improve their properties on a voluntary basis.

40. The Government’s Sustainable Housing Strategy published earlier in 2013 states that it will work with stakeholders to develop options for setting minimum energy efficiency standards in private sector housing, ahead of public consultation on draft regulations in 2015. This suggests we are still a long way away from having the robust framework of standards, enforcement and financial resources that will be necessary to make the necessary improvements in the energy efficiency of private housing, particularly those that are hard to treat.

Part 7: Miscellaneous

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

41. GWSF’s main interest relates to the proposed changes to the powers of the Scottish Housing Regulator (SHR), as described in section 79 of the Bill. We are content with the general principle behind the section 79 proposals which is to ensure that SHR can respond effectively to exceptional circumstances where an RSL may be in serious financial jeopardy.

42. The section 79 proposals should be seen as a backstop for worst-case scenarios. In practice, it is far more important to prevent the proposed powers having to be exercised at all. A key issue is how SHR uses its existing statutory powers to ensure early detection and an effective response to serious financial problems. SHR has spoken publicly on a number of occasions (including in its recent evidence to the ICI Committee in December 2013) about its role in “managing three RSLs out of near insolvency” during 2012. In our view, the financial crises that occurred in these cases were not the product of SHR lacking appropriate
statutory powers:

- SHR had long-standing and serious concerns in each case (for one of the three RSLs, SHR was closely involved from 2008 onwards);
- SHR made limited use of its formal statutory intervention powers and relied instead on non-statutory methods of engagement;
- For whatever reason, regulatory intervention failed to avert or provide early warning of the financial problems that crystallised in 2012.

43. On the specific measures now proposed in section 79 of the Bill:

- It is reasonable that SHR should have powers to act decisively in cases where an RSL is in serious financial jeopardy and this may lead to insolvency, as proposed in section 79 (a) of the Bill
- We do not support section 79 (b) of the Bill. This would repeal the Regulator’s general obligation to base a directed transfer of an RSL’s assets on an independent valuation. Directed transfers are extremely unusual (the last one occurred more than 10 years ago) and we do not see the purpose of removing the general requirement for independent valuations.
- Instead, it would be more appropriate to retain as the norm the current requirement for independent valuations set out in section 67 (6) of the Housing (Scotland) 2010, and to amend section 67 (6) so that the obligation to obtain an independent valuation can be set aside in the highly exceptional circumstances where emergency action is needed. In other words, the obligation to obtain an independent valuation would remain, but would be set aside where the four specific conditions relating to financial jeopardy narrated in section 79 of the Bill are met.
- There should be transparency and accountability for exceptional regulatory action that results in a directed transfer of an RSL’s assets, including SHR’s own role in matters. This could be achieved by requiring SHR to publish information about inquiries that result in a direction to transfer an RSL’s assets.

44. While supporting the general principle underpinning section 79(a), we are unsure what practical impact the proposed legislative changes will have. None of the 3 recent cases involving RSLs in financial jeopardy involved a transfer of assets directed by SHR. Instead, the mechanism used in these cases was for the RSLs in financial difficulty to join a group structure. The arrangements proposed in section 79 would not have applied, since none of the cases involved a directed transfer of assets.

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s
policy objectives or specific provisions?

45. The proposed changes set out in section 79 of the Bill are designed to make changes to the housing regulation framework in response to issues that were not foreseen when the Housing (Scotland) Act 2010 was enacted.

46. GWSF believes that the same principle should be applied to other aspects of housing regulation. In this regard, we have identified three key areas for legislative change, described below. While we have wider concerns about other aspects of housing regulation, we believe that these could be addressed by changes to current regulatory practice by SHR within the existing scope of the 2010 Act and by enhanced parliamentary scrutiny of how the 2010 Act housing regulation framework is operating in practice.

 Tenant consent for RSL restructuring

47. GWSF has recently published a detailed analysis of RSL group structure activity in Scotland. We have made our briefing report available to members of the Committee in light of the Committee’s role in scrutinising housing and regulation issues and its previous interest in the restructuring taking place within the Scottish housing association sector.

48. Our briefing report makes a number of proposals for policy and regulatory changes that can be introduced within existing legislation, to respond to the rapid growth of RSL group structure activity in Scotland. Legislative change is also needed, to provide for tenant consultation and ballots, where an RSL is seeking to join a group structure as the subsidiary of another RSL. The current Bill provides an opportunity to address this, to ensure proper protection for the interests of tenants.

49. The Housing (Scotland) Act 2010 requires tenant consultation and ballots to take place where RSLs decide to restructure through mergers or transfers of engagements that result in a change of landlord. The 2010 Act does not make equivalent provision for tenant consultation and ballots where an RSL intends to join a group structure. This is now a serious omission and there is a strong case for making statutory changes that would bring group structures within the statutory definition of restructuring set out in the 2010 Act, with a resulting extension of tenant ballot provisions.

50. The main reasons in support of statutory changes relating to RSL group structures are as follows:

- Restructuring via group structures is happening on a substantial scale in the Scottish RSL sector and has a significant impact on the future interests of many thousands of tenants and service users (almost 90,000 tenants are now housed by an RSL that is part of a group structure comprising two or more RSLs). It is unacceptable
that tenants have no legal rights to be consulted or to give their consent to such significant changes, as would be the case if a restructuring proposal resulted in a change of landlord.

- When an RSL joins a group structure, it relinquishes sovereignty and ultimate control over its affairs to a third party in return for whatever benefits the group structure arrangement is intended to provide. This has long-term consequences for tenants, because a parent RSL will have direct influence (and potentially, ultimate control) over a such matters as a subsidiary RSL’s business plan, rent policy, housing investment policy, funding costs and service delivery structures and locations.

- An RSL seeking to join a group structure needs only to obtain the agreement of its shareholding members, not its tenants and rent-payers. This produces a substantial democratic deficit. For example, the decision to create The Wheatley Group and for Glasgow Housing Association to become a subsidiary of Wheatley was made by GHA’s board (under GHA’s constitution, its board are the only shareholding members). More than 40,000 GHA tenants had no say in the decision, nor will Wheatley’s Board be directly accountable to GHA tenants for its current plans to expand the Group’s activities, even though the Group’s main assets are tenants’ homes. While the democratic deficit is particularly pronounced in the case of The Wheatley Group, the same deficit applies in all other cases – there is no formal requirement for tenant consent.

- Very large RSLs, including The Wheatley Group and a number of UK-based RSLs, are actively pursuing business growth strategies which involve absorbing smaller Scottish RSLs into their group structures. The long-established and distinctively Scottish policy of promoting greater localism in housing service delivery and accountability now appears to be in reverse, more as a result of a vacuum in housing policy thinking rather than any explicit desire on the part of government to promote a policy of big being better. Many Scottish housing associations are increasingly concerned that they are becoming sitting targets for takeovers by very large RSLs and that the current statutory and regulatory framework offers no safeguards against this happening. In making statutory provision for tenant consent to mergers and transfers of engagements during the passage of the Housing (Scotland) Act 2010, the Minister for Housing and Communities told Parliament that “...Such a safeguard is important not only for tenants but for landlords as the need to secure tenant support will make it much harder for another landlord to contemplate a hostile takeover bid. (Col 3491)”.

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3 SPICE Briefing: Housing (Scotland) Bill as amended at Stage 2 (October 2010)
51. We have set out at Appendix 1 details of the current statutory provisions for RSL restructuring and their limitations. We suggest that the current Housing (Scotland) Bill should make provision for the protection of tenants’ interests and that this could be achieved by:

- Amending Parts 8 and 10 of the Housing (Scotland) Act 2010, to expand the statutory definition of restructuring to include the formation or joining of a group structure involving more than one RSL;

- Extending the tenant authorisation provisions in Part 10 of the 2010 Act (including the provisions for tenant ballots) to all restructuring cases falling within the expanded definition, regardless of whether the restructuring proposal would result in a change of landlord.

52. If adopted, our proposal for tenant ballots would involve the same exceptions as already apply to other types of RSL restructuring. For example, tenant ballots are not required in cases where the Scottish Housing Regulator directs an RSL to transfer its assets following a statutory inquiry, and section 79 of the Bill proposes that tenant consultation requirements would be waived in directed transfers where an RSL is at risk of imminent insolvency. These are highly exceptional circumstances and it is appropriate that the same arrangements should be applied in all cases. Therefore, we suggest that tenant consultation and ballots should be the norm for all types of restructuring including group structure proposals, but would not be required where an RSL was potentially insolvent and a statutory inquiry by SHR resulted in emergency action to avert the potential insolvency.

Regulatory interventions and the need for statutory mechanisms for reviews and appeals

53. The 2010 Act requires SHR to publish, following consultation, statutory codes of practice on its powers to carry out inquiries and to seek information (section 51 of the 2010 Act) and to exercise statutory intervention powers (section 54 of the 2010 Act).

54. These aspects of the current legislation are not operating satisfactorily:

- SHR has not published the codes of regulatory practice referred to in the 2010 Act, beyond high level information contained in its April 2012 Regulatory Framework.

- A number of housing associations have expressed strong concerns to representative bodies about the scope and proportionality of regulatory interventions in their organisations. GWSF offers no view on the merits of individual cases, but we are concerned that there is such a high level of dissatisfaction with SHR’s activities and approach. The root cause in our view is a lack of transparency and of sufficiently clear ground rules for the kind of intervention approach typically being used by SHR.
• That intervention approach involves “behind the scenes”, non statutory methods rather than the more transparent and accountable processes set out in the 2010 Act (e.g. published inquiry reports for named organisations and use of the formal statutory intervention powers described in Part 5 of the 2010 Act). To date, SHR has not made any use of those formal intervention powers and it has published only one inquiry report for a named RSL.

• SHR’s Regulatory Framework provides for a review process in the case of published inspection reports, but there are no review processes for other types of regulatory action. Moreover, there is no appeals process available to RSLs who believe that regulatory actions are disproportionate or inappropriate.

55. We believe that these issues need to be addressed in the current Housing Bill. We propose that the Bill should:

• Establish a requirement for SHR to publish, following consultation, a consolidated code of regulatory practice that addresses all of its methods for intervening in the affairs of social landlords (i.e. including interventions that are not publicly reported and those that do not involve the use of statutory intervention powers);

• Provide a statutory right for social landlords to request a review by the SHR Board of regulatory decisions or actions;

• Establish a formal external appeals process, which allows social landlords to challenge SHR’s regulatory decisions or actions.

56. In putting forward these proposals, it is not our intention to constrain SHR’s ability to take effective regulatory action. The introduction of a review process would enhance SHR’s ability to perform its functions in a fair and transparent manner and would improve confidence in the regulatory system. That confidence is being put at risk by the way in which the regulatory system currently operates, i.e. overwhelming reliance on “offline” non statutory interventions, limited public reporting, and no opportunities for social landlords to question or challenge regulatory action that is often perceived – rightly or wrongly - to be inappropriate, disproportionate or excessive.

57. In the absence of an appeals system, the only mechanism currently available to RSLs who have serious concerns about regulatory action is to seek judicial review. This is not in our view in the interests of SHR, social landlords or tenants.

58. Instead, we suggest that the Housing Bill should make provision for an external appeals process, independent of SHR. This would be consistent with statutory arrangements for the charity sector. The Charities and Trustee Investment (Scotland) Act 2005 makes statutory provision for both reviews of decisions made by the Office of the Scottish Charity Regulator (OSCR) and for independent consideration of appeals
against OSCR decisions by a Scottish Charities Appeal Panel. Members of the Panel are appointed by Scottish Ministers and are independent of OSCR.

Consultation and Involvement Requirements

59. The Housing (Scotland) Act 2010 places SHR under an obligation to consult with social landlords and their representative bodies on a range of specific matters. These arrangements are not operating effectively at present in terms of consultation on regulatory guidance, discussion of the operation of the overall regulatory framework, or how SHR and the sector can work together more effectively to promote good practice for the benefit of RSLs and their tenants.

60. The prospects for achieving more constructive and productive relationships between SHR and the housing sector would in our view be enhanced by making amendments to section 5 of the Housing (Scotland) Act 2010. This requires SHR to consult and involve representative bodies in discussions about the performance of its functions. We suggest that section 5 of the 2010 Act should be amended, to add bodies representing social landlords to the list of representative bodies that SHR is required to consult and involve. This would encourage a more proactive approach by SHR to working with the housing association sector and would provide a platform for greater partnership working and co-operation on how RSLs can improve standards and meet regulatory expectations.

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

61. As noted in the recent SPICe briefing on the Bill, GWSF and SFHA both argued during the pre-legislative consultation process for clearer, more permissive provisions on how social landlords can incorporate local connection provisions in their allocations policies. This is not reflected in the Bill as introduced and is in our view a significant gap. While Scottish Ministers have in the past made helpful statements about the use of local connection provisions, this does not have any statutory expression beyond the “negative” provisions in existing legislation\(^4\). These only cover circumstances where residence in a landlord’s area of operation cannot be taken into account. Clearer, enabling statutory provisions on local connection would be extremely helpful.

\(^4\) Housing (Scotland) Act 1987, section 20
Appendix 1
Current Legislation and Regulatory Guidance relating to RSL Restructuring


Part 8 of the 2010 Act, sections 96 to 104 sets out statutory requirements for regulatory consents where an RSL is seeking to restructure:

- “Restructure” in this context includes transfers of engagements, amalgamations and voluntary winding up/dissolution.
- Section 96(3) says SHR shall not give consent to restructuring proposals “… unless satisfied that (the RSL) has consulted its tenants about the matter for which consent is needed”.
- Section 97 confirms that transfers of engagements, amalgamations etc require the RSL seeking to restructure to pass a special resolution (in practice, an affirmative vote by its shareholding members) and to have this approved by SHR and registered by the Financial Conduct Authority.
- The RSL seeking to restructure needs to show it has consulted with tenants in order to obtain SHR consent. If a restructuring proposal would result in a change of landlord, Part 10 of the 2010 Act applies (“Special procedure for disposals and restructuring resulting in change of landlord”)

The main features of the special procedure set out in Part 10 of the 2010 Act are that:

- There is a statutory requirement for enhanced tenant consultation, with a range of specific requirements set out in section 115 of the Act (e.g. issue of a formal notice by the RSL, provision of information about the consequences of the change proposed, opportunities for tenants to make representations about the changes proposed).
- SHR’s consent to the disposal is subject to “tenant authorisation”. Tenant authorisation (i.e. consent) may take the form of a tenant ballot (section 118 of the Act) or the written agreement of the tenants affected (section 119).

Part 8 Sections 96 to 104 of the 2010 Act and the special procedure for tenant authorisation set out in Part 10 of the Act do not apply to circumstances where an RSL is seeking SHR approval to join a group structure as the subsidiary of another RSL.

Instead:

- Part 8, section 93 of the 2010 Act requires only that SHR should give its consent to material changes to an RSL’s constitution (becoming a subsidiary of another RSL would require this).
There are no provisions in the 2010 Act that require tenant consent if an RSL is seeking to become the subsidiary of another RSL.

2. Regulatory Policy and Procedures

Regulatory policy and procedures about RSL restructuring proposals are set out in the following documents published by SHR:

- SHR Regulatory Framework: Consent to constitutional and organisational change and disposals (March 2012)
- SHR Regulatory Guidance: Organisational Changes (April 2012)
- SHR Regulatory Guidance: Requirements for Tenant Ballot or Written Authorisation

Where a change of landlord would be involved, the Regulatory Framework states that a tenant ballot will normally be required, unless a landlord makes a convincing case for why another form of written consent by tenants should be sought.

The separate SHR guidance on organisational change proposals and group structure proposals replicate the 2010 Act in applying different thresholds for tenants’ rights and tenant consent, depending on whether restructuring proposals will result in a change of landlord.

If there is no change of landlord, SHR’s guidance on Group Structures and Constitutional Partnerships confirms that there will be a lower threshold in terms of tenant information and consent:

“If the proposal does not involve a change of landlord we will expect tenants to be consulted about the proposal. We will wish to see a description of action taken to inform and consult tenants and any Registered Tenants Organisations about the proposals, and consultation outcomes. We may require the RSL to ensure tenants have access to independent advice funded by the RSL. RSLs should have a clear communications/ consultation strategy that allows sufficient time for meaningful tenant consultation on the RSL’s proposals”. Regulatory Guidance on Group Structures and Constitutional Partnerships, Appendix 1

Glasgow and West of Scotland Forum of Housing Associations
27 February 2014
GWSF Briefing: Housing Regulation in Scotland

February 2014
1. Introduction

1.1 The Housing (Scotland) Act 2010 established new arrangements for regulating registered social landlords and local authority housing and homelessness services, and a new Scottish Housing Regulator (SHR) which took up its role in April 2012.

1.2 SHR is accountable to the Scottish Parliament and has recently given evidence to the parliamentary Infrastructure and Capital Investment Committee about its activities, based on its Annual Report for 2012/13.¹

1.3 Our Briefing identifies a number of areas where GWSF is concerned about how the regulation framework is operating. Our starting-point is that housing regulation serves an important purpose and that effective regulatory intervention is essential in individual cases where there may be a serious and material risk to tenants' interests or to an RSL’s assets. However, we do not think the current system of housing regulation is fully meeting the requirements for proportionality, transparency and accountability set out in the 2010 Act. We also wish to see much better dialogue between SHR and the housing association sector about how the regulatory system is operating, the impact it is having on RSLs, and how SHR and the sector can work together to improve matters.

1.4 We have sent a copy of our Briefing to the Scottish Housing Regulator and to members of the Scottish Parliament’s Infrastructure and Capital Investment Committee, the parliamentary committee to which SHR is accountable. We have also sent our Briefing to Scottish Ministers and MSPs, so that they can consider our proposals for improving the statutory framework for housing regulation through the current Housing (Scotland) Bill.

How the regulatory system is working in practice

2. SHR’s purpose and the focus of its activities

2.1 SHR’s statutory purpose is to protect the interests of tenants and those seeking to use social landlords’ services. The regulatory approach SHR has developed does not always provide a direct line of sight to that objective or to the specific policy intentions stated by the Scottish Government when it introduced the 2010 Act to the Scottish Parliament²:

“In bringing forward provisions to modernise regulation, the Scottish Government has two aims: to place current and future tenants, homeless people and other service users at the heart of the new regime; and, consistent with its wider approach to scrutiny reform, to create a proportionate and risk based regime that encourages and supports social landlords to improve their performance.”

2.2 In practice, SHR’s regulatory approach for RSLs has focused much less on the outcomes they deliver for their tenants and service users than on governance and organisational/financial management issues. GWSF’s analysis of RSL Regulation Plans³ for 2013/14 shows that:

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¹ Meeting of the Infrastructure and Capital Investment Committee, 4 December 2014
² Housing (Scotland) Bill 2010, Policy Memorandum
³ Regulation Plans are published for RSLs with which SHR intends to have increased levels of engagement, based on its assessment of risks. 62 Regulation Plans proposing medium or high levels of SHR engagement have been published for 2013/14 (covering around 40% of RSLs).
• 50% of SHR’s reasons for engagement with RSLs relate to financial or risk management issues;
• 33% of reasons for engagement relate to RSL governance and organisational management issues;
• Only 13% of reasons for engagement are directly related to services to tenants and others.

2.3 SHR’s regulatory focus for local authority landlords is quite different. Audit Scotland’s 2013/14 Assurance and Improvement Plans show that SHR’s planned engagement with local authority landlords relates overwhelmingly to two issues, both with a direct impact on tenants and those seeking to use services:

- The performance of homelessness services (60% of the reasons for SHR engagement with local authorities stated in the published Plans);
- Performance in meeting the Scottish Housing Quality Standard by 2015 (26% of the reasons for SHR engagement stated in the published Plans).

2.4 Scrutiny of RSLs’ governance and financial performance greatly exceeds scrutiny of these matters in other sectors and is disproportionate to the scale and organisational resources of many RSLs. SHR’s approach does not appear to be justified in terms of the primary purpose of scrutiny, which the 2007 Crerar Report described as being “to provide an independent assurance that public money is being used properly and that services are well managed, safe and fit for purpose”. In the same report, Crerar set out the need for scrutiny activity to have a clear public focus: “The needs and priorities of service users and the public must be the prime consideration in all external scrutiny. The public is the ultimate beneficiary of external scrutiny”.

2.5 SHR has suggested that its scrutiny of RSLs’ governance and financial management is needed to promote good service quality and outcomes, but there is little evidence to suggest that service failures by RSLs are widespread or significant:

- SHR recently reported to Parliament that it carried out 22 performance inquiries in 2012/13 on service quality or performance issues in RSLs and local authorities. SHR told Parliament that “Nothing has come out of those inquiries has been so significant that we have had to consider using our statutory powers.”. To date, SHR has not published a single inquiry report relating to service performance in individual RSLs.
- Our analysis of SHR’s Regulation Plans for 2013/14 indicates that levels of regulatory engagement on service quality issues are relatively low for RSLs. This is illustrated in the following table:

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4 Assurance and Improvement Plans are published by Audit Scotland and incorporate planned engagement by other scrutiny bodies, including SHR. Any proposed engagement or scrutiny relating to governance or financial management issues is led by Audit Scotland.


6 SHR evidence to meeting of Infrastructure and Capital Investment Committee, 4 December 2013
2.6 The statutory system for reporting on the Scottish Social Housing Charter is due to take full effect during 2014. We suggest that this should trigger a change in SHR’s regulatory focus, so that its activities and use of resources are better aligned with the original policy intention of placing tenant interests at the heart of the housing regulation system.

3. SHR analysis and reporting of RSL governance

3.1 There is widespread concern among housing associations that SHR’s recent methods of reporting on RSL governance are damaging the reputation of the sector.

3.2 SHR published five “Governance Matters” reports during 2013. These set out (in the form of anonymised case studies) reported governance failures in a number of individual RSLs, along with action points that SHR suggests are relevant to all RSLs. These reports have created an unjustified impression of widespread, systemic weaknesses in the governance of RSLs in Scotland:

- In SHR’s recent evidence to Parliament, a member of the Infrastructure and Capital Investment Committee asked SHR whether the Governance Matters publications “… suggest that there is a weakness in RSLs as far as governance is concerned that must be addressed”. SHR agreed with that statement, telling the Committee “… it would be fair to say that there is”.

- GWSF members have told us recently that funders are now citing concerns flowing from the Governance Matters reports in discussions about future funding for their organisations. The availability and terms of funding are already highly challenging. It is essential that SHR does not compound these difficulties by making generalised statements that are rooted in opinion rather than hard evidence or more transparent public reporting.

3.3 The Governance Matters reports provide evidence of governance problems in specific organisations in specific circumstances. But the impression that they may
be illustrative of widespread, systemic weaknesses throughout the sector must be challenged:

- Some of the material in the case studies reported on date back to the early 2000s, but this is not clear from the reports.
- The reports set out SHR’s perspective, with little or no opportunity for the organisations reported on to comment on factual accuracy or interpretation. In that respect they differ substantially from public reporting for named organisations, where a scrutiny body would be accountable for ensuring factual accuracy and for meeting the Crerar principle on accountability, that “assessments and findings must be fair and capable of being defended”.
- SHR’s reliance on anonymised reporting and limited public reporting for named organisations mean that there is a gap in accountability and transparency. The Governance Matters series appears to be a substitute for public reporting on named organisations, rather than something that complements it. SHR published only one governance inquiry report for a named RSL in 2012 and it published no such reports in 2013. Moreover, SHR’s Regulation Plans for 2013/14 indicate that it will engage with 12 RSLs (7% of all RSLs in Scotland) on specific governance concerns. This does not support the suggestion that serious governance weaknesses are commonplace.

3.4 Drawing on the Governance Matters case studies, SHR has published a series of action points for all RSLs to consider. There are 98 such action points to date, in addition to all of the other guidance SHR publishes on RSL governance, financial management and notifiable events. While SHR intends the action points to be helpful, their practical value is limited by their number and in some cases by their content. We suggest that joint working by SHR with housing associations and representative bodies would be beneficial, as a way of co-producing practical tools that will help RSLs of different types and sizes to address any general issues SHR is seeking to raise through the Governance Matters reports and action points.

4. Regulatory engagement and interventions

4.1 Regulatory engagement and interventions have been a cause of tension between SHR and some individual RSLs. SHR has expressed concerns in its Governance Matters reports about a perceived lack of co-operation on the part of some RSLs. Equally, some housing associations subject to regulatory engagement and interventions have expressed concerns to us (and to SFHA) about SHR’s approach.

4.2 The main issues housing associations have raised with GWSF have included:

- SHR’s reasons for intervention action;
- The proportionality of action taken;
- SHR’s manner of communicating with RSL governing bodies and senior officers;
- A perceived reluctance on the part of SHR to provide clear, written information about regulatory concerns, requirements and actions;
- The suggestion that regulatory involvement has in some cases slowed down or impaired efforts to tackle problem issues in a decisive manner; and
- The absence of any means to raise and resolve differences of view.
Underpinning all of this is a sense of uncertainty about SHR’s role and powers in cases where it is not using formal statutory inquiry or intervention powers.

4.3 GWSF has no wish (or basis for) second-guessing SHR’s judgements in individual cases. Instead, our concerns relate to:

- The processes in place and how these are managed;
- The apparent absence of clear ground rules for the kind of engagement and intervention approach typically being used by SHR; and
- The absence of review or appeals processes available to RSLs if they believe that regulatory actions are disproportionate or inappropriate.

4.4 The key to understanding these issues lies in the fact that SHR relies heavily on “behind the scenes” methods of engagement and intervention rather than the more transparent and accountable processes set out in the 2010 Act (for example, published inquiry reports for named organisations and the formal statutory intervention powers described in Part 5 of the 2010 Act). Since April 2012, SHR has not made any use of its formal intervention powers and it has published only one inquiry report for a named RSL. Despite this, SHR is intervening to a significant degree in the management of many RSLs, through its support and intervention team.

4.5 If regulatory engagement and intervention continue to rely on non-statutory methods, a more transparent and accountable framework is even more essential. This should describe more clearly triggers for regulatory engagement; how engagement will be managed and communicated; the respective roles and responsibilities of SHR and RSLs; how SHR will report on regulatory engagement; and how housing associations can seek redress if they have concerns about the reasons for non-statutory regulatory engagement or how it is being managed.

4.6 While some RSLs have expressed concerns about regulatory action being too heavy-handed, SHR’s effectiveness in identifying and acting upon serious problems in some RSLs is also an important issue.

4.7 For example, SHR has spoken publicly on a number of occasions about its role in managing three unnamed RSLs out of near insolvency during 2012. Information about these cases has focused on what the RSLs did wrong, but consideration of regulatory action is equally important. SHR had a long-standing involvement with the three RSLs concerned (in one case, for 4 years from 2008 to 2012; in another case, for two years from 2010 to 2012). It would appear that regulatory interventions did not – for whatever reason - avert or provide early warning of the financial crises that subsequently occurred. SHR’s reliance on behind the scenes intervention methods rather than formal statutory powers means that there is little transparency about its regulatory interventions in such cases, and there is a resulting lack of accountability for ensuring that serious problem cases are identified and acted upon in a manner that is timely, effective and decisive.

5. Statutory checks and balances

5.1 The Housing (Scotland) Act sets a number of statutory requirements which we do not think are fully reflected in SHR’s regulatory practice since 2012. These include the following obligations placed on SHR by the 2010 Act:

- To perform its functions in a way that is proportionate, accountable and transparent and which is targeted only where action is needed (section 3 of the 2010 Act);
To perform its functions in a manner that takes account of the different types of social landlord it regulates, based on legal status and governance arrangements, property owned or managed, annual turnover and number of employees (section 4 of the Act);

To consult stakeholder groups, including social landlords and their representative bodies, on codes of practice relating to SHR’s powers to carry out inquiries (section 51 of the 2010 Act) and to exercise statutory intervention powers (section 54 of the Act).

5.2 In relation to the requirement for proportionality described in the 2010 Act, we have already articulated concerns about SHR’s general focus on RSL organisational management issues rather than service quality and outcomes for tenants. Based on comments from our members, there appears to be significant dissatisfaction about the proportionality of SHR’s regulatory engagement with individual RSLs on specific issues. Some Housing Associations have told us they are reluctant to speak publicly about these issues or to raise them directly with SHR. This stems from the fact that SHR does not operate any review or appeals processes, and from the perception that raising concerns with SHR will be interpreted as a failure to engage or co-operate. This is an unhealthy situation.

5.3 SHR’s statutory remit is to regulate individual social landlords rather than the sector as a whole. However, SHR’s published outputs relate overwhelmingly to sector-wide issues rather than to the performance of individual landlords. Since April 2012, SHR has published only three performance reports relating to named individual organisations (two inquiry reports relating to local authority housing services, and one inquiry report relating to governance concerns about an RSL). This diminishes accountability and transparency.

5.4 SHR generally has higher levels of engagement with large RSLs categorised as being of systemic importance. It has not adjusted regulatory requirements or processes for smaller landlords, which we think is the clear intent of sections 3 and 4 of the 2010 Act. This is a significant issue for many GWSF members, because of their scale and organisational resources. The median number of office-based staff employed by RSLs in Scotland is 20, and a quarter of Scottish RSLs employ fewer than 10 office-based staff. Tailoring regulatory requirements for smaller landlords is essential, to prevent scarce organisational resources being diverted or overloaded in small housing associations with lean staffing structures.

5.5 SHR has not published the regulatory codes of conduct required by sections 51 and 54 of the 2010 Act. Instead, there are high-level descriptions in the SHR Regulatory Framework of SHR’s general approach to carrying out inquiries and using statutory intervention powers. Since SHR makes virtually no use of formal inquiry procedures or statutory intervention powers to address concerns about governance or other organisational matters within RSLs, there is a resulting lack of transparency. This could be addressed by SHR developing a consolidated code of regulatory practice, to establish clearer procedures for non-statutory engagement and intervention, as well as the statutory inquiry and intervention powers described in the 2010 Act.

6. Consulting and involving housing associations

6.1 The Housing (Scotland) Act 2010 places SHR under an obligation to consult with social landlords and their representative bodies on a range of specific matters. These matters include regulatory guidance on the Scottish Social Housing Charter and on RSL governance and financial management; and the codes of regulatory
guidance on inquiries and interventions described in sections 51 and 54 of the 2010 Act.

6.2 These arrangements are not operating effectively at present. Consultation with housing associations and representative bodies has been limited on regulatory guidance and publications that impact directly on the sector, with the notable exception of the framework for reporting on the Charter. Where SFHA undertook to develop a model code of conduct for RSL governing bodies, the process became protracted due to SHR effectively demanding rights of approval and editorial control over a code produced by the sector. In addition there is no structured framework for discussing how the overall regulatory framework is operating, or how SHR and the sector can work together more effectively to promote good practice for the benefit of RSLs and their tenants.

6.3 Formal structures to promote meaningful involvement, consultation and joint working are in our view badly needed, with clear terms of reference and protocols on how consultation and involvement arrangements should operate.

7. Proposals for change and improvement

Non-legislative solutions

7.1 There is considerable scope to improve how the housing regulation system is working within the existing statutory framework set by the 2010 Act, although this will depend on SHR’s willingness to make the kind of changes housing associations want to see.

7.2 We suggest that improvements can be made in the following areas:

- SHR should review the scope and focus of its current regulatory approach for RSLs, to better reflect its core purpose (proportionate regulation of individual social landlords, focused on outcomes for service users and risks that impact directly on tenants’ interests). This should also reflect SHR’s specific obligations under section 3 of the Housing (Scotland) Act 2010: the requirement that the performance of SHR’s functions should be proportionate, transparent and accountable and targeted only where action is needed.

- SHR should tailor its regulatory requirements and processes for different types and sizes of RSLs, to better reflect the diverse nature of Scottish RSLs and its obligations under section 4 of the 2010 Act.

- SHR should review its approach to reporting on RSL governance issues. This should include more public reporting for named RSLs; correcting any impression that problems in individual RSLs are indicative of sector-wide weaknesses; and more co-operation and joint working between SHR and the sector to promote good practice.

- SHR should create more formal structures and protocols for consultation and involvement by RSLs and their representative bodies.

- SHR should meet its statutory duty to publish, following consultation, the codes of regulatory practice specified in sections 51 and 54 of the 2010 Act. Beyond this, SHR should consider producing a consolidated code of regulatory practice that addresses all aspects of its regulatory practice, to include non-statutory engagement and interventions as well as use of its inquiry and statutory intervention powers.

- SHR should introduce formal mechanisms enabling RSLs to seek reviews of its decisions or regulatory actions.
• SHR and the RSL sector should work together more closely on issues that relate to the sector as a whole (as distinct from SHR’s regulatory engagement with individual RSLs). SHR and the sector have a strong shared interest in developing and promoting practical tools that will help RSLs to improve standards and manage risks. We suggest that work on sector-wide good practice issues is best addressed on the basis of co-production and partnership working.

Accountability to Parliament

7.3 SHR’s accountability to Parliament is a key part of the Housing (Scotland) Act 2010. It is inevitable that SHR’s views about the housing sector as a whole will feature prominently in its evidence to the Infrastructure and Capital Investment Committee, but there is a risk in such circumstances that this will deflect from what we believe should be the key focus of the SHR’s accountability to Parliament, namely holding SHR to account for the performance of its regulatory functions and for its performance in meeting its statutory obligations under the 2010 Act.

7.4 In the immediate future we believe that the issues set out in this paper are worthy of further scrutiny, namely:

• Whether SHR’s current regulatory approach is sufficiently focused on service quality and outcomes for tenants and service users
• The evidence underpinning the views SHR has expressed to the Committee about general weaknesses in RSL governance and the impact those views are having on the RSL sector
• The limited extent of public reporting by SHR in relation to individual, named organisations, in carrying out its functions
• The transparency and accountability of SHR’s non-statutory methods of engagement and intervention in the management of RSLs, and the effectiveness of its interventions in serious problem cases
• The effectiveness of SHR’s current methods for consulting and involving RSLs on regulatory guidance and the overall operation of the housing regulation framework.

Improvements to the statutory framework for housing regulation, through the current Housing (Scotland) Bill

7.5 Most of the improvements GWSF wishes to see can be achieved within the existing statutory framework set out in the Housing (Scotland) Act 2010, subject to the willingness of the Scottish Housing Regulator to adjust its current approach. We also believe that statutory changes are required in some areas, and that these should be considered in the context of the current Housing (Scotland) Bill. Our proposals in this regard involve selective enhancements to the 2010 Act rather than a fundamental review of it.

7.6 Our proposals for legislative change are set out in GWSF’s response to the call for views on the Housing Bill issued by the Infrastructure and Capital Investment Committee. These proposals, as they relate to regulation, may be summarised as follows:

• The Bill should establish a requirement for SHR to publish, following consultation, a consolidated code of regulatory practice that addresses all of its methods for intervening in the affairs of social landlords (i.e. including regulatory engagement and interventions that are not publicly...
reported and those that do not involve the use of statutory intervention powers).

Our proposal recognises that non-statutory engagement and intervention methods (rather than published inquiry reports and use of statutory intervention powers) have become established as SHR’s main way of working since its creation in 2012. We do not think this was envisaged during the passage of the 2010 Act.

- **The Bill should establish a statutory right for social landlords to request a review by the SHR Board of regulatory decisions or actions. It should also establish a statutory appeals process, which allows social landlords to challenge SHR’s regulatory decisions or actions.**

  Our proposal is based on the fact that the Housing (Scotland) Act 2010 makes no provision for reviews or appeals and the only redress available to social landlords is to seek judicial review. This is a significant weakness in the existing legislation.

- **The Bill should amend section 5 of the Housing (Scotland) Act 2010 by adding RSL representative bodies to the list of bodies that SHR is required to consult and involve in performing its functions.**

  Our proposal reflects the fact that SHR’s current arrangements for consultation and involvement are not operating satisfactorily. Statutory provision would provide a platform for making the changes that are needed.

Glasgow and West of Scotland Forum of Housing Associations
February 2014
GWSF Briefing: Registered Social Landlord Group Structures in Scotland

February 2014
## Summary

Since 2010, there has been rapid growth of group structures consisting of two or more RSLs. Group structure registered social landlords (RSLs) now house almost one-third of all RSL tenants in Scotland, with further group structure proposals in the pipeline. These changes have huge significance for tenants, the RSL sector and the Scottish economy.

### Key Concerns

- Expansion by very large RSLs north and south of the border is running unchecked.
- Tenants affected by group structure proposals have no rights of consent through tenant ballots, unlike in stock transfers and other landlord restructuring scenarios.
- Local and specialist housing associations are increasingly becoming takeover targets. Some RSL group structure arrangements are taking financial resources and jobs out of fragile local economies and the Scottish economy as a whole.
- Regulatory guidance and practice on group structures need to be strengthened, to ensure that the Scottish Housing Regulator (SHR) is able to meet its core purpose of safeguarding tenants’ interest and so that public reporting of group structure proposals is improved.

### Legislative changes needed, through the current Housing (Scotland) Bill

- Tenant authorisation/ballot requirements should be extended to group structure proposals.

### Non-legislative changes needed

- The Scottish Government’s housing and regeneration policies should champion the role of locally focused and accountable social landlords, such as local authorities and place-based housing associations and co-operatives. The Government should prioritise the role these organisations play in the delivery of its policies and programmes, to maximise the economic benefits for local communities and economies.
- Increased parliamentary scrutiny of RSL restructuring activities is desirable, due to the scale of change taking place and the high impact on large numbers of tenants in Scotland.
- SHR should strengthen its regulatory guidance to ensure that RSLs are required to act transparently when entering into group structures and that they are accountable to tenants about group structure proposals and their future operation.
- SHR should strengthen its approach to assessing group structure proposals, by giving full consideration to the prospective group parent as well as to the RSL seeking to become a subsidiary.
- SHR’s Board should assume responsibility for approving statutory consents for group structure proposals. SHR should also improve public reporting, by publishing assessments of how restructuring proposals will benefit tenants and service users, and by reporting publicly on the achievement of these benefits after group structure changes take effect.
- SHR should meet its existing statutory obligation to consult on and publish a code of practice on regulatory intervention. This should address SHR’s role in decisions about group structure partners, in cases where it is already intervening in the affairs of an RSL, either through the use of statutory powers or non-statutory engagement and intervention.
Introduction

1) Since 2010, there has been a rapid growth of RSL group structures that consist of a parent RSL and one or more subsidiary RSLs. This raises major issues for tenants and for the future of housing associations and co-operatives in Scotland, but there is currently very little information in the public domain to explain or analyse the changes that are taking place.

2) This GWSF Briefing seeks to address that gap. The Briefing includes a series of recommendations about how housing legislation, policy and regulation all need to be strengthened in response to the growth of group structures.

Restructuring within the RSL sector in Scotland

3) Restructuring in the RSL sector is not new, but the current scale of restructuring activity is unprecedented.

- 16% of Scottish RSLs (owning around 90,000 houses and housing around one third of all RSL tenants in Scotland) are now part of, or are in the process of joining, a group structure containing more than one RSL;

- An increasing number of Scottish RSLs are becoming the subsidiaries of much larger national/regional or UK-wide RSLs.

A detailed analysis of which Scottish RSL’s are a part of a group structure is available.

4) In the past, RSL restructuring was typically based on transfers of engagements (merging the assets and liabilities of two RSLs in a single organisation) rather than group structures, and partnerships were more likely to involve RSLs working in neighbouring communities or serving similar client groups.

5) The Housing (Scotland) Act 2010 sets out the statutory framework for regulating RSL restructuring through mergers and transfers of engagements, including provision for tenant ballots. This framework now needs to be updated, because transfers of engagements are no longer a significant factor in RSL restructuring. Instead, group structure solutions are now the norm for RSL restructuring, and these are not addressed specifically in the 2010 Act.

6) Group structures involving more than one RSL are based on:

- One RSL acting as group parent and having constitutional control over other RSLs in the group;

- Subsidiary RSLs retaining their own legal identity and housing stock, but having the legal status of subsidiaries of the parent RSL.

These are not matters of administrative detail. To make a direct comparison with the present Scottish constitutional debate, joining a group structure as a subsidiary is akin to an RSL giving up sovereignty in order to become a devolved administration, with the parent organisation always having ultimate control over the subsidiary’s affairs.

7) The drivers for RSL group structures are sometimes positive. For example, a wish to improve or expand services for tenants or to help keep rents affordable in the face of
financial challenges. Achieving these benefits in practice is by no means assured and depends entirely on the specific circumstances of the RSLs involved and how they plan to work together. For example:

- Sharing staff or services within a group structure can increase as well as reduce management costs for a smaller RSL joining a group structure as a subsidiary. The financial benefits may in some cases be greater for the prospective parent, if it is a large organisation with a top-heavy management structure and high overheads which it can offset by selling management and other services to subsidiary RSLs.

- A smaller RSL joining a group structure may be able to access private finance sourced by the parent RSL. But on lending within a group structure must be on commercial terms; a smaller RSL will not receive preferential terms because it is part of a group structure. Nor does it follow that a larger parent RSL will necessarily be able to access funding more easily or on better terms than much smaller RSLs.

8) RSLs that have entered into group structure arrangements are understandably keen to emphasise the benefits they think this might bring for tenants. But the current growth of group structures in Scotland is also being driven by wider, more worrying factors:

- In the last 2-3 years, we have seen a number of very large Scottish and UK-wide RSLs pursue business growth strategies that are designed to expand their presence in different parts of Scotland. The main players have included The Wheatley Group (based in Glasgow), The Riverside Group (headquartered in Liverpool), The Sanctuary Group (headquartered in Worcester) and the Gentoo Group (based in Sunderland).

- Some Scottish RSLs have allowed their future financial sustainability to be compromised, because of the scale of new housebuilding they have chosen to carry out at sub-marginal rates of Government subsidy. This has resulted in substantial increases in debt levels and may be a key driver for some group structure arrangements. Other RSLs, originally set up as local vehicles for Scottish Homes or New Town Development Corporation housing transfers, have not had sufficient provision in their business plans to invest in improving the quality of their housing stock.

- Where RSLs get into financial or other difficulties, and supervision by the Scottish Housing Regulator takes place, the outcome is increasingly for the RSL in difficulty to join a group structure.

In some cases, this has led to a group structure involving neighbouring RSLs (for example, Cloch and Oak Tree Housing Associations in Inverclyde).

More frequently, the resulting partnerships have been with much larger organisations that have no connection to the RSL’s local community. Recent examples include Tenants First Housing Co-operative in Grampian, which is now a subsidiary of the UK-wide Sanctuary Group; and Cordale Housing Association, a community-based housing association in West Dunbartonshire which is in the process of becoming a subsidiary of Caledonia Housing Association, an RSL that has no connection with West Dunbartonshire and whose main housing stock areas are in Perth and Kinross, Dundee and Angus.
9) There are some important lessons to be learned from elsewhere in the UK. Firstly, patterns of stock ownership among many of the largest UK RSLs are highly dispersed:

- For example, The Riverside Group (now the parent of Irvine Housing Association in North Ayrshire and seeking further growth in other parts of Scotland) owns social rented housing in more than 150 local authority areas in England. Its social housing stock is located in such diverse places as Liverpool, Leicester, East Anglia, Kent, London and Milton Keynes.
- The Riverside Group is a major landlord in several local authorities in the north of England. But it is a minor player in the vast majority of areas where it has stock: it has fewer than 100 houses for low cost rent in 120 of the local authorities where it owns such housing.¹

We are already seeing some group structure relationships in Scotland that have no apparent strategic rationale, other than a desire for growth on the part of the parent RSL. Based on the English experience, this will lead to more landlords providing tenant services through call centres or agency services, rather than having a physical presence for service delivery in their communities. This will also reduce the ability of local authorities to achieve effective partnerships with RSLs in their areas.

10) A further important lesson from England is that RSLs joining group structures as subsidiaries have no long-term guarantees about retaining their own separate legal identity. The early 2000s saw many smaller or locally based English housing associations becoming subsidiaries of much larger organisations. By the end of the decade, many parent RSLs in England were seeking to “collapse” their group structures for reasons of simplification, with smaller group members fully absorbed into the parent organisation rather than maintaining their own legal identity.

11) To provide some illustration of the collapsing of group structures in England, the Tenant Services Authority reported in 2010 that Sanctuary Housing Association was the parent of 8 other English RSLs which owned more than 22,000 houses between them. By 2013, it appears that only one of the registered subsidiaries (owning less than 2,000 houses) remained as an RSL in its own right.² Sanctuary is just one of a number of group parents in England that have reportedly collapsed their group structures in this manner.

Action needed to provide a clearer strategic and policy context

12) The rapid growth of RSL group structure activity is divorced from any rational strategic or policy framework for the future structure of the social housing sector in Scotland. The Scottish Government has stated the following position:

> "The Scottish Government’s vision for the future of housing associations and housing co-operatives and all other registered social landlords (RSLs), is focused on the outcomes these bodies can achieve rather than on their...

¹ Statistical Data Return 2012/13, Homes and Communities Agency. The same data source shows a similar pattern of highly dispersed stock ownership for other UK-based RSLs now operating in Scotland (Places for People, Sanctuary, Home)

² Data Sources: Tenant Services Authority Regulatory Judgement for Sanctuary Housing Association Ltd (December 2010) and Homes & Communities Agency Statistical Data Return 2012/13
structure as a sector… The Government does not believe that it could or should have a particular vision of what that structure might be in the future; rather it should encourage, and work with, all parts of the sector to achieve good housing and other outcomes for communities across the country.  

An unintended consequence of this laissez-faire position is that it has created an environment in which very large Scottish and UK-wide RSLs can pursue their ambitions for expansion.

13) Scottish RSLs are not looking to the Government to play a detailed role in prescribing what the structure of the RSL sector should be. But the current position is untenable if the Government wishes to have an effective influence over how its own policies are delivered and if it also wishes to promote rational, effective delivery partnerships between local authorities and RSLs.

14) It is essential that the Scottish Government and leaders from across the political spectrum should now take a more decisive position that actively supports and promotes the key delivery role of Scottish local authorities and of Scotland’s extensive network of local, place-based housing associations and co-operatives.

15) Within the Scottish housing system, democratic accountability and a focus on local communities are clear-cut matters for local authorities, community-controlled housing associations and other place-based RSLs with open membership policies and “one member, one vote” constitutions. Given this, Scotland’s politicians should champion the role of locally focused and accountable social landlords and give them real priority as delivery partners of choice for housing policy and programmes.

16) There are strong economic arguments for adopting this approach. Social landlords with a local focus and accountability (local authorities and local housing associations) are major contributors to sustaining local economies. By contrast, some of the types of RSL group structures that are now emerging will dilute these economic benefits:

- RSL subsidiaries within a group structure will frequently be required to arrange borrowing and to buy “group services” from the parent (for example in relation to corporate services, tenant call centres, housing development services, etc);

- Economic resources (rental income, loan repayments and jobs) will shift from local economies to where the parent operates – whether that is another part of Scotland, or elsewhere in the UK.

The economic impacts of group structure activity are not being quantified far less considered or debated at present. In our view, economic impacts should be central to government thinking about its support for housing in Scotland.

**Tenant consent for RSL group structures**

**The Housing (Scotland) Bill**

17) Group structures involve fundamental changes to an RSL’s constitutional control and its future arrangements for delivering tenant services. But because there is no

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3 Scottish Government response to the report of the Scottish Parliament’s Infrastructure and Capital Investment Committee on the draft Scottish Budget for 2013/14 (January 2013)
change of landlord, the Housing (Scotland) Act 2010 provisions for tenant consultation and ballots in cases of RSL restructuring do not apply to group structure proposals. Instead, the only statutory controls are that the Scottish Housing Regulator must give its consent to changes to an RSL’s constitution. Appendix 1 sets out in detail the statutory provisions and their limitations.

18) The current Housing (Scotland) Bill provides an opportunity to address these issues directly. The miscellaneous provisions in the Bill propose changes to tenant consultation requirements in cases where an RSL is at risk of possible insolvency\(^4\), the rationale being to respond to circumstances that were not foreseen at the time of the 2010 Act. We suggest that the same principle should apply to tenant consultation and consent in relation to group structure proposals. The 2010 Act did not make specific provision for these matters and this omission is now significant because of the growth of group structure arrangements since 2010 and the need to provide appropriate safeguards for tenants’ interests.

19) We suggest that the Bill could be revised as follows:

- Amending Parts 8 and 10 of the Housing (Scotland) Act 2010, to expand the statutory definition of restructuring to include the formation or joining of a group structure involving more than one RSL;
- Extending the tenant authorisation provisions in Part 10 of the 2010 Act (including the provisions for tenant ballots) to all restructuring cases falling within the expanded definition, regardless of whether the restructuring proposal would result in a change of landlord.\(^5\)

20) There is a strong case for making these statutory changes:

- Restructuring via group structures is happening on a substantial scale in the Scottish RSL sector and has a significant impact on the future interests of tenants and service users. It is unacceptable that tenants have no statutory rights to be consulted or to give their consent to such significant changes, as would be the case if a restructuring proposal resulted in a change of landlord.
- When an RSL joins a group structure, it relinquishes sovereignty and ultimate control over its affairs to a third party in return for whatever benefits the group structure arrangement is intended to provide. This has long-term consequences for tenants, because a parent RSL will typically have direct influence (and potentially, control) over matters such as a subsidiary RSL’s business plan, rent policy, housing investment policy, funding costs and service delivery structures and locations.

Appendix 2 sets out extracts from current SHR guidance on RSL group structures. The guidance extracts show the extent to which an RSL cedes

\(^4\) In exceptional cases where an RSL is threatened with insolvency (section 79 of the Bill).

\(^5\) Our proposal for tenant ballots would not apply to cases where exceptional regulatory action is needed. Section 79 of the current Housing (Scotland) Bill proposes that SHR would not be obliged to consult tenants before using its exceptional statutory powers to direct a transfer of an RSL’s assets, if the RSL was potentially insolvent. We would expect the same principle to apply to any tenant ballot requirements introduced for group structure proposals, ie ballots would be the norm but would not be required where an RSL was potentially insolvent and a statutory inquiry by SHR resulted in emergency action to avert the potential insolvency.
ultimate control over its affairs, if it decides to become a subsidiary within a group structure and if the parent RSL wishes to exercise its constitutional control over a subsidiary RSL. As we have already shown, this could include the risk that the subsidiary RSL will ultimately lose its separate legal identity at some point in the future.

- An RSL seeking to join a group structure needs only to **obtain the agreement of its shareholding members, not its tenants and rent-payers**. This can create a substantial democratic deficit.

For example, the decision to create The Wheatley Group and for Glasgow Housing Association to become a subsidiary of Wheatley was made by GHA’s board (under GHA’s constitution, its board are the only shareholding members). More than 40,000 GHA tenants had no say in the decision, nor will Wheatley’s Board be directly accountable to GHA tenants for its current plans to expand the Group’s activities, even though the Group’s main assets are tenants’ homes.

While the democratic deficit is most pronounced in the case of The Wheatley Group, it also applies in other cases and is largely hidden from public view. RSLs are under no obligation to publish a record of how many shareholders take part in votes about joining a group structure, or how the number voting relates to the total number of shareholders or the total number of tenants affected.

- There are strong concerns among many Scottish housing associations that they are becoming **sitting targets for takeovers** by very large RSLs.

In making statutory provision for tenant consent to mergers and transfers of engagements during the passage of the Housing (Scotland) Act 2010, the Minister for Housing and Communities told Parliament that “…**Such a safeguard is important not only for tenants but for landlords as the need to secure tenant support will make it much harder for another landlord to contemplate a hostile takeover bid**. (Col 3491)”. The same thinking and safeguards now need to be applied to restructuring through group structures.

**SHR’s regulatory requirements and decision-making framework for RSL group structures**

21) Changes to legislation should be accompanied by improvements to SHR’s regulatory requirements and decision-making processes for RSL group structures. Currently, these are set out in SHR’s Regulatory Framework and in a Regulatory Guidance Note published in April 2012.

22) SHR has recently announced that it has commissioned external research to inform changes to its regulatory guidance on group structures. We look forward to having the opportunity to discuss the research findings when these are published by SHR.

23) We would suggest three main areas where current regulatory guidance and practice could be strengthened to improve transparency and accountability and to better safeguard the interest of tenants.

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6 SPICe Briefing: Housing (Scotland) Bill as amended at Stage 2 (October 2010)
a) How group structure partners are identified/selected

24) Some important aspects of group structure activity lack transparency and are not subject to any clear rules on ethical practice.

- Some GWSF members have told us recently that they have been contacted by consultants acting for other RSLs, to test potential interest in group structure discussions. There is also a degree of ambulance chasing, to target RSLs suspected of being in difficulty.
- Group structure discussions can create significant potential for conflicts of interest (for example, in relation to senior staff salary increases/bonuses and enhancement of pension entitlements if an RSL joins a group structure).

25) Addressing these issues does not require changes in legislation. Through changes to its regulatory guidance and practice, SHR could ensure that:

- RSLs are required to adopt a transparent and accountable process for identifying potential group structure partners (whether on a voluntary basis or in cases where a group structure forms part of a rescue plan for an RSL in difficulty);
- RSLs are required to provide their tenants with a proper level of information about the process they have followed, and about the criteria applied and options considered, when selecting a group structure partner;
- SHR itself scrutinises how potential conflicts of interest have been managed in the development of group structure proposals, and ensures that RSLs are accountable to tenants for any material enhancements to senior staff remuneration that have occurred, directly as a result of group structure proposals.

26) Greater transparency would also be beneficial with regard to SHR’s own role in cases where rescue partners are being sought. This can be addressed under existing legislation which requires SHR to consult on and publish a code of practice on regulatory intervention. Such a code of practice should make clear that SHR has no role (formal or otherwise) in recommending potential group structure partners, unless it is using the statutory intervention powers set out in the 2010 Act.

b) How group structure proposals are assessed, to safeguard tenants’ interests

27) Current regulatory guidance is focused overwhelmingly on the business case put forward by the RSL that is seeking to join a group structure. It is much less clear how the prospective parent RSL is assessed by SHR. For example, in relation to:

- The prospective parent RSL’s risk profile
- The prospective RSL’s reasons for seeking to expand its structure to areas where it has no existing role and with which it has no strategic connection
- The impact the group structure proposal may have on the parent RSL’s own tenants, and their views on the proposal.

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7 Section 54 of the Housing (Scotland) Act 2010
28) These issues need to be embedded in SHR’s approach, since its overall purpose is to safeguard tenants’ interests. A number of the very large RSLs seeking to expand through group structures are complex organisations whose business models involve significant risks that potentially impact on the future interests of tenants. For example, if the prospective parent has multiple non-registered subsidiaries that operate for commercial purposes; or if the prospective parent uses complex financial instruments or higher-risk types of borrowing that may expose their subsidiaries to much higher levels of risk if there is on lending within the group.

29) Greater clarity is also needed about SHR’s role in assessing impact on the interests of the prospective parent RSL’s tenants. For example, does SHR expect prospective parent RSLs to meet financial neutrality conditions? If not, are the parent RSL’s tenants subsidising direct financial incentives to RSLs joining their landlord’s group structure?

30) Some group structure proposals involve parent organisations that are regulated by the Homes and Communities Agency (HCA), the housing regulator for registered housing providers in England, rather than by SHR. It is not clear whether SHR relies on information provided by the HCA when assessing group structures involving an English-based parent, or whether it carries out its own independent assessment of the motivations, risk profiles or business plans of the RSLs concerned. It is important that there should be transparency on these matters, since SHR’s statutory purpose is to safeguard the interests of tenants and service users in Scotland. SHR has still to publish details of its joint working protocols with the HCA, and this would seem to be a key area for action in making changes to SHR’s guidance on group structures.

c) Transparency and accountability for regulatory decisions

31) SHR does not currently publish any information about the specific benefits it expects RSL group structure proposals to deliver for tenants, when giving its consent to the proposals. Similarly, it does not publish any information about the extent to which those benefits for tenants are subsequently achieved. As such, there is a significant gap in public reporting of regulatory decisions on group structures. This does not sit comfortably with SHR’s statutory purpose of safeguarding tenants’ interests or with its overarching statutory obligation to perform its functions in a transparent and accountable manner.

32) The public minutes of SHR Board meetings indicate that with one exception (The Wheatley Group), the SHR Board has not been responsible for approving regulatory consents for constitutional changes relating to group structures.\(^8\) It is in our view essential that SHR’s Board should be directly responsible for group structure consents:

- Group structure proposals have a direct and significant impact on tenants’ interests. SHR’s statutory purpose is to safeguard those interests.
- Statutory consent to group structure proposals should not be classed as routine operational decisions that SHR’s Board should delegate to officers.

\(^8\) SHR Board meeting minutes suggest that an exception was made in the case of Wheatley because its registration as a non asset owning RSL was deemed to be a policy decision.
• SHR’s Board rather than its executive officers are accountable to Parliament for the performance of its regulatory functions. It is right that SHR’s own internal processes should reflect that accountability relationship where major decisions affecting large numbers of tenants are concerned.

Glasgow and West of Scotland Forum of Housing Associations
February 2014
Appendix 1
Current Legislation and Regulatory Guidance relating to RSL Restructuring


Part 8 of the 2010 Act, sections 96 to 104 sets out statutory requirements for regulatory consents where an RSL is seeking to restructure:

- “Restructure” in this context includes transfers of engagements, amalgamations and voluntary winding up/dissolution.
- Section 96(3) says SHR shall not give consent to restructuring proposals “... unless satisfied that (the RSL) has consulted its tenants about the matter for which consent is needed”.
- Section 97 confirms that transfers of engagements, amalgamations etc require the RSL seeking to restructure to pass a special resolution (in practice, an affirmative vote by its shareholding members) and to have this approved by SHR and registered by the Financial Conduct Authority.
- The RSL seeking to restructure needs to show it has consulted with tenants in order to obtain SHR consent. If a restructuring proposal would result in a change of landlord, Part 10 of the 2010 Act applies (“Special procedure for disposals and restructuring resulting in change of landlord”)

The main features of the special procedure set out in Part 10 of the 2010 Act are that:

- There is a statutory requirement for enhanced tenant consultation, with a range of specific requirements set out in section 115 (eg issue of a formal notice by the RSL, provision of information about the consequences of the change proposed, opportunities for tenants to make representations about the changes proposed).
- SHR’s consent to the disposal is subject to “tenant authorisation”. Tenant authorisation (i.e. consent) may take the form of a tenant ballot (section 118) or the written agreement of the tenants affected (section 119).

Part 8 Sections 96 to 104 of the 2010 Act and the special procedure for tenant authorisation set out in Part 10 of the Act do not apply to circumstances where an RSL is seeking SHR approval to join a group structure as the subsidiary of another RSL.

Instead:

- Part 8, section 93 of the 2010 Act requires SHR to give its consent to material changes to an RSL’s constitution (becoming a subsidiary of another RSL would require this).

There are no provisions in the 2010 Act that require tenant consent if an RSL is seeking to become the subsidiary of another RSL.

2. Regulatory Policy and Procedures

Regulatory policy and procedures about RSL restructuring proposals are set out in the following documents published by SHR:

- SHR Regulatory Framework: Consent to constitutional and organisational change and disposals (March 2012)
- SHR Regulatory Guidance: Organisational Changes (April 2012)
Where a change of landlord would be involved, the Regulatory Framework states that a tenant ballot will normally be required, unless a landlord makes a convincing case for why another form of written consent by tenants should be sought.

The separate SHR guidance on organisational change proposals and group structure proposals replicate the 2010 Act in applying different thresholds for tenants’ rights and tenant consent, depending on whether restructuring proposals will result in a change of landlord.

If there is no change of landlord, SHR’s guidance on Group Structures and Constitutional Partnerships confirms that there will be a lower threshold in terms of tenant information and consent:

“If the proposal does not involve a change of landlord we will expect tenants to be consulted about the proposal. We will wish to see a description of action taken to inform and consult tenants and any Registered Tenants Organisations about the proposals, and consultation outcomes. We may require the RSL to ensure tenants have access to independent advice funded by the RSL. RSLs should have a clear communications/consultation strategy that allows sufficient time for meaningful tenant consultation on the RSL’s proposals”. Regulatory Guidance on Group Structures and Constitutional Partnerships, Appendix 1
Appendix 2
Scottish Housing Regulator Guidance on RSL Group Structures

The following extracts from SHR’s Regulatory Guidance (April 2012) illustrate the reduction independent decision-making capacity that will typically be involved if an RSL joins a group structure as the subsidiary of another RSL:

“We place a strong emphasis on the role the parent body plays within the group structure, for example by determining the group’s strategy and objectives, monitoring the performance of subsidiaries, and taking action where objectives and standards are not being met” (para 14);

“The constitutions of group members must enable the parent to exercise and to take corrective action, where required” (para 20);

“Within group structures, the parent must have constitutional control over its subsidiaries… Constitutional control by the parent should normally be exercised through:

- Powers to control the majority of votes at a general meeting of a subsidiary; and
- Powers to appoint and remove a majority of the subsidiary’s governing body” (paras 24-25)

“Parent RSLs should exercise high-level control, by monitoring the activities and performance of their subsidiaries. Parent RSLs should take timely and effective action if their subsidiaries do not operate within approved limits or fail to meet agreed standards of performance.” (para 27)

“We require that if a subsidiary is an RSL, its governing body should as a minimum have sufficient members to form a quorum independently of any members who are also governing body members of the parent organisation. This does not restrict constitutional rights a parent may have to appoint or remove governing body members of a subsidiary or to use any other step-in rights”. (para 31)

“The basis for interventions by the parent should be clearly described and applied. For example:

- If a subsidiary does not adhere to financial or other agreed limits, the parent should have clearly defined rights to step in and take action;
- Parent RSLs should have unrestricted step-in rights where a subsidiary or its governing body is experiencing serious problems (for example, relating to the governance, financial management or performance of the subsidiary). Step-in rights should include the power to appoint and where necessary remove members of the subsidiary’s governing body”. (para 42)
LEGAL SERVICES AGENCY

WRITTEN SUBMISSION

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.

Very generally, we appreciate that it is important for neighbours, the community and, in the long, term, those guilty of anti-social behaviour, that that behaviour be controlled and the individuals and families concerned be rehabilitated.

However the route to that end entails a balancing of the rights and interests of all concerned including those who have committed, or are accused of, anti-social behaviour, their partners and children.

All are entitled to somewhere to live and should not be pushed into a homeless underclass. Where are they to go?

Whilst the allocation of housing and eviction, or the threat thereof, play a part in the control and ultimate cessation of anti-social behaviour they must be a last resort. Eviction followed by, in effect, removal of any further housing options for tenants and their families is a draconian step that will impact most on the youngest who of course will have been entirely innocent of any fault.

Your Committee will be fully aware, of course, that many of those who behave in an anti-social manner do so because of either highly stressed circumstances, mental disorder, learning difficulties or other difficulties. Many are motivated to change and do so. Whilst others are suffering an exacerbation in their mental ill health and require additional care to manage behavioural symptoms arising from the disorder. There can also be issues of neighbours who are acting in a discriminatory way towards those with mental disorder or learning difficulties.

We can hardly overstate the adverse impact mental health and addition problems can have on families, including children: for that to be exacerbated by eviction followed by the removal of further housing options is harsh indeed.

Some of the issues arising in the Bill to which these general comments are directed include the following (the numbers relate to the section numbers of the Bill).

Section 5 repeals earlier provisions concerning the allocation of housing and seeks now to permit social landlords to take into account the age of an applicant
age 16 or over. As the proposed amendments comments, this does not alter the requirements to avoid unlawful discrimination on the grounds of age.

We are not comfortable with this provision and think that it will be difficult, in practice, for RSL’s to manage lawfully and clearly. If the problem aimed at related to maturity and the ability to sustain a tenancy or needs that may arise as a result of mental or physical frailty or disability these factors should be highlighted rather than attempting to use age as a proxy.

Section 7 (2) permits RSL’s to impose a requirement that an application for housing must have remained in force for a minimum period before the applicant is eligible for the allocation of housing. We are not advised as to the period concerned: at the very least there should be a maximum time (3 months?).

In any event, we have difficulty understanding why those in housing need should have to wait before they are even considered for housing as a matter of policy. In permitting RSL’s to desist from housing tenants and their families with difficulties, policy makers do have to follow on by indicating their views as to precisely where such citizens (at fault though they may be on occasion) should live, whether temporarily or permanently. There is plainly already a major crisis in the provision of temporary accommodation.

We note that the proposed amendments state that a RSL may not impose a requirement (a minimum period of time) “if the landlord … is a local authority and has a duty to an applicant” (a duty to secure accommodation where the applicant is homeless).

In passing it should, of course, be noted that local authorities are under limited duties to homeless persons if it can be said they are “intentionally homeless” unless, of course, they suffer from a mental disorder in which other duties come into play.

Given that so much housing is now, of course, owned and let by RSL’s, the protection given by this subsection to homeless persons is very limited. The protection should be extended to provide that it applies not only to local authorities but also to RSL’s.

The proposed change goes on to provide that RSL’s must have regard, in imposing a qualifying period for the allocation of housing, to any Guidance issued by Scottish Ministers on the maximum period preceding the application which should be considered in relation to a variety of circumstances (see below), including where the applicant has (been alleged) to have acted in an anti-social manner or pursued a course of conduct amounting to harassment.

The judgement as to whether the circumstances relating to anti-social behaviour apply or not, seems to be entirely in the hands of the RSL concerned and could
be open to a variety of interpretations. We are not happy with the high level of discretion given.

Other grounds for the removal of eligibility for housing for undefined periods of time include “abandonment” by the tenant or joint tenant of a former tenancy. The new provisions include even a joint tenants interest having been terminated by the abandonment procedure – this could mean a couple separate, one leaves and then cannot access public sector housing for a period of time simply because they haven’t informed the landlord that they have left. Recovery of possession through the abandonment procedure can occur owing to mental health problems, hospitalisation, imprisonment, a chaotic lifestyle or a range of difficulties: as well as, simply a mistake by the landlord concerned.

Whilst an applicant for housing may appeal by Summary Application to the Sheriff against a requirement that an application for housing must have remained in force for a minimum period of time before the applicant is eligible for allocation of housing, no criteria as such are given for how the Sheriff would reach his/her decision on the matter. Not even a test of “reasonableness”.

Of course, human rights “proportionality” would apply: we would however very much prefer that it be stated that the RSL’s decision on the requirement be subject to a test of statutory “reasonableness”.

Such a statutory test would inform the policy of the RSL as well as give guidance as to the forms of argument to be expected as part of a summary application.

It should be noted that it would appear that quite tough procedural requirements would exist for such a Summary Application. The Court action would for instance, probably be required to be raised within 14 days of the decision complained of.

We would suggest that the timelimit for such an application to the Court be extended to a minimum of two months.

From our experience in dealing with “homelessness” cases we have found the Review procedure that is provided for, in terms of that legislation useful, (a Review by a more senior, independent officer of the local authority) and would suggest that there might be much to be said for introducing such a procedure in these cases as well as an application to the Court.

We would also like RSL's to be required to formally intimate by First Class and First Class Recorded Delivery any such decision which should include not only the decision, the reasons for the decision as well as the facts founded upon by the decision maker, as well as details of the Review and Appeal's process.
Section 8 deals with the creation of a Short Scottish Secured Tenancy (SSST’s).

The Section develops the principles upon which a SSST can be created by, amongst others, permitting a landlord to serve a conversion notice on grounds that the tenant, a person residing or lodging with, or a subtenant of the tenant, or a person visiting the house has, within the period of three years preceding the date of service committed a range of anti-social conduct and behaviour.

We are concerned that the notice may be served on the basis of quite limited contact with the tenant (by visitors) and the premises and, that within a period of 3 years. This period is far too long and it may make it impossible for tenants to dispute a claim given that the landlord may have records but that the tenant may not have any records, or not even remember any incidents. The period should be reduced to a period of one year at the most.

The conduct upon which the service of a Notice creating the SSST can be based, is vague involving acting in an anti-social manner or pursuing a course of conduct. The change of a secure tenancy to a much more insecure SSST is a serious step concerning a tenant and his/her family’s home. The criteria upon which such a step is to based should be as clear as possible with some indication in the statute requiring that the behaviour be of some significant objective seriousness.

We would also prefer that it be required that the landlord in deciding to serve the notice creating a SSST have regard to the overall “reasonableness” of the step.

Section 12 relates to recovery of possession of the SSST. We consider this step to be a major one given that as a result of it the tenant and his/her family may be evicted with considerable difficulty thereafter in obtaining accommodation elsewhere.

Section 12 provides that a ground for recovery of possession/seeking eviction from a SSST be, amongst others that an obligation of the tenancy has been broken.

We would suggest that it be made clear that an obligation of some substance requires to have been broken.

Section 13 relates to a “tightening up” of the rights that flow from secure tenancy status. (The “Tenants Charter”).

The change to the rights concerned would not appear generally to have a major impact on those in significant housing stress for whom we generally act.
However, we are concerned that the rights in relation to assignation and subletting and, in Section 14, succession all require notification that the house concerned was the applicant’s only or principal home before the application concerned.

This is contrasted to showing as a matter of fact that the house concerned was the applicant’s only or principal home.

We do not see how the landlord’s interest would be prejudiced in any way by requiring proof as a matter of fact and or notification as opposed to merely by notification.

Section 15 concerns grounds for eviction based on anti-social behaviour from a SSST.

Paragraph 31 of the Guidance states that this (Section 15) inserts new paragraphs to the 2001 Act to remove a requirement that the court considers whether it is reasonable to make an order for eviction in cases where another court has already convicted a tenant of using the house for immoral or illegal purposes or an offence punishable by imprisonment, committed in or in the locality of the house.

The Guidance goes on to state that the tenant would go on to retain a right to challenge the court action.

It should be noted that where there is no defence of “reasonableness”, the grounds to challenge a court action are limited to disputing whether the acts founded upon did, or did not, take place.

The additional test of “reasonableness” allows the court to take into account the seriousness of the facts as proven, the impact of the eviction on the tenant and his/her family as well as the benefit (if any) to the landlord, the neighbours and the community.

In general, the statutes relating to eviction provide for a requirement of reasonableness and, in any event, in some situations human rights “proportionality” will import such a requirement as a matter of law and principle anyway.

Insofar as Parliament chooses to change this area of law we would urge that a requirement of reasonableness be retained. We are reasonably confident that if Parliament were not to choose to do so, the Court would, as a consequence of human rights proportionality, in effect have to reinstate such a requirement to some degree.

We refer to Orlic v Croatia [2011] HLR 44 at paragraph 65:
“in this connection the court reiterates that any person at risk of an interference with his right to home should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under art. 8 of the Convention, notwithstanding that, under domestic law, he or she has no right to occupy a flat (see muttatis mutandis McCann v United Kingdom ay [50]).

Reliance on human rights proportionality is however not a substitute for the full assessment of reasonableness which entails looking at the circumstances of landlord and tenant as a whole and provides the court with an opportunity to look at all the facts.

Part 3 provides for certain recovery of possession/eviction actions currently raised through the Sheriff Court to be taken to the Private Rented Housing Panel.

This is a comparatively modest step and we do not as such have significant concerns about this currently given that the numbers involved are small and the grounds for disputing recovery of possession in the private sector are generally much more limited than in the social rented sector. We would however wish it to be made emphatically clear that whilst we are making no objection to the proposal, we should not be taken to in any way support a proposal, if it were made, for eviction actions in the public and socially rented sector to be taken out of the courts.

As regards the proposal in the Bill our main concern is that currently Legal Aid is not available for the Tribunal. (Private Rented Housing Panel). Where eviction, and all the technicalities of private rented sector law is concerned there will be many tenants who currently receive Legal Aid in the Courts who would not do so through the Panel system. An absence of Legal Aid will infringe their Article 6 Rights and we would propose that some form of Legal Aid be made available for those threatened with eviction in cases before the PRHP (this is of course as usual subject to tests on the grounds of reasonableness and financial circumstances).

Summary

We are very pleased to have had the opportunity to have made written submission followed by verbal submissions albeit at a comparatively late stage in this Bill.

We would have much preferred to have had the opportunity to take part in the initial discussions upon which the Bill is based and have no doubt that Parliament would have ended up being better briefed on the range of views of relevant had that taken place.
Nonetheless, of course, we remain appreciative of the time provided to us for us to articulate our views.

Legal Services Agency
16 January 2014
THE LAW SOCIETY
WRITTEN SUBMISSION

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

General Comments

This is a very significant Bill which covers a number of items. Part 1 relates to the right to buy; Part 2 relates to social housing; Part 3 relates to private rented housing; Part 4 relates to the regulation of letting agents; Part 5 relates to mobile home sites with permanent residents; Part 6 relates to private housing conditions and Part 7 is a miscellaneous Part dealing with various aspects of housing law.

Part 1 – Right to buy

Section 1, Abolition of the right to buy

The abolition of the right to buy is a policy decision of the Government on which the Society has no view. However the exercise of that right over the years since 1980 has reduced the availability of good quality affordable housing in the public sector. It is important for Government to encourage the public and private sectors to build sufficient houses so that people can have access to good quality affordable homes.

Section 2, Amendment of right to buy provisions

The Society has no comments to make.

Part 2 – Social housing

Sections 3 – 7 deal with the allocation of social housing. The provisions appear to be reasonable and will achieve their objective.

Sections 8 – 12 deal with short Scottish secure tenancy in the context of anti-social behaviour.

These provisions seem reasonable and will attain the objective set out.

Sections 13 – 16 deal with the Scottish secure tenancy in connection with assignation, sub-let, joint tenancy, succession, grounds for eviction (where there is anti-social behaviour) and recovery of possessions. These provisions seem reasonable and will attain their objective.
Part 3 – Private rented housing

Sections 17 – 21 deal with the transfer of the sheriff’s jurisdiction to the first tier tribunal. The Society approves of this change.

Sections 22 – 25 deal with landlord registration and the time limit for determining applications and the enforcement of the repairing standard.

The Society approves of these provisions.

Part 4 – Letting agents

Part 4 creates a register of letting agents and requires letting agents to register operating as a letting agent without registration is a criminal offence. Letting agency work means things done by a person in the course of that person’s business in response to relevant instructions which are:-

(a) carried out with a view to a landlord who is a relevant person entering into or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlords house as a dwelling; or

(b) for the purpose of repairing, maintaining, improving, insuring or otherwise managing a house which is or is to be subject to a lease or arrangement mentioned in paragraph (a).

Section 26 requires Scottish Ministers to establish and maintain a register of letting agents.

The Society supports the regulation of letting agents. This will be of assistance to landlords and tenants alike.

However the Society is of the view that it is inappropriate for solicitors who act as letting agents to be subject to an additional registration process governed by Scottish Ministers and that Scottish solicitors should be exempt from this scheme. The reasons for the exemption are:-

1) The legal profession must be independent of Government.
2) Solicitors in Scotland are regulated by the Law Society of Scotland and subject to stringent rules of admission and detailed practice rules covering professional ethics and conduct and many other aspects of practice. Those practice rules require the approval of the Lord President.
3) Solicitors are subject to an independent, statutory complaints body, the Scottish Legal Complaints Commission.
4) Under the Solicitors (Scotland) Act 1980, the Law Society of Scotland maintains a wide set of public protections including the Master Policy for professional indemnity and the Scottish Solicitors Guarantee Fund which provides compensation in the event of dishonesty.
5) Creation of the scheme of regulation for letting agents which would include solicitors would duplicate some aspects of regulation and add cost and expense to solicitor businesses.

The Private Landlords and Letting and Managing Agents (Regulation) Bill, which is a private members bill in the House of Commons creates the letting agent regulation system by amending the Estate Agents Act 1979. That Act does not apply to solicitors in England and Wales.

Section 27 sets out the details of the application process for registration.

Section 28 makes it an offence for a person who makes an application to provide false information.

Section 29 provides that Scottish Ministers must determine an application and must enter the applicant in the register if they are satisfied that the applicant is a fit and proper person to carry out letting agency work.

Section 30 provides the considerations which Scottish Ministers must have regard to in determining whether a person is a fit and proper person to become a registered letting agent. It is material to this consideration if the person has been convicted of an offence involving fraud or other dishonesty, violence, drugs, firearms or is a sexual offence or has practiced unlawful discrimination on the grounds of any of the protected characteristics in the Equality Act 2010 or has contravened any provision of:-

(a) The law relating to housing;
(b) Landlord and tenant law; or
(c) The law relating to debt

Material information also relates to compliance with the letting agent code of practice, compliance with any other letting code or failure to comply with a duty to use a letting agent registration number or contravention of any letting agent enforcement order or failure to pay any costs in connection with an application to the first tier tribunal.

The definition of a “fit and proper” person in the context of section 30 is limited to certain defined characteristics. It is unclear what is meant by any contravention in relation to the “law relating to debt” or the “law relating to housing”. These expressions need further definition. Does ‘person’ in this section only relate to a ‘natural person’?

The section does not include contravention of professional rules or removal from the roll of a professional body of which the applicant for registration as a letting agent may have been a member and it also fails to take into account ‘associations’ which the applicant may have.

Furthermore, there is no requirement for the person who wishes to become a registered letting agent to have training or qualifications in letting property, nor to have in place any client protections. It is difficult to envisage how this
system will actually protect prospective landlords or tenants (except in a very basic way) or enhance the services of letting agents.

Section 31 relates to the criminal record certificate of a fit and proper person.

Section 32 requires Scottish Ministers to allocate a letting agent registration number to each registered letting agent. This number must be included in any document sent to a landlord, tenant, prospective landlord or prospective tenant during the course of the agent’s work; any property advertisement or any other document or communication specified by Scottish Ministers.

Section 33 imposes of registered letting agents a duty to inform Scottish Ministers of any information provided by the agent should it become inaccurate. It is an offence to fail to comply with this obligation.

Section 34 requires Scottish Ministers to remove a registered letting agent from the Register if the agent has not made an application for renewal at the expiry of three year’s registration.

Section 35 provides Scottish Ministers with the power to remove a registered letting agent from the register if they are satisfied that the person is no longer a fit and proper person to carry out letting agency work. Scottish Ministers are required to provide notice to the individual who is subject to the revocation order. Scottish Ministers must consider any representations before making the determination.

There is no provision for making oral representation or for the agent to be represented in connection with the making of representations.

Section 36 – appeals

A person may appeal to the First tier Tribunal against the decision by Scottish Ministers under Section 29 to refuse to enter that person’s name on the Register or to renew a registration or under Section 30 to remove the person from the Register.

Section 37 requires Scottish Ministers to note a refusal to enter a person in the Register or renew an entry on the Register. It also requires Scottish Ministers to note a removal on the Register.

Section 38 provides that where a person has been refused entry to the Register, or has been removed from the Register, no costs incurred by that person in respect of letting agency work are recoverable and no fees may be charged.

There does not appear to be a sanction for seeking to recover expenses or fees in these circumstances.

Section 39 provides that it is an offence to operate as a letting agent without registration.
Section 40 provides that it is an offence for using a registration number where the person is not registered.

Section 41 provides Scottish Ministers with discretion to make by regulations a code of practice which provides the standard of practice of persons who carry out letting agency work.

Solicitors are already subject to a code of standards as part of The Law Society of Scotland Practice Rules 2011. It is inappropriate for Scottish Ministers to set a code of practice for solicitors.

Section 42 prohibits contracting out of the letting code of practice or to impose any penalty disability or obligation in the event of a person enforcing compliance by the letting agency with such a duty.

Section 43 provides that a tenant or landlord may apply to the First-tier Tribunal for a determination that a letting agent has failed to comply with the letting agent code of practice.

Section 44 provides for the First-tier Tribunal to vary or revoke enforcement orders.

Section 45 provides that if a letting agent fails to comply with an enforcement order from the First-tier Tribunal, it may notify Scottish Ministers of that failure.

Section 46 provides that it is an offence for a letting agent who, without reasonable excuse fails to comply with a letting agent enforcement order.

Section 47 provides for transfer of jurisdiction of actions involving letting agents.

Section 48 provides for offences by bodies corporate.

Section 49 allows Scottish Ministers to delegate any of their functions relating to the Register to such persons as they consider appropriate.

This provision requires further thought. The qualifications and training of the delegate, the method of appointment and removal and the powers which the delegate will exercise should be stated on the face of the Bill.

Section 50 amends the 2004 Act in respect of landlord registration where an agent is a registered letting agent.

Section 51 provides the definition of letting agency which means “things done by a person in the course of that person’s business in response to relevant instructions which are carried out with a view to a landlord who is a relevant person entering into or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord’s house as:-
Section 51(1)(b) is very widely drafted and could include a number of people in the definition of those doing 'letting agency work' who are not actually letting property.

The Private Landlords and Letting and Management Agents (Deregulation) Bill contains a definition of letting agents work as follows:-

(a) things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as “the client”) who wishes to let or have the letting of an interest in land managed (for example, the collection of rents on his behalf) –

(i) for the purpose of, or the view to, effecting the introduction to the client of a third person who wishes to let an interest in land; or

(ii) after such introduction has been effected in the course of that business, for the purpose of securing the letting of the interest in land; or

(iii) the for the purpose of, or with a view to, managing the letting of the interest in land on behalf of the client; or

(iv) for the purpose of, or with a view to, block management of interests in land; and

(b) management activities undertaken by any person in the course of a business (including a business in which he is employed) in connection with land or interests in land”.

This is a more comprehensive definition which might be (with appropriate modifications) more effective than the one in the Bill.

Section 52 provides for interpretation of Part 4.

Part 5 – Mobile home sites with permanent residents

The Society has no comment to make.

Part 6 – Private housing conditions

The Secretary welcomes the Tenement Management Scheme in Section 77.

Part 7 – Miscellaneous
The Society has no comment to make.

Part 8 – General

The Society has no comment to make.

The Law Society
21 January 2014
Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 22 January 2014

[Housing (Scotland) Bill: Stage 1]

The Convener (Maureen Watt): Good morning and welcome to the second meeting in 2014 of the Infrastructure and Capital Investment Committee. I remind everyone to switch off mobile phones and other such devices as they can affect the broadcasting system, but I note that some committee members will use their tablets to consult their papers. I also welcome Patrick Harvie to the meeting.

Adam Ingram will begin the questioning.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): Good morning, everyone. The Scottish Government's declared vision is "that all people in Scotland live in high quality, sustainable homes that they can afford and that meet their needs." To what extent do the bill's provisions support that vision?

David Bookbinder (Chartered Institute of Housing in Scotland): I am happy to kick off on that. A lot of areas in this wide-ranging bill will contribute to the improvement of housing and housing standards in the private rented sector, the owner-occupied sector and indeed the social sector. Only certain parts of it relate to physical standards, particularly in the owner-occupied and private rented sectors, but the overall issues with regard to rights, obligations and an improved housing system across the sectors are reflected in almost every part of the bill.

Rosemary Brotchie (Shelter Scotland): I thank the committee for the opportunity to give evidence. Shelter Scotland very much supports the bill's aims and feels that many of the measures will achieve them. However, as the session continues, members will note that a few concerns that we have about some areas will emerge, and we suggest that the committee might wish to look for certain areas to be strengthened. If you have had an opportunity to read our submission, you will have seen that there are a few areas—particularly the provision of temporary accommodation and permanent homes for people who have found themselves homeless, and safety standards in the private rented sector—where we think an opportunity to strengthen the bill has been missed.

Andy Young (Scottish Federation of Housing Associations): I thank the committee for inviting the SFHA to give evidence. We support the bill's broad aims and principles, but I agree with David Bookbinder that in general it deals with the management of tenancies rather than with supply, which is more linked to your question.

Alan Benson (Glasgow and West of Scotland Forum of Housing Associations): On behalf of the forum, I thank the committee for the invitation to give evidence. Like others, we agree with the bill's general principles and think that it is certainly moving in the right direction. Housing bills do not come around very often, so when they do it is essential that we use them to deal with the real and difficult housing issues that still exist in Scotland.

I back up the other witnesses' comment that certain details still need to be addressed. We can discuss them later in the meeting but, as far as the private rented sector is concerned, the bill does not contain much to try to improve standards, which will be a major issue for the sector if it is increasingly to be used to help people in housing need.

Adam Ingram: I am sure that my colleagues will pick up on some of the issues that you have mentioned.

The Scottish Government expects one of the bill's main outcomes to be sustainable communities. Do you agree that its provisions support that outcome?

David Bookbinder: As the committee knows, the bill contains a number of measures to help landlords to have more flexibility on allocations and to deal more effectively with antisocial behaviour. Those provisions could be said to have the aim of helping to maintain sustainable and cohesive communities and we very much welcome them.

However, we should not overegg the extent to which the provisions on allocations and antisocial behaviour will dramatically change the situation. Social landlords already have good flexibility on allocations. The bill contains welcome clarification
and minor amendments to the existing legislation. We very much welcome provisions such as that to allow landlords to take age into account when allocating housing, which is common sense.

No single measure on antisocial behaviour will change the world. Serious antisocial behaviour cases will always be tricky to deal with, but there are significant improvements that will help. Any way in which legislation can help landlords to deal with antisocial behaviour will contribute to happier and more settled communities.

Rosemary Brotchie: Adam Ingram's question pointed to management in the social rented sector. On achieving sustainable communities, David Bookbinder identified the antisocial behaviour measures in the bill. Shelter Scotland agrees that much more needs to be done to ensure that social landlords provide the best supply from a limited social stock, but we have concerns that the proposals on eviction processes could have negative consequences, given how they are defined in the bill.

We have concerns, but we agree that responses to antisocial behaviour should be strong, consistent and effective. We do not want any detrimental change to housing law that would affect tenancy rights as a knee-jerk reaction. We want to ensure that landlords can use the responses in the bill effectively.

Andy Young: David Bookbinder is right and I agree with him again. It is important to realise that the bill’s measures alone will not be a panacea for tackling antisocial behaviour, which will always require a multi-agency approach.

Alan Benson: Our forum represents community-based housing associations in Glasgow and the west of Scotland. We argue that we have provided sustainable and cohesive communities for the past 35 years or so. We feel under siege to an extent, because the major issue is that it is becoming more difficult to maintain those communities and all the good work that has happened. We would support anything that the bill can do to reverse that trend.

The rent payers in our communities are now expected to meet a lot of added costs that were not expected to be met in the past, such as the cost of maintaining waiting lists. That was a good idea in previous legislation, but it costs an organisation such as the one that I work for £6,000 a month. Perhaps that money could be better spent. Our organisation has 150 voids in a year, but 1,000 people are on our waiting list. It would be useful to debate that and consider how best existing resources can be used. However, the thrust of maintaining stable communities is good.

Adam Ingram: Are you content with how the Scottish Government’s consultation process was conducted? Do you have any issues with that?

David Bookbinder: The consultation was comprehensive. Various issues were covered in different consultation processes, such as the right to buy, social sector tenancies and allocations and the future of the private rented sector. By and large, we could not say that consultation has been lacking. However, there was no prior consultation on one or two measures that appear towards the end of the bill. I will not go into detail on that now, but it meant that some of us were not in a position to comment in detail on some of the newer provisions relating to, for example, the Scottish Housing Regulator. We need more time to look at such provisions, but thankfully there is more time between now and stage 2 in which to do that.

Rosemary Brotchie: I agree with David Bookbinder. Different Scottish Government teams consulted on different parts of the bill, so there was no single consultation. I echo the point that measures have appeared in the bill that we were perhaps not expecting as a result of the consultation process, and we need some time to consider them. That approach has meant that there are some additional measures that we would have promoted through the consultation process had we had the opportunity to do so. I hope that the committee will consider those issues at stages 1 and 2.

The Convener: What specific measures are you talking about?

Rosemary Brotchie: An example is that there was no opportunity during the consultation to raise particular issues around electrical safety in the private rented sector. We have also identified other matters on which we would have wanted to respond but that did not fit into any of the areas that were consulted on.

Andy Young: It is a fair point to say that some issues were not consulted on but, on a positive note, the consultation was very thorough on those issues that were consulted on, and our members were allowed to feed into the process.

Alan Benson: I echo that. Some of the views that our members expressed in the pre-legislative consultation were taken on board when it came to the drafting of the bill, so we were pleased with the process. Probationary tenancies is one such issue on which our members commented and that has not appeared in the bill, so someone must have listened to us during the pre-legislative process.

Adam Ingram: Thank you.

The Convener: As members have no further questions on that topic, I call Alex Johnstone, who has some questions on the right to buy.
Alex Johnstone (North East Scotland) (Con): Abolishing the right to buy is a headline objective of the bill. What benefits will come from that?

David Bookbinder: The key benefit is supply. For reasons that everyone is familiar with, recent years have not seen as many sales as were made in the 1980s and 1990s. 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.

Ultimately, right to buy is an individual right, and it is difficult to use it in a strategic way. Its time in Scotland has very much come. Even if, as I said, sales are not enormously high at the moment, that could change, which would make greater inroads into removing supply. CIH Scotland believes that the measure is hugely welcome.

Alex Johnstone: Will you reduce the matter to simple numbers? How many vacancies do you expect to be created by the abolition of right to buy?

David Bookbinder: I do not have those figures.

Alex Johnstone: Those who are denied right to buy, for the most part, will continue to be tenants. A deep assumption in the argument is that abolishing right to buy would massively increase housing stock availability, so how many vacancies will be created by abolishing that right?

David Bookbinder: An oft-used argument in favour of right to buy is that a tenant who buys does not vacate the property, but if they had not bought, they might not have immediately vacated the property either. That is a short-term argument. The longer-term argument is a no-brainer—that supply is increased by maintaining council and housing association stock at its maximum.

I do not have figures to hand, but I would be happy to supply them. I think that the Scottish Government has already supplied figures in the policy memorandum that accompanies the bill. It is undoubtedly the case that abolition will have a beneficial impact on supply over the longer term.

10:15

Alex Johnstone: I think that the sales rate is currently about 1,000 a year in Scotland, but if we abolish right to buy, we will not create 1,000 vacancies a year. We will create a number that is very much smaller than that—if there are any, initially.

David Bookbinder: It is a longer-term move. As I said, if we look at the impact on supply over the longer term, there is no doubt about the contribution that right to buy has made to depriving councils and housing associations of the ability to house people in housing need.

Rosemary Brotchie: I agree with everything that David Bookbinder has said. I add that the issue is not just the volume of stock that is lost through right to buy but the types of homes that are lost. When I say “lost”, I mean lost from the social sector. We have often seen the most desirable and best maintained homes in the best areas—often homes with particular characteristics—sold to their tenants, so that they are no longer available to social tenants in the future. Being able to secure those properties for the future is important.

Andy Young: The long-term issue is important. A study was done a couple of years ago—off the top of my head, I cannot remember the names of the people who carried it out, but I can supply the details later—that revealed horror stories about ex-right-to-buy properties that are now in the private rented sector for rents approaching double what the social rent would be. The study suggested that, UK-wide, that is costing the public purse up to £2 billion a year in excess housing benefit. That is one of the longer-term issues that David Bookbinder referred to.

Alan Benson: Working for a housing association, I know that there are practical issues around right to buy in relation to trying to manage the business, as the asset base is at risk all the time. That is one of the issues that we are dealing with.

Alex Johnstone is right to say 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.

As time has gone on, the issue from our perspective has been the discount. If people in our community want to buy a house that they have lived in at the full market value and become owner-occupiers, that is fine, but that is not what happens in reality. What happens is that the discount gets used and people move the property into the private rented sector and, as Andy Young said, double the rent. That problem has never been addressed over the past 30 years.

Alex Johnstone: The proposal to abolish right to buy includes a three-year notice period. When we discussed that with officials last week and asked them the reason for it, they cited human rights as one of the issues. Given that a right is being taken away, they believe that a three-year notice period is appropriate. What are your views...
on the notice period? Do you believe that it is a human rights issue?

David Bookbinder: I am not a lawyer, but I think that there are probably human rights implications when an existing right is taken away. I can understand why ministers have been keen to ensure that they are acting reasonably in this situation so that tenants have a chance to plan ahead and consider their options.

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. A period of two years rather than three would also give landlords more stability and certainty about future finances, and it would perhaps also limit the period in which there might be some peaking of sales. We believe that two years would be a reasonable period.

Rosemary Broatchie: The proposed notice period is excessive. I do not think that it is necessary to give tenants that long. It could be quite damaging, and not just from the point of view of the peaking of sales, which David Bookbinder mentioned. We also know—this has been evidenced before—that when the right to buy has been restricted or limited, companies out there almost prey on vulnerable tenants to persuade them to purchase the property when that might not be the right thing for them to do financially or in terms of their security. If we give people too long an opportunity to decide whether to purchase, we might see some detrimental effects on tenants.

We need to give people long enough to make an informed decision on whether to purchase their rented property, but three years is too long for that. We have suggested that six months to a year would be a reasonable period. A lot would also give landlords more stability and certainty about future finances, and it would perhaps also limit the period in which there might be some peaking of sales. We believe that two years would be a reasonable period.

Andy Young: It is probably worth pointing out that three quarters of the respondents to the consultation also thought that three years was too long. I agree with Shelter that a year seems more appropriate.

It puzzles me slightly that the Scottish Government seems to be a bit concerned about legal challenges to the provision. The situation with the right to buy is so complex and multilayered that there are lots of other situations within it that are probably more open to legal challenge than the notice period. For example, the right to buy for people who live in areas that have pressured area status has, in effect, ended. I would have thought that that would have provoked more of a chance of legal challenge.

Alan Benson: I echo what has been said. I am not a lawyer so I cannot comment on the human rights issue. However, I agree with what Rosemary Broatchie said on behalf of Shelter, which was that three years is too long. We reckon that the period should be one year, as we have said previously. The vast majority of our members feel that that is an appropriate timescale.

Alex Johnstone: As Andy Young pointed out, people who live in pressured areas will not get the right to buy unless that status is lifted prior to the end date. Does the bill adequately address the position in which individuals in pressured areas might find themselves? Is it necessary for the bill to look further at the situation of people who would like to buy but who live in pressured areas and will remain there until the right is gone?

Andy Young: To be honest, I do not think that you could legislate for every little connotation of the current right-to-buy situation. For me, it would be quicker and cleaner just to draw a line under it.

Alex Johnstone: Is there a danger that, if we try to legislate for every area, we will create anomalies that will then be exploited through the courts?

Andy Young: Possibly.

Rosemary Broatchie: Pressured area status has been brought in for a significant and important reason. On the point about the committee possibly undermining that by trying to alter the abolition, the consensus in the consultation was that the sooner the right to buy is ended, the better.

Alex Johnstone: I will come at the right to buy from an entirely different angle. Another issue is that, regardless of whether you approve of it, right to buy has been an income stream for social landlords—money has come in as a result of properties being sold. Will losing that income stream have any implications for social landlords?

Andy Young: It is likely that the worst affected will be the larger stock-transfer type of organisations. The indications are that the abolition of right to buy will have either a positive or a neutral effect, so the organisations are really not concerned about loss of receipts at all.

Rosemary Broatchie: I cannot comment on the landlords’ perspective on the issue. However, even if the right to buy is removed, landlords will still be able to sell if they choose to do so. Such sales will be planned sales; landlords will be able to plan for them and sell the stock that they think is appropriate for selling. If a landlord needs to raise
income and considers that selling off stock is the best way to do that, they will not be precluded from doing it by the abolition of right to buy.

**Alex Johnstone:** Okay. Thank you very much.

**The Convener:** If you want to have a shorter notice period—a year, say, rather than three years—might there be any difficulties in that? Even if the period is three years, do you envisage a rush of tenants wanting to buy within that three years—or one year? Has there been any indication from tenants that that might be the case?

**Andy Young:** The honest answer is that we just do not know. There is always a danger that, if we make the notice period a year, there will be a stampede. I cannot see that happening in reality, but it is of course a risk—there is no question about it.

**Rosemary Brotchie:** As I said a few minutes ago, the committee will need to consider what an appropriate time is to allow people to take advice and consider the implications properly. The issues are not limited to the purchase price and the cost of the mortgage; they also include maintenance costs. Shelter Scotland sees cases in which people have bought rashly, without taking proper advice. They have not fully considered all the costs of running and maintaining an owned house, and they have got into difficulty and trouble later on.

We have spoken about the impact of the cost of houses in the private rented sector that were previously bought under the right to buy. There is a significant repair and maintenance implication with homes in blocks where some flats are owner occupied and others are owned by social landlords. Owners can potentially find themselves with very significant bills for common repairs, which they had not anticipated. We would encourage anybody who considers purchasing a right-to-buy property to take proper advice.

We are aware that a number of companies are pretty much urging people to buy before it is too late, and we want to limit the impact that such companies might have on tenants.

**The Convener:** What kind of companies?

**Rosemary Brotchie:** They persuade tenants—they facilitate a mortgage, potentially so that they can buy the property to let it out. That is called mortgage to rent: tenants are persuaded to purchase their property, which the company then purchases and lets back to the tenant. We have seen that problem in the past, and it can be seen across the owner-occupied sector.

**The Convener:** Would that situation be helped by reducing the notice time?

**Rosemary Brotchie:** Potentially, yes. If we allow a longer time period, there is 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.

**The Convener:** As regards housing associations, and as far as borrowing and relationships with the banks are concerned, do you think that the right-to-buy measures will assist with the situation, as you will not have a depletion of your stock and assets?

**Alan Benson:** I said earlier that it is much easier to do our own internal business planning if we know that our asset base is not at risk. That is bound to help. Over the years, the right-to-buy numbers have reduced significantly, but it is still an issue for us: we want to be able to plan ahead, knowing the amount of stock that we have and budgeting accordingly. In that respect, the measure can only help.

**The Convener:** If there are no further questions on right to buy, we will move on to part 2 of the bill, on social housing.

**Mark Griffin (Central Scotland) (Lab):** What are the panel’s views on how the bill would amend the reasonable preference provisions in relation to allocation policy for social landlords?

**David Bookbinder:** It is a modest tinkering with the reasonable preference criteria. For many years now, very sensibly, the criteria have covered people coming out of homelessness and people living in unsatisfactory housing conditions—which include almost any kind of circumstance that people might find themselves in. Those criteria remain, with a very slight amendment to clarify that such people would of course have to be in housing need. There is also the welcome addition of people who are in social housing who are underoccupying, and we all understand the reasons for that.

The amendment to the reasonable preference criteria is modest and very sensible. It is not a radical change, but I do not think that any of us felt that there was a need for radical change.

10:30

**Rosemary Brotchie:** 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. We therefore think that the move is positive, in that it will give landlords scope to prioritise groups in a way that reflects local need.

However, we want to ensure that the use of the provision is monitored. The Scottish Housing Regulator or groups such as Shelter Scotland should 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.

Andy Young: David Bookbinder nailed it when he said that the effect should not be overegged. In practice, we do not think that the measure will make an awful lot of difference to housing association allocation policies.

Alan Benson: We agree that the measure is a modest change. However, the term “unmet housing needs” in the bill could do with a bit of clarification.

Mark Griffin: I think that we all understand the reason for including the provision on underoccupied properties, which is to do with the effect that there is on many tenants. However, will the removal from the existing criteria of large families and overcrowded properties have a negative impact on some larger families or people who are struggling in houses that are too small for their needs?

David Bookbinder: No, not at all. A large family might not in itself be in any housing need. If such a family is in housing need, I believe that the situation will be covered, because I cannot imagine an allocation policy that would not include overcrowding under the criterion of unsatisfactory housing conditions. Therefore, in practice, I do not see that change making any difference.

As Rosemary Brotchie alluded to, it is fairly outdated to have large families as an isolated category in the reasonable preference provisions because, in itself, that has no relation to housing need. I am sure that, if such a household is in housing need, it will be covered by the allocations policy under unsatisfactory housing.

Mark Griffin: The bill gives the Scottish ministers the power to make regulations on the categories of people that should be included in allocation policies. Is that power necessary and, if so, what categories of people should be specified?

Rosemary Brotchie: The three key groups that are currently identified in legislation are homeless households, those living in unsatisfactory living conditions and, as we said, those with unmet housing need. That covers the broad range of people who would be given any kind of reasonable preference. However, I echo the point that the term “unmet housing needs” is a little woolly and could do with clarification.

Mark Griffin: The bill will allow social landlords, for the first time, to take into account an applicant’s age, although that cannot affect the overall policy to give priority to certain household types. What are the panel’s views on that? How could that assist in allocations?

David Bookbinder: I will unashamedly go first on that question, because CIH Scotland specifically sought the measure.

Over the years, local authority and housing association landlords have told us that if, for instance, they wanted to house five or six older households in a group of non-specialist ground-floor houses, where the location seemed particularly suitable and for other sensitive allocations reasons it seemed the right thing to do, they could not lawfully do that—they could not say that those five or six houses would go only to older people.

We therefore 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.

Rosemary Brotchie: This might be one of the few areas in the bill on which there will be disagreement. We do not agree that the measure is necessary. It was not consulted on, so we did not have the opportunity to respond to it in the consultation process.

We think that the current legislative framework already allows sufficient flexibility for landlords to take such issues into account where there is a real need for them to be taken into account. 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.

As David Bookbinder said, it is not the policy intention that the allocation rules could be used in a discriminatory way, and we want to be certain that they are not used in a discriminatory way. We do not see any reason to have age listed in the bill as a specific reason for allocations being made.

Andy Young: Consideration of age should help with sensitive lettings and it should help to avoid what we might call lifestyle clashes. However, because age is a protected characteristic, as was said, I wonder how the provision will operate in practice.

That is partly what I meant when I talked about the Government seeming to be frightened of a legal challenge in relation to the three-year notice period. With that in mind, it is a little contradictory to include in the bill the measure on taking age into account, which I think is wide open to legal challenge at some point.
That said, I understand why the measure was included and we support it, although in practice I wonder how readily it will be used.

Alan Benson: We support the measure. I think that it concurs with the proposals that we put forward in the Government’s pre-legislative consultation. The new provision would help social landlords to make greater use of sensitive lettings and promote greater tenant sustainability. We think that it is a good measure.

Mark Griffin: I have one last question. Do you have any comments on the bill’s provisions relating to qualifying periods for joint tenancies, subletting, assignations and successions?

David Bookbinder: We are pleased to see those provisions. Without over dramatising the extent to which abuse occurs in those areas, I suggest that most landlords have experienced cases of people who move in the day before a relative dies or something like that. The protection measure is therefore welcome.

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.

Andy Young: Despite the perception, queue jumping is probably not as widespread as some people might think. That said, it is right that loopholes should be closed. I am pretty sure that our two organisations wanted to go further when it came to assignation: we wanted to remove the tenant’s right to assign a tenancy and, instead, confer a power on the landlord to allow assignation if necessary. Nevertheless, we agree with all the provisions.

The Convener: Let us move on to antisocial behaviour as it is dealt with in part 2.

Mary Fee (West Scotland) (Lab): I have some questions about the Scottish secure tenancy.

The bill contains provisions that would allow landlords to create a short SST or convert an SST to a short SST when the tenant or applicant has a history of antisocial behaviour. Do you think that the proposals are appropriate and proportionate?

Rosemary Brotchie: Shelter Scotland certainly believes that antisocial behaviour, which we know can blight communities and cause misery and distress to individuals and neighbours, should be tackled quickly and effectively. However, we have concerns about the way in which section 8 is drafted—particularly about what constitutes antisocial behaviour, as it is defined—and about what evidence would be required for antisocial behaviour to result in somebody losing their tenancy or security of tenure.

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.

David Bookbinder: I think that the measures are proportionate. Social landlords are heavily regulated, of course. It is a question of whether the system and the law trust landlords to use measures sensitively.

The exasperation that is felt by most landlords whom we come across is usually to do with long-standing and very difficult cases, not isolated incidents in which somebody is causing too much noise, for example. We are talking about protracted cases that have gone on for a long time, perhaps because of a lack of witnesses or a lack of satisfactory evidence as a result of people being afraid to come forward.

The measures do not in any way solve all those issues, but they give landlords additional options. 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, and that they will protect the majority of tenants who live around the property in question from extreme distress and upset.

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.

Andy Young: I do not necessarily disagree with Shelter Scotland. Clarity on what antisocial behaviour is and what the evidence test is for going through the process would be welcome—we flagged that issue up at quite an early stage in the consultation. That said, we agree with the measure.

Alan Benson: We agree that giving more flexibility to landlords is a good thing, but the briefing note that we have issued to our members says that one consequence of the bill is to talk through the implementation issues with housing staff. Some practicalities of how such a power would be used in practice have to be worked through. We have a fair way to go to bottom that out.

Mary Fee: If the Government produced guidance on how that particular provision should be used, would you like to see anything in
particular in it? Does the guidance need to be quite specific and detailed about what evidence can be used and the length of time that people need to go back in examining the evidence?

Rosemary Brotchie: We would certainly be interested in seeing whether there will be a check or balance in the primary legislation to identify what the burden of proof would be to penalise somebody under section 8. That is not to say that we do not take antisocial behaviour very seriously, but the means to address it should be effective and should not create unintended consequences.

David Bookbinder: We would favour advisory good practice guidance that, for instance, 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.

I will give a quick example, if I may. A measure in the bill suggests that, in respect of somebody possibly being suspended from receiving a housing offer because of antisocial behaviour, the ministers will have the power in regulations to set the maximum period that people can be suspended for—it seems perfectly reasonable that ministers could do that—and to set how far back a landlord can go in considering the behaviour that has taken place.

Again, we think that the issue is a matter of good practice. CIH has good practice guidance out on suspensions, and there are situations in which it would not be reasonable for landlords to go back many years and penalise somebody for behaviour a long time ago. However, if you legislate for that—by, for example, naming on the face of the bill or in regulations the maximum period that landlords can go back—you are legislating for something that we think would be better left to landlords’ discretion, because there might always be odd cases in which it is appropriate to go back a decent amount of time. We have to be careful not to overlegislate for every type of circumstance when it comes to antisocial behaviour.

10:45

Rosemary Brotchie: We need a slightly stronger definition in the bill. Just as we can use such an example to show how such a measure could be unfair to landlords, we could probably point to an equivalent example in which such a measure could be used to unfairly penalise a tenant. We have to accept that people can reform and improve their behaviour over time.

We also have to acknowledge that the bill sets the definition very broadly—it could include somebody who is just living in that household, not the tenant themselves. It could even include somebody who is just visiting the household. There is a concern that the definition might be open to misuse and might be used inappropriately in some circumstances.

Mary Fee: The bill also makes provision for protection for tenants who are on short SSTs. Is any other protection required for tenants who are on short SSTs, or are you content that what is in the bill is adequate?

Rosemary Brotchie: We certainly welcome those measures, particularly the increase in the period of time for which somebody can have an SSST, which enables them to have the support that is required to progress to a full, secure tenancy.

Andy Young: A landlord having to give a tenant a reason for ending a short tenancy is a positive move as well.

Alan Benson: Yes.

Mary Fee: Thank you.

The Convener: I will go back to the earlier discussion on taking into account an applicant’s age. Is it correct that allocations could previously be made in terms of age? As MSPs, one of the major issues that we deal with is antisocial behaviour when younger people have been moved into a block that was traditionally a block for older people. Is being able to allocate based on an applicant’s age going back to what used to happen?

David Bookbinder: For as long as I can remember, it has not been possible to take age into account when allocating. I would have to double-check and get back to the committee on whether that was because of the Housing (Scotland) Act 1987 or the Housing (Scotland) Act 2001. I rather think that it goes back to the 1987 act, but I will happily clarify that for the committee. The age-related provision in the bill will remove that prohibition on taking age into account.

Rosemary Brotchie: You may be thinking of a situation, convener, in which landlords can already make decisions about how they allocate their property because of the type of property that it is. Clearly, if landlords have a block of adapted property or property with particular characteristics that make it more suitable for particular types of occupants, they can already distinguish people from others on a waiting list and allocate them to that property if it is suitable. As I said before, I think that there is already sufficient flexibility in allocations and that the addition of age as a category is therefore not required.

David Bookbinder: The existing provision that Rosemary Brotchie refers to relates to accommodation that is specially designed—for older people, for example. The whole idea of the new provision is to enable a degree of flexibility in
relation to mainstream, ordinary accommodation that is not specially designed. That is where the barrier is at the moment.

**The Convener:** On the antisocial behaviour proposals, do you think that tenancy agreements will be written up differently or rewritten to be more specific about what constitutes antisocial behaviour in the view of the landlord?

**Andy Young:** Possibly. It depends on what comes out at the end of this process: I think that the tenancy agreement will be based on whatever guidance you give to us.

On your previous question, convener, I go back further than David Bookbinder and you are right—councils and housing associations used to advertise blocks for the over-55s, for example. That seemed to be common. I am not too sure quite what happened when someone turned from 54 to 55 years old—although I am about to find out. Landlords could not do that now under the Equality Act 2010, so we cannot turn the clock back.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** I will continue on the subject of antisocial behaviour. The bill intends to make evictions simpler in cases in which an individual has been convicted of illegal activity that affects the community. How will that address some of the problems that social landlords currently experience when they seek to evict tenants who have a Scottish secure tenancy and who have been convicted of antisocial behaviour?

**David Bookbinder:** That particular provision about eviction after conviction will apply only in a small number of cases. The cases in which it could apply are likely to be protracted and difficult ones in which a criminal case is being built up at the same time as the landlord is trying to build a case to recover the property. Generally, those would be very serious cases. The landlord will often struggle in that situation, because witnesses can be afraid to come forward. If there is a conviction in those cases, it will help. So we should not exaggerate the number of cases in which the measure will help, but the cases in question are usually quite serious.

The wording of the provision means that, in theory, a landlord, if so motivated, could choose to evict someone who has been convicted for a relatively minor offence that does not harm or distress other people, such as a small possession of drugs case that does not involve anyone else. The CIH feels that landlords are not interested in using the provision to evict that kind of person, but they are interested in using it for long-running and serious cases in which other people have been harmed significantly and for a long time.

**Rosemary Brotchie:** Shelter Scotland absolutely understands why landlords are seeking the change, and why MSPs might support it, but we urge a bit of caution. David Bookbinder talked about the ability to assess the nature of the offence. To take away sheriffs’ ability to assess reasonableness in the pursuit of an eviction would be a significantly detrimental measure. We argue strongly that a sheriff should still have the option of considering reasonableness in considering an eviction under the power.

For certain types of offence or certain characteristics of the person whose eviction is sought, an eviction might not be reasonable. Part of the reform of a person or of someone changing their behaviour might be to maintain a secure and stable home. We therefore recommend that reasonableness is retained and potentially that tenants should have a right of appeal against such evictions.

**Andy Young:** I point out that social landlords’ record on evictions has improved significantly in the past three or four years. We are not in the business of evicting people; it just does not make any sense at all on any level. Obviously, I disagree with Shelter on that.

I understand the point about reasonableness, but my understanding is that a sheriff would still have to consider proportionality, if not reasonableness, which is more of an issue in such cases. It might be worth checking that out—perhaps we can come back to the committee on the issue.

**Alan Benson:** The measure in the bill is welcome, but we are talking about a very small number of cases. There is a wider discussion to be had about what social housing providers can do in the general context of antisocial behaviour and criminality. There might be a concern that everything seems to be falling at the door of the landlord. The interface with the police and other services is important.

Although the measure is welcome, ultimately, we always see eviction as a failure. The main issue for landlords is that there should be levers that ensure that people engage with us, because if people engage with us properly a lot of issues can be prevented. However, there are extreme cases in which landlords have no alternative but to seek recovery.

**Gordon MacDonald:** On the small number of cases in which eviction must take place, the Legal Services Agency said in its written submission:

“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.”

It went on to say:
“All are entitled to somewhere to live and should not be pushed into a homeless underclass. Where are they to go?”

Does the proposed power strike the correct balance between the rights of tenants and landlords?

Rosemary Brotchie: I concur with what the agency said, to the extent that people who are convicted of a criminal act and whose conviction might lead to a prison sentence will need somewhere to live when their sentence ends. There is a significant problem in Scotland with homelessness among people who come out of prison. We need to consider the longer-term implications of the approach.

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. We want to ensure that the balance does not swing one way or the other and that the right checks and balances are put in place, to ensure that the courts can make an assessment on an eviction case in such circumstances.

David Bookbinder: If members were discussing this issue with a group of tenants who had, over a long period, been affected and had their lives blighted by serious and intimidatory antisocial behaviour, it would not be satisfactory to say, “Look, we could do something, but we would just be moving the problem somewhere else.” That is not a satisfactory response to such tenants.

Gordon MacDonald: The CIHS said in its submission:

“Serious ASB will always be very challenging to deal with, as in most cases there are few, if any, speedy remedies.”

What impact is the bill likely to have on social landlords’ ability to tackle antisocial behaviour? Will the bill help to tackle the causes of antisocial behaviour?

David Bookbinder: I am not sure that the bill seeks to tackle the causes of antisocial behaviour. As Alan Benson suggested, there are wider issues, which are to do with how people behave and how other agencies, not least the police, deal with antisocial behaviour.

Overall, the measures are welcome. There will be some additional tools for landlords. However, we live in a society in which—quite rightly—someone is innocent until proven guilty. It is exasperating for tenants to find that landlords cannot suddenly remove an alleged perpetrator from their property, but of course that cannot happen. We have strong tenancy rights, particularly in Scotland.

The bill contains measures that will help landlords. However, in the publicity that surrounds the bill as it goes through its stages and becomes law, let us not overegg to the public the extent to which it will help landlords to solve every antisocial behaviour case quickly, because that probably will not happen.

Rosemary Brotchie: It is evident that antisocial behaviour is not a tenure-based issue; it is found across all housing tenures. We talked about the impact of the right to buy on the creation of mixed communities. There are instances of antisocial behaviour blighting communities where there are private landlords or owner-occupiers. We want to give social landlords proportionate and effective powers to deal with antisocial behaviour, but the problem is not about housing; it is about how people behave in society.

We need a strong response, with significant and appropriate powers to deal with such situations; we also need to consider what support can be provided to individuals and communities. Landlords should give just as much consideration to that as they give to how they can end tenancies in such situations.

11:00

Andy Young: To be honest, landlords see their relationship with agencies such as the police as far more important and influential in dealing with antisocial behaviour than anything that is in the bill.

Alan Benson: I reiterate that it is good that the bill might provide additional tools for landlords, but the basis for that should always be to allow us to engage with people who carry out antisocial behaviour and with other agencies that can support us to find a suitable remedy.

As we said in our written evidence, we know of cases in which tenancies have been recovered. What happens is that the problem is moved within the same area to the private rented sector. Rather than the remedy being to recover the housing, it would be much better if the behaviour was tackled. From our perspective, perhaps there are unrealistic expectations of what housing providers can do.

We need an interface with other agencies, and their full support. As a housing association director, I hear all the time about the bun fight on whether the problem is a police one or a housing one. There is not enough co-ordinated and joined-up work to deal with such issues without the recourse of recovering the tenancy.
The Convener: We will move on to part 3, which is on private rented housing.

Jim Eadie (Edinburgh Southern) (SNP): The bill makes provision to transfer certain types of civil court actions in relation to the private rented sector from the jurisdiction of the sheriff court to the jurisdiction of what will be a newly established first-tier tribunal. What are your views on that? Will it significantly improve the quality of and access to justice for landlords and tenants?

Rosemary Brotchie: We have certainly recommended that and supported it strongly. Over the past 10 years, we have seen a continuing problem with access to justice for private tenants and, indeed, landlords in the sector. The private rented sector now houses a significant number of households across Scotland—double the number that it was 10 years ago—and we know that 26 per cent of tenants in the private rented sector have children. Increasingly, the sector houses people for much longer periods; it is becoming less about providing transitional tenancies.

There are big problems with private renting. There are conflicts between landlords and tenants and unresolved issues, particularly around repairs. We think that access to justice is a significant problem for tenants, who might want to improve the condition of their tenancy or challenge their landlord in certain circumstances. We would welcome the introduction of a private rented sector tribunal to try to overcome some of the problems that have been with the court system in the past little while.

David Bookbinder: I echo everything that Rosemary Brotchie said and add that all the advantages that a tribunal system would bring to the private rented sector, including that it would be less adversarial and more user friendly, would apply equally if we had a tribunal system in the social sector. I realise that that is a bigger issue, but if you were going to come on to that—

Jim Eadie: We are coming straight on to that, but first I would like to hear the panel’s views on the transfer of jurisdiction in the private rented sector, please.

Andy Young: I do not think that I can add anything to what Rosemary Brotchie said on that, but we want some sort of full housing tribunal pilot that deals with social cases, too.

Alan Benson: We think that that would be a sensible measure.

Jim Eadie: That brings us seamlessly on to the next point, which is about extending the tribunal system to the social rented sector. The Chartered Institute of Housing has made the case that the transfer to the first-tier tribunal should apply also to the social rented sector. Can you outline your reasons for that and, if you have costed that proposal, say what the cost implications of such a move would be?

David Bookbinder: It would be a much greater move in terms of volume and cost. We are not arguing that the bill should be amended to take on board social sector cases, because we appreciate that a lot of costing work would need to be done. However, it is hard to find an advantage of the first-tier tribunal that does not apply across the sectors. We are aware that some changes will be made to the sheriff court system in the coming years and we acknowledge that the Scottish Government would want to consider the impact of those changes on the system, whether they reduce delays and whether the system can be made more user friendly. We are simply asking that the option to apply the tribunal system to the social sector is not closed off forever.

Rosemary Brotchie: I do not disagree with anything that David Bookbinder has said. As I said, we 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. Tenants and landlords avoid it as far as possible. We see the consequences of that in the way that the private rented sector works at the moment. We know that repairs cases are not dealt with as effectively as they might be because access to the PRHP is perhaps not as easy as it should be for tenants—

Jim Eadie: Will you explain what PRHP stands for?

Rosemary Brotchie: I beg your pardon—it is the Private Rented Housing Panel, which is an existing tribunal specifically for dealing with repairs cases. One of the reasons for that is that tenants do not have the security of tenure that they might need in order to pursue such cases. Although we welcome the introduction of the tribunal for private rented sector cases, we think that it should be accompanied by increased security of tenure for tenants to enable them to use the new access to justice most effectively.

Jim Eadie: I want to be clear about what you mean by that. Are you saying that the scope of the tribunal should be extended?

Rosemary Brotchie: Do you mean in terms of the social rented sector?

Jim Eadie: Yes.

Rosemary Brotchie: That is certainly something to look at in future but, in the first instance, private rented sector cases should be the priority, and the new tribunal should be accompanied by an increase in security of tenure...
for tenants, to enable them to use that access to justice most effectively.

**Andy Young:** I would not argue with anything that has been said. I particularly agree with what David Bookbinder said. We talked earlier about access to justice. One of the biggest complaints to me from our members is about swift access to justice. The current sheriff court system appears to be unfit for purpose in respect of social housing cases.

**Alan Benson:** Andy Young just stole my thunder. I was just going to say that the current system, as it applies to the social rented sector, is not fit for purpose. In fact, it penalises tenants. I look at spreadsheets all the time, and see rent arrears cases where the legal fees are as high as the rent arrears because of the length of time that the processes take. That issue should be looked at seriously in future. Since the Scottish Parliament was re-established, there has been a lot of talk about whether there should be a housing court to deal with some of those issues. The current sheriff court system is definitely not fit for purpose.

**Jim Eadie:** Ms Brotchie, you mentioned the Private Rented Housing Panel. Sections 23 to 25 of the bill make provision to expand access to the panel by enabling third-party applications by local authorities to enforce the repairing standard, which is the condition standard and legal obligation that landlords have to meet in order to rent out their property. I presume that you agree with that but, in responding to the point, could you refer to your earlier comments about the bill perhaps being in need of strengthening in relation to safety and electrical safety?

**Rosemary Brotchie:** Certainly. You are right that we support the proposal for third-party reporting. The number of cases that are taken to the PRHP by tenants to challenge their landlord over the basic condition of the property is minuscule in comparison with what we know is significant disrepair throughout the private rented sector. Shelter sees cases every day. Some of the most significant things that people call us about are problems of disrepair and damp with their private rented property. Sometimes, those problems are severe and significant.

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. In some cases, tenants might get only a month’s notice if that secure period has ended. To deal with disrepair in the private rented sector, local authorities must have powers to take action against private landlords in such circumstances. However, 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, which, as I have said, is a much bigger problem.

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.

We also ask the committee to consider strengthening the bill with the introduction of stronger regulation of electrical and, in particular, carbon monoxide safety in privately rented homes. Provisions on increasing electrical safety standards in the private rented sector might be considered, but we would also like the committee to consider the possibility of making the installation of carbon monoxide monitors or alarms mandatory for all private tenants.

**Jim Eadie:** That was helpful, but I want to understand where you think the gap in the bill is so that we can address it. The Private Rented Housing Panel can issue repairing standard enforcement orders to ensure that landlords bring properties up to the appropriate standard. As I have said, that is a legal obligation. Would not that be the mechanism for ensuring that the additional electrical safety standards that you have mentioned are met?

**Rosemary Brotchie:** Absolutely. However, although such orders are the mechanism for achieving standards, we are also looking for additions to the repairing standard to cover the specific issues of electrical safety and carbon monoxide alarms, in order to prevent unnecessary deaths.

**Jim Eadie:** Could that be achieved through an amendment?

**Rosemary Brotchie:** It certainly could.

**Jim Eadie:** We look forward to seeing such an amendment. Do the other panel members have anything to add?

**Alan Benson:** The repairing standard is very basic; we concur that it needs to be strengthened for the private rented sector. A parallel can be drawn with the social rented sector, which has to comply with the Scottish housing quality standard and for which a whole system of regulation is in place. That is absolutely fine, but the fact that the private rented sector has no equivalent must be addressed urgently. After all, the crisis in the quality of housing lies in the private sector and not in the social rented sector.

**David Bookbinder:** Over the past couple of years, CIHS and a number of other housing...
bodies have been working closely with the Electrical Safety Council on trying to get better electrical safety standards reflected in the repairing standard, including regular safety checks by qualified persons. We realise that the fact that such a provision has not been consulted on creates issues for the Scottish Government, but we very much want the Government and Parliament to keep the matter in mind, so we ask—if it is not possible to put such a measure in the bill—that it be considered at the earliest possible opportunity thereafter.

On the very welcome move with regard to third-party reporting to the Private Rented Housing Panel, if, unfortunately, a tenant has to move on either because of difficulties or because they simply have to—of course, I echo Rosemary Brotchie’s hope that it does not lead to that—the local authority will, if it so wishes, still be able to pursue action through the power. That course of action does not exist at the moment, so I welcome the proposal in the bill to ensure that a tenant’s moving on does not stop the local authority pursuing the landlord.

Rosemary Brotchie: We mentioned just now the difference between repair in the private rented sector and in the social sector. I agree with most of those points, but we also seek a strengthening of the right of tenants who are placed in temporary accommodation to access to good-quality accommodation and good standards. That would be a simple amendment to an existing regulation that provides measures on unsuitable accommodation for certain categories of tenants who are placed in temporary accommodation. It should be extended to cover the condition of the accommodation in which they are placed.

11:15

Jim Eadie: I received a petition from Shelter Scotland before Christmas on that issue, so I am aware of it and look forward to further discussions on it.

Do the witnesses have an opinion on the Scottish Government’s view, as outlined at paragraph 131 of the policy memorandum, that “Proposals for court reform ... and increased use of mediation will provide the opportunity to improve outcomes for social sector cases while they remain with the courts”?

David Bookbinder: I think that that is a reference to reforms of the civil court system. The jury is out—if you will excuse the pun—on what the impact of the changes will be. CIHS has always been a supporter of mediation where that is appropriate; I am sure that every organisation that is represented here is, too. There are, of course, cases in which mediation might be particularly difficult. The idea of mediation is that people volunteer for it rather than their being coerced into it, so it will not be appropriate for every case. However, more use of mediation and reform of the court system can help the social sector

Andy Young: Mediation is a useful tool; there is no doubt about that. It is also well used in the social sector. However, access to mediation is a bit of a problem at the moment; I understand that it is quite patchy throughout Scotland, which should be examined.

Patrick Harvie (Glasgow) (Green): I am sure that I am by no means alone among members in seeing an increase in the volume of issues that are raised with me in relation to the private rented sector, so I appreciate the opportunity to contribute to the committee’s discussions.

There has been a general welcome for the bill’s measures on the private rented sector. Do the witnesses have views about areas in which the bill could have gone a little further? Rosemary Brotchie mentioned security of tenure; the bill could have addressed that. We know that the Government is undertaking some further work and there could be moves down the line, after the bill is passed.

From the issues that constituents have raised with me, it seems to me that the vulnerability that insecure tenure creates is most damaging when it also relates to other issues. That might be the small minority of illegal evictions, harassment and aggressive or threatening behaviour by landlords, or the much more common things that would never—to be realistic—go to a panel or tribunal because people just put up with them, such as minor repairs not being done. It could relate to the proliferation of alternative ways of getting around the tenancy deposit scheme, failure to comply with that or using so-called advance rent to replace deposits. It could also relate to discrimination against housing benefit claimants in the private rented sector.

Would the witnesses like the Government to take additional measures or make further progress in the bill, or in policy at the same time?

Rosemary Brotchie: I am a member of the Government review group that has been mentioned, which is considering how the private rented sector tenancy currently operates. That group’s considerations so far have identified a very significant range of problems in how the tenancy works for landlords and for tenants.

One of the conclusions to which we are coming—I do not speak for the group; this is my point of view—is that the current tenancy regime is working very informally. In the vast majority of cases, tenancies are not set up correctly and the protections that should exist for landlords and
tenants are not properly enforced. In fact, because landlords and tenants do not choose to use the court system because of all the reasons that we have just mentioned, most often, tenancies are ended with a no-fault ground at the end of the period.

Tenants themselves tend not to want to pursue the landlord or to seek changes or improvements to their property; they would rather just move on. It is a fluid and transitory sector. It does not need to be, however. Many people rent from private landlords because they want the flexibility to stay for a few months and then to move into owner occupation or move on. Sometimes, they want to try out an area. It is absolutely not the case that we want to see the end of that. Security of tenure does not necessarily mean recreating a longer-term sector.

However, we want security of tenure to exist so that tenants who face problems can challenge their landlords. If they wished to do so and if their doing so were appropriate, they could turn to the local authority for help. It is to some extent a matter of rebalancing the power between landlords and tenants in such situations.

Patrick Harvie: On some of the other issues that I mentioned, such as failure to comply with the tenancy deposit scheme, we know that the Government is not able to put a figure on compliance, but I am sure that Shelter will be aware of many cases of landlords or letting agents working their way round the provisions by claiming not to be charging a deposit, although they are in fact charging a deposit in all but name. Are there provisions that we could be considering that would improve the operation of existing systems that are not working as they were intended to work?

Rosemary Brotchie: Yes. The onus is on the tenant to take the landlord to court over non-protection of their deposit, and the penalty on the landlord is up to three times the deposit. There is almost an incentive for tenants to pursue such cases, but not many of them take that action. That being moved to the tribunal would be very welcome, but we would be interested to consider other options for addressing that problem.

Patrick Harvie: Do you have concerns about discrimination in the private rented sector against housing benefit claimants now, or about how that might increase with the housing benefit changes that are coming through? Is there anything that we could be doing to address that issue?

Rosemary Brotchie: I, as you and everybody else round the able has, have over the past few months heard of cases of landlords deciding wholesale not to accept tenants who are in receipt of housing benefit. That is not a new problem; it has existed many times in the past. I am sure that everybody is familiar with adverts saying “No DSS”.

We are concerned about the availability of private rented accommodation at the levels that people on housing benefits can afford. There will be continuing uncertainty, as we move towards the introduction of universal credit, among landlords who might not be prepared to take the risk. We are certainly concerned about the situation, and we would welcome measures to try to address it.

David Bookbinder: CIH Scotland and CIH across the UK are concerned at reports of private landlords pulling people who are in receipt of housing benefit out of housing. It is hard to see how any Government can legislate to tell people who to house and who not to house. One obvious reaction from us is that, if more people are going to be excluded from the private rented sector who might have turned to it in the past, that increases the importance of there being an improved supply of social sector houses. The current target is to build 4,000 a year. I know that times are difficult, but the more we can do to increase that target, the more we can offer an option to people who may not now have the private rented sector to turn to.

The Convener: We have touched on the subject of letting agents, and there has already been legislation concerning them. Do you agree that regulation of letting agents is required? If so, why?

Rosemary Brotchie: We whole-heartedly agree that regulation of letting agents is necessary. I do not know of anybody who does not agree with that. Even the sector itself is calling for regulation.

We get a disproportionate number of calls to our helpline from tenants who are having problems with their letting agent. As you may know, we have been running a campaign over the past little while on charging of unlawful fees to tenants by letting agents. However, that is not the only problem that we see. Some letting agents engage in a wide range of management practices that are counterproductive to ensuring that there is a secure and stable private-sector experience for tenants.

We would like regulation of letting agents and we want to ensure that it is effective and, especially, that there are sufficient powers to enforce change in the sector. As we have seen with landlord registration, it is all very well to have a list, but we need to ensure that regulation has teeth and can enforce change in practice among agents in practice.

The Convener: How do you propose the regulatory regime should work in practice?

Rosemary Brotchie: The proposal in the bill is that the Scottish Government will set up a register
of letting agents and that, to be accepted on to it, an agent will have to accept a code of practice and pass a fit-and-proper-person test. The nature of the code of practice and the dispute resolution that will surround it need to be looked at carefully to ensure that they will be effective.

**The Convener:** Do you believe that provision needs to be beefed up, over and above what is in the bill?

**Rosemary Brotchie:** We do not know the detail of what will be in the code of practice because that is for secondary legislation, but we will be interested to see what it covers. On dispute resolution, again the bill introduces powers rather than sets out in detail how it is will operate. We encourage the committee to look for assurances from the Government about how dispute resolution will operate in practice.

**The Convener:** Would you expect to be consulted on that?

**Rosemary Brotchie:** Yes, we certainly would.

**The Convener:** Okay.

We move on to part 5, which is on mobile home sites with permanent residents. Does anyone have any comments on that? Perhaps only Shelter will want to comment.

**Rosemary Brotchie:** I do not have any detailed comments on the provisions in the bill, I am afraid. We acknowledge that there is a need for reform and we are glad that the Government is acting on that need.

**The Convener:** Does Shelter get calls from people on mobile home sites?

**Rosemary Brotchie:** We get such calls occasionally. Park homes are not a big concern. In rural Scotland, there is a problem with people living in caravans on unlicensed sites, but that is not what part 5 of the bill covers.

**The Convener:** Okay. Part 6 is on private housing conditions, on which we have already touched, in particular in relation to local authorities’ ability to pay a missing share and recoup that from the private part of a block, usually. Do you have any views on the provisions on that?

**David Bookbinder:** I merely say that it appears that there are welcome clarifications or modest amendments to the existing powers. Probably, the broader issue here is not so much a legislative one but a question of what resources hard-pressed local authorities are able to use to exercise the powers. Money is usually involved, which presents challenges for local authorities at any time, and especially at present. However, that is not something that the bill can tackle.

**The Convener:** We will certainly ask about that when we have the local authority representatives in.

Do you have any comments about the bill’s miscellaneous provisions? Are there any other issues that you want to raise, while you have the chance?

**Rosemary Brotchie:** There is an area that has not come up in which we would like to see an additional power that is not currently in the bill. What is termed the section 5 referral process is the process whereby local authorities make referrals to housing associations to house people under the homelessness duties. Currently, there is mixed practice across Scotland regarding whether the section 5 referral process or a more informal nomination practice is used.

As we have said to the committee in relation to previous bills, we believe that there are strong arguments for making it mandatory across the board for local authorities to use the section 5 process to secure housing from social landlords. That would increase transparency and enable local authorities to see where registered social landlords in their areas are providing more help. It would also enable tenants to understand why they have been refused, which is not the case when the current more informal approaches are used.

11:30

**David Bookbinder:** Rosemary Brotchie is right that local authorities use a variety of mechanisms to work with registered social landlords to house homeless people. Sometimes, the mechanism is section 5, and at other times, it is a more informal arrangement, as she said.

It strikes the CIH that a local authority that is dissatisfied with RSLs’ contribution to its achieving its homelessness objectives can, if necessary, use section 5 referrals, if informal nomination arrangements are not working well. It feels like Shelter is asking to mend something that is not broken, if local authorities are happy with how things are working.

**Andy Young:** The proposal seems to move away from the person-centred approach that we have moved on to, and it does not sit comfortably with me. It is almost as if Shelter wants to monitor what RSLs are doing rather than worry about the outcome for homeless people, which must be first and foremost in everybody’s thoughts. If a different mechanism from section 5 referrals works best for an applicant, surely to change that would be ludicrous.

**Rosemary Brotchie:** Shelter is not clear whether that approach is working best for applicants. As I said, RSLs play a large role in
housing homeless people in some areas but do not in other areas.

To answer David Bookbinder's point, I think that the section 5 referral process is sometimes seen as a big stick in the allocations process. It need not and should not be that. It is not a complicated or overly burdensome process, but it increases transparency and makes the figures measurable, so that we can see the contribution. That should also help partnership working.

To answer Andy Young's point, we do not suggest the removal of informal nomination arrangements, under which personal contact between a person in a local authority and somebody in a housing association facilitates availability of a house. However, we want that to be backed up with the section 5 process. The two things do not have to be at either end of a spectrum; they can work hand in hand. That would improve the situation for many homeless people across Scotland.

The Convener: I thank all the witnesses for their helpful input.

11:33
Meeting suspended.

11:38
On resuming—

The Convener: In the second panel of witnesses on the bill, I welcome Paul Brown, chief executive officer of the Legal Services Agency; Michael Clancy, director of law reform at the Law Society of Scotland; and Garry Burns, prevention of homelessness caseworker at Govan Law Centre.

Adam Ingram: Good morning, gentlemen. The Scottish Government's vision is "that all people in Scotland live in high-quality, sustainable homes that they can afford and that meet their needs".

To what extent does the bill support that vision?


Michael Clancy (Law Society of Scotland): Thank you, convener. I am probably the least qualified member of the panel to answer Adam Ingram's question.

It is important to have a vision in housing provision. As the committee will see from our paper, the Law Society of Scotland does not comment on the policy behind the Government's views on the issue. However, solicitors buy and sell houses for people all over the country, and we try to do our bit in helping to make that provision a reality for people. Beyond that, I am not really sure that I am qualified to comment on Government policy in that kind of context.

Paul Brown (Legal Services Agency): I absolutely buy into the vision. Abolishing the right to buy and tackling tenemental repairs are important initiatives. I think that my colleague Garry Burns concurs with our view that there is a major problem of homelessness and that, in some respects, the bill will make that worse. The Legal Services Agency advised 256 rough sleepers in Glasgow between 12 April 2012 and 11 April 2013, but that figure soared between 12 April 2013 and 11 December 2013, which is a period of much less than a year, to 355 rough sleepers. We think that the number will double this year from a baseline four or five years ago of very few rough sleepers.

There is a major problem, and we are concerned that some of the approaches to managing antisocial behaviour in general and to allocation policies will make the position more difficult, particularly in Glasgow. We understand from Glasgow City Council press releases that one of the reasons why it has a homelessness problem is the difficulty in getting housing through registered social landlords. We are concerned that there appears to be an implicit strategy behind the bill that people who are accused and sometimes guilty of antisocial behaviour are going to be thrown on to the tender mercies of the private sector, which is the opposite of what one would expect. The private sector has none of the resources required to deal with people with mental health or behaviour problems. However, the policy seems to be to further exclude such people from RSLs and local authority housing stock. We are concerned about that.

The Convener: Does the position that you have described not relate particularly to Glasgow? Overall in Scotland the number of applications for homelessness assistance has fallen by about 13 per cent over the past year. I get the feeling from newspaper articles and so on that there is a passing-the-buck situation that relates particularly to Glasgow because Glasgow City Council does not have its own housing stock. As part of our evidence taking for our homelessness inquiry, we went to Glasgow and met Glasgow Housing Association and another organisation. They said that they were very proud of the work that they had done in Glasgow. However, we now seem to be finding that Glasgow City Council is reneging on its obligations to the homeless.

Paul Brown: Glasgow City Council states that it cannot get the housing from RSLs—I am not privy to what is the true situation. We heard in the earlier evidence session about section 5 referrals by the local authority to registered social landlords, but there is basically not very much compulsion on
RSLs, because they can turn down a referral if there is a good reason for them to do so. There is therefore a lack of alignment between a local authority’s obligations and the ability to provide housing. If there has been a stock transfer, the people who have the housing do not really have the obligation to provide housing for people who are homeless, but the local authority does—that is a mismatch. I suggest that the allocation policy for all public sector organisations, including RSLs, should be aligned with the public policy to provide accommodation for people who are homeless. The two things need to be aligned, or the mismatch will continue.

11:45

It is wonderful law. The homelessness law has improved enormously—there is no question about that—and it is something of which we can all rightly be proud. However, there has to be a means to implement it, and it appears that there is not.

Glasgow City Council has announced that it will provide 60 new beds for temporary accommodation. That is great—I do not know where it got the money from—but, given the numbers concerned, it does not look to me as if that will get it very far.

There needs to be a change in the way that housing is allocated, to give more priority to people who are vulnerable to homelessness. A proportion of them will inevitably be people who have had behaviour problems in the past. We cannot have a situation where there is nowhere for them to go. I appreciate that people who have behaved in an antisocial manner need to be controlled, but that cannot be done in a way that results in their becoming a homeless underclass. One suspects that the fantasy that people have is that those people will go off to London or somewhere. The point is that they are not going to go away; they are here to stay and we need to have a joined-up policy.

The Convener: My point was that it seems to be a particular problem in Glasgow. As far as we can ascertain from the dealings that we have with our local authorities and housing associations, they work together in the rest of the country. The letting is done on a cross-social-housing basis. There seems to be a particular problem in Glasgow because the council does not have its own social housing stock. I think that we should move on.

Adam Ingram: I will ask Garry Burns to pick up on that, given his experience. One of the outcomes that the Scottish Government is seeking from the bill is to encourage sustainable communities. Could you talk to that in response to what you have heard already?

Garry Burns (Govan Law Centre): I echo what Paul Brown said. I agree that Glasgow is a specific case as it has the worst homelessness in Scotland, but the figures do not always tell the true story. Hidden homelessness is not happening only in Glasgow; it is happening in every community. I have worked with enough local authorities in this job and in my previous job to know that there are significant barriers to everybody who presents to a local authority. That has to be investigated. Sometimes local authorities will do everything they can before they take somebody on as a homelessness case. I dealt with a case like that just at the end of last week. I will not name the local authority, but it did everything that it could rather than take the client on as a homelessness client. The people involved were a couple—the young person involved was 16 years old. The local authority was just bashing them back and forward. The idea that this happens only in Glasgow is not completely true.

If we are to have sustainable communities, something has to be done about private landlords. Our work with private landlords represents probably about 30 per cent of my case load. Some private landlords are charging very high rents. More and more people are coming to my organisation saying, “I can’t afford my rent. What am I supposed to do?” We cannot really offer them a solution. They cannot present as a homeless family because technically they have a tenancy. We are quite reluctant to tell them to ramp up rent arrears, because then they will have a big debt and they will have to go through an eviction process. Unaffordable private rents are a significant problem. There is a very simple solution to it, which is that the Scottish Government has to do something about rents in the private sector.

Also, with regard to tenancies in the private sector not being fit for purpose—

The Convener: I will stop you there because we are getting into detail that we might come to when we look at the private rented sector. We are just taking a broad-brush look at this at the moment. We will certainly come back to the detail of what you were saying.

Adam Ingram: In general terms, you are saying that we need to do more than what is in the legislation to create the kind of sustainable communities that we are looking for.

Garry Burns: Absolutely.

Adam Ingram: My final question is about the consultation process for the bill. Are you content with it? Were there deficiencies?
Garry Burns: I have had a look at the consultation process. We got a lot of the material quite late on, so it has been difficult to look at it thoroughly, but I think that there are a lot of tenants’ voices missing. There is talk about changing age criteria in relation to reasonable preference, but I do not see that any young people or young persons’ organisations have been consulted. In my experience, inserting provisions to do with age would not be to the detriment of anybody apart from young people, so if you are changing the process, the voice of young people’s organisations such as Barnardo’s and Save the Children, which have homelessness places all over Scotland, would be positive in informing the debate. However, that part of the consultation document says that the Government did not consult on that issue. If the consultation paper itself says that it did not consult on it, that part definitely has to change.

I would also like to see more tenants’ views on the process. A lot of the policy looks to me as if it has been written for and on behalf of the registered social landlords, without taking account of tenants’ voices.

Adam Ingram: Witnesses on a previous panel of tenants’ representatives suggested that they were actually quite pleased with the pre-consultation consultations that they had had, but I take your point about some of those things coming late on the scene.

Garry Burns: The ones who are excluded from getting into tenancies by the bill have not been consulted. It is easy for a tenant to say that that is a good idea because it means that they will not get somebody who has had an antisocial behaviour order or who has been evicted living next to them, but those people also deserve housing. Instead of listening to only a select few tenants, there should be a wider debate that includes people who have chaotic lifestyles, because there are enough organisations working with them to allow us access to them. That would allow us to ask them, if they are going through homelessness or into different tenancies or in and out of places, what they think could help them to sustain a tenancy, as opposed to telling them how not to get housing.

Paul Brown: I entirely agree with Garry Burns. I suggest that the membership of the affordable rented housing advisory group should have been markedly wider. There are no lawyers represented on it who specifically represent homeless people. Shelter is represented, but it bore the full weight of representing that constituency. No organisations representing people with mental health problems are represented, and that is one of the areas that we are talking about when we consider some aspects of antisocial behaviour. The membership should have been broader. I entirely agree that young people do not have a voice in established tenants’ organisations or housing associations in general, so an effort needs to be made there.

Michael Clancy: The general point about consultation is that it can always be done better. The Standards, Procedures and Public Appointments Committee is currently looking at the legislative process, and it will probably receive comments on consultation, which is something that we should look at in the round.

Garry Burns made a point about reaching those constituencies that are not among the so-called usual suspects. Doing that is a challenge to Parliament and to Government, and we can make efforts to address that by using social media and thinking out of the box. If the box is a committee room, you can go out into the community. It is a question of getting to those who are affected by legislation. As a long-time consultee and responder to consultations, I have no doubt that it is easier for organisations that have dedicated staff and resources than it is for individuals or for underresourced organisations.

Adam Ingram: That is helpful. We will move on to the detail of the bill. Part 1 is about the abolition of the right to buy. Do you have any comments to make about the proposed abolition of the right to buy, particularly in relation to the impact on tenants’ rights?

Michael Clancy: I think that that is another one for me. Having listened to some of the earlier questioning and having read last week’s Official Report, I know that questions have been raised in the committee about whether the abolition of the right to buy is compliant with the European convention on human rights. If one looks at the provisions of the convention that engage with property rights, such as article 8, which says that “Everyone has the right to respect for his private and family life, his home and his correspondence”, and article 1 of protocol 1, which deals with “the peaceful enjoyment of ... possessions”,

one can see exactly how it could be concluded that the provisions abolishing the right to buy are compliant with article 8 and protocol 1.

A case in 2001 called Chapman v the United Kingdom—33 EHRR 399—says in effect that article 8 does not give the right to be provided with a house. I have tried to track down a 2004 case relating to Northern Ireland that spoke of the right to buy there not engaging article 1 of protocol 1, which says:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”
When we stack those up, the abolition of the right to buy is being done by law and in accordance with what is considered to be the public interest. Although the way in which the abolition of the right to buy is being done would not prevent someone from taking a case that their human rights have been contravened, I would agree with the comment made last week by a Government official that it is unlikely that such a case would be successful.

Adam Ingram: The length of time for the process to extinguish the right to buy has been stipulated at three years. We have heard from others that one year might be sufficient. Do you have a view on that?

Michael Clancy: It is a personal view only—I did not consult anyone back at the office on this. I think that three years is quite reasonable. It gives people a reasonable time in which to decide whether to exercise the right to buy.

Adam Ingram: Do any of the other gentlemen have views on the matter?

Garry Burns: We support it.

Paul Brown: We support it, too. It is a bold and important reform.

The Convener: Part 2 of the bill is on social housing.

Mark Griffin: Does the panel have any comments on provisions in the bill that are aimed at increasing the flexibility that social landlords have in allocating properties, particularly relating to the changes to the existing reasonable preference provisions and the inclusion of age as a factor that social landlords are able to take into account?

Paul Brown: My view is that RSLs’ obligations in the allocation of housing need to be aligned with local authorities’ obligations to provide housing, particularly where there has been a stock transfer. I have no difficulty with increasing flexibility but within the context that the flexibility needs to be constrained by enabling the local authority to meet its obligations to people who are homeless.

What I would be concerned about is that the increased flexibility may well make that more difficult. It also gives the message, if you see what I mean—rather than necessarily what is in law—that it is public policy that RSLs should be able to decide their own priorities without regard to the needs of the wider community.

I entirely accept that the old section 20 of the 1987 act was out of date and, to an extent, was not terribly helpful in referring to “reasonable preference”, which does not really mean all that much. I would be in favour of something much clearer and more specific, basically requiring RSLs to have their policy aligned with the needs of allocation to homeless people. That would be along with other issues, of course. It is not an easy issue, but it needs to be highlighted.

12:00

Garry Burns: When it comes to reasonable preference, one danger is to do with removing the category of overcrowding. We would be concerned if that were to be removed, as overcrowding is certainly an issue in Glasgow and, I guess, in other local authority areas. Removing people living in overcrowded houses as a category for reasonable preference would not be a great idea.

I will go back to the issue of age, although I have already touched on it. Young people are experiencing significant changes with regard to housing benefit—those that have already happened and those that are going to happen. To start to take away their right to social housing at a time when their rights have been eroded significantly is not the best move. Young people should have exclusive rights within housing. Some young people cannot stay at home—some young people do not have great families. There is some help from social work, and there is some policy. By consulting other organisations, we can figure out a way of getting young people into decent housing. If they can get into decent housing, they can get into college or go to work. It would be a good idea for the Scottish Government to do that.

When it comes to the tolerable standard, some definition is needed. There is quite a lot in the policy before us that says that the Scottish Government is going to come back and define the term. Removing the tolerable standard would not be a good idea either, as it means people living in accommodation that is not tolerable. If they cannot move because of that, I do not see how they can do so otherwise.

The problem is that, given that RSLs are set up to help housing, if the tolerable standard becomes so bad, people would then go to statutory homeless, which creates more problems and leads to more money having to be put into social housing anyway. To remove the tolerable standard as a way of facilitating social housing taking on a new tenant would be a bad idea.

The Convener: Do you wish to discuss issues around antisocial behaviour, Mary?

Mary Fee: Thank you, convener. I have some questions about Scottish secure tenancies. The bill contains provisions that would widen the circumstances in which landlords can use short SSTs where there is a history of antisocial behaviour. I am interested in the panel’s views on whether those proposals are appropriate and proportionate. Do the witnesses have any
concerns about the type of evidence that a social landlord would need to have to make use of those powers?

**Paul Brown:** We have considerable concerns about the overall direction of travel regarding antisocial behaviour in the bill.

Starting with the allocation provisions, there is codification of the means whereby allocation of housing will be delayed for a minimum period, set by the landlord, in cases where someone is held to be guilty of antisocial behaviour. There is no real way of protesting about that under the bill. A summary application is no more than an article 6 fig leaf, because the number of people who will have sufficiently easy access to legal advice and representation in order to submit a summary application will be no more than one a year. I imagine that that is the case; I have never been consulted by anyone on that area.

The point is that there are groups of people in some areas who will not be allocated any social housing for a minimum period—we do not know what that period will be. Their access to any ways to dispute that will be limited. They may then be allocated a house. Perhaps they have not gone down that route, but they are allocated a house, and antisocial behaviour is committed or alleged to have been committed.

The demotion process is very vague. Previously, if someone already had a secure tenancy, the demotion to an SSST was subject to a case having gone through a criminal court. That was very clear, but the new demotion process is much more vague and, although we entirely approve of the idea that people get reasons for it, there is no easy way of protesting about it. Again, it is a summary application—we seem to be having a summary application fest here. Anyway, that will not cash out in real terms in applications to the court, because it will just not happen.

Someone might be accused of antisocial behaviour without the matter having gone through any court process, and their tenancy could be demoted to an SSST; then, that SSST can be brought to an end. Again, there is a summary application process. A full judicial process to evict the person is not easily available.

I am concerned about the potential for misuse and about the difficulty that people who have chaotic lives or mental health problems, or whatever it may be, will have with getting an opportunity to get an outside court—as that is the forum that society provides—to consider the matter.

I would prefer either that the demotion was made more restricted, going back to the old criteria, or, if the new criteria are to be left in, that the landlord be required to raise a summary cause action so that they, rather than the tenant, have to take the matter to court. The issue is getting into the court. No doubt we will discuss later whether a court or a tribunal is best, although I am not too bothered about that particular question. The point is to provide another bite at the cherry—an opportunity to go to a court and get the forms of advice, assistance and representation that are provided through that route, which is currently much easier than taking the initiative to make a summary application.

**Garry Burns:** I think that a solution is being designed for a problem that does not exist. SSSTs can be used at the moment anyway, if there has been antisocial behaviour. In cases involving families or individuals in which antisocial behaviour is taking place, there will be other issues and other things going on. There might be mental health problems, addiction issues or both; other things could be going on in the family.

Tenants do not want to lose their homes. Some tenants might be acting in a way that is not great for everybody else, but we feel that it is a matter of working with such tenants, instead of threatening them, which is what we feel that the measures will do. We have to keep an eye on the wider community, but if we are going to make it easier to get people with issues out of a property, we have to be concerned to ask where they will go. Once people have been put out of their social housing, where do they go? They go to the council for accommodation and the council is obliged to accommodate them in temporary accommodation, which costs a lot of money. They may well end up in a private flat.

If people have issues, those issues do not disappear when they move into a private flat. Whatever issues they had that created the ASBO go with them into their new tenancy, wherever they go. ASBOs as they are used now are sufficient as a tool, but for people with behaviour that needs to be changed for the wider community, why not include in the policy a statutory obligation on the local authority to put support services in place? Most councils will not provide tenancy support unless there is homelessness. If we are helping folk with homelessness, why not help folk who are struggling in tenancies and keep the SSSTs as they are now?

**Mary Fee:** Would it be helpful if the Government issued specific guidance to landlords on how the powers should be used?

**Paul Brown:** I think that the procedure and the rights need to be tightened up. It is not just a matter of guidance. There will be human rights challenges.

**Mary Fee:** Specifically with this?

**Paul Brown:** Yes.
The new demotion criteria relate to how the defender—the tenant, a member of the family or visitor—has acted within a period of three years. The landlord might have records, but if somebody was accused of having done something two and a half years ago, most people would not have a record of that and getting evidence of that sort of thing would be a very complex matter. If one wanted to test the fact, it would be by way of summary application. However, there is no test of reasonableness; the court will not be told, “You have to look at reasonableness.” In the 2001 act, reasonableness is defined in various ways in a situation where someone is evicted from a secure tenancy.

I would suggest that in order to be human-rights compliant, you will probably need to have a test of reasonableness for most of these disputed issues. The test of reasonableness can be explained in more detail either in statute or in guidance, but if one does not include the test, people will try proportionality challenges, which are not quite the same thing. If landlords want certainty and clarity, it is much better to say that their decision making has to be reasonable, rather than leave things to proportionality.

The course of conduct in a demotion situation might not be proven by way of a criminal court or through an ASBO. However, if it has been so bad that demotion is obviously reasonable, the defender’s lawyer will tell them that the demotion is perfectly reasonable and if they do not go along with it, they will get evicted. They will not get legal aid either and the sheriff will be very annoyed if a defence is attempted that is obviously absurd.

One has to trust the process to some extent, rather than leave things to good practice on the part of landlords. I think that good practice among landlords is probably general, but mistakes are made and there are prejudices—sometimes witnesses are prejudiced. These things need to be tested properly and I do not think that the way that this issue is dealt with in the proposals provides for that fully.

Mary Fee: Does Garry Burns have any further comments?

Garry Burns: No. I could not add anything that Paul Brown has not already said.

Mary Fee: There are provisions in the bill that would provide further protection for tenants, particularly those with short SSTs. Do you think that any other type of protection is required? You have talked at length about issues that you have, but could something specific be added that would help?

Paul Brown: To protect tenants?

Mary Fee: Yes.

Paul Brown: I am concerned about the new proposed recovery of possession procedure for secure tenants. Section 15 removes reasonableness from the test for antisocial behaviour. It says that if someone has been convicted of various offences, there is no defence to the action for eviction—apart from the proportionality route. I think that that was accepted in the earlier session. It seems a bit absurd to have people know that proportionality may be raised but not to explain it in statute in a way that is accountable and clear. The rule of law should give people a clear indication.

If someone went to see their lawyer and said that they wanted to defend their eviction but they had attacked their next-door neighbour with a hammer, the lawyer would tell them that the eviction was perfectly reasonable and they would not get legal aid. However, if more explanation was provided about the behaviour that led to the eviction, such as that it happened some time ago and that social work, the general practitioner and everybody else said that the individual had been rehabilitated, there would be a reasonableness test argument, so the test should be retained. It would be a mistake to let things fall to proportionality challenges, because they are much more complex and it would be much more expensive for landlords, who would instruct advocates and go for appeals left, right and centre. It would be much better to have it put into the bill.

We can be proud of the way in which the reasonableness test has been understood, of how the courts generally apply it, where it exists, and of the way in which it has been explained in statute. That principle should be built on, rather than there being an attempt to remove it for hard cases, which would be a mistake.

12:15

Garry Burns: The way to improve all tenants’ rights is to bring private sector tenancy rights more in line with social sector tenancies, because it is a lot easier to get somebody out of a private let. There are examples of people who have been in their homes for four, five or six years, or even longer, and who can be out of there relatively quickly because of certain ways in which the landlord can raise actions. Sometimes not a lot of evidence is required for those actions to get somebody out, and the period can be as short as six weeks to two months. That is quite unfair, particularly where families are involved. If someone has been in a tenancy for five years, that is their home and they think that they will be there for a long time. We should bring things in the private sector more into line with the social sector.
Across Scotland, there are some good third sector agencies and legal services that provide help for citizens, but there seems to be a bit of a mismatch in how that happens. In places such as Glasgow and Edinburgh, there are services all over the place for people who are going through an eviction and there is a lot of expertise on how to stop evictions, but in smaller local authorities there does not seem to be the same knowledge about how to access services.

We have come across that because there have obviously been a lot of issues with the bedroom tax and Govan Law Centre has been in the media, so we are getting phone calls from all over Scotland. Although the bedroom tax is a specific issue, other issues have also come up, because there are not enough services that are independent of the local authority and of Government. That is important, because sometimes agencies that get funding from Government or from local authorities might not be great at challenging the local authority that funds them, although they should do, based on their remit.

To recap, we need more independent agencies that can fight for people’s rights across Scotland, and we need to make private sector tenancies stronger for tenants.

Mary Fee: What is Michael Clancy’s view?

Michael Clancy: I am afraid that I am inexpert in this area and must defer to the two experts on either side of me.

Mary Fee: I suspect that I know the answer to my next question, because we have touched on the eviction process and the bill simplifies that process. Do you think that it balances the rights of tenants and landlords, or does it swing too much in favour of one or the other?

Paul Brown: I reckon that, for the most vulnerable tenants, quite a lot of rights could be removed by the bill, and I have concerns about that. I do not understand why landlords appear to fear the legal process so much. I appreciate that there are sometimes problems, but we have heard evidence that they do not like the arrangements and that they seem to think that they do not get their remedies. That is not our experience at all. RSLs and local authorities in Scotland raise thousands of actions, sometimes on quite modest grounds, and they frequently get the remedy that they seek. I am not talking about rent arrears cases, but they frequently get the remedy that they seek in other cases. I am concerned about the way in which the changes to the SSST regime can result in naive tenants and members of their families losing their homes, or losing a lot of security, without really understanding what is going on.

I am not in any way saying that all tenants should always stay in their homes. There are times when people need to be evicted and I am not querying that, but it is a question of getting the balance right, which I appreciate is not always easy.

Garry Burns: Any erosion of tenants’ rights or any policy that makes it easier for a landlord to evict a tenant should be avoided at all costs. It should be more difficult to evict, although I echo what Paul Brown said—we are not saying that tenants have a right to their home no matter what they do.

I return to my original point about most people to whom eviction happens. People with SSSTs who have received ASBOs will often have mental health issues or addictions. However, there can also be a breakdown in the relationship between the tenant and the landlord, which can sometimes be really personal. When there is that personal relationship, housing associations—just like any organisation—can dig in their heels. That is not to say that that is the practice of all social landlords—of course it is not—but relationships like that can be so close that when there are a lot of pressures on social landlords, such as the bedroom tax and so on, a lot of them break down. The problem is that it might not be in the best interests of vulnerable tenants to give social landlords extra powers to evict.

The Convener: Moving on to part 3, on the private rented housing sector, Jim Eadie has some questions.

Jim Eadie: I kick off by asking whether panel members have information that they can provide about housing cases, particularly those in the private rented sector, that are currently dealt with by the sheriff courts. What are some of the problems in relation to equality and access to justice?

Garry Burns: One of the significant barriers is the private landlord. We deal with illegal evictions—a rough estimate is about five or six a month. By that, I mean a landlord changing someone’s locks or removing their property from their home and putting it out on the street.

The police refuse to get involved in that. Without a court order, forcing a lock is a criminal act; it is not a civil matter. Landlords are doing that routinely. The problem is that the people they are doing that to tend to be young and female, and they tend to be mothers. There is an element of bullying there, and an element of people not getting their rights.

I have spent days talking to the police when that happens and no action is taken. The person gets fed up because she is out on the street and cannot get into her house and get her child’s clothing,
toys and bedding. She is having to go to her mother, when the relationship broke down years ago. It is important that there is stronger advice and terms for the police to take action on such situations.

Jim Eadie: Are you saying that in such cases, when a criminal act has been committed, the police refuse to intervene?

Garry Burns: Not in every case.

Jim Eadie: You have experience of the other side of the situation.

Garry Burns: In almost every case, I have had to spend a significant amount of time with the police, going through different types of officer to get the sergeant so that I can report the landlord’s action as a crime. Even when it is reported as a crime, the police ask questions such as whether the tenant has paid rent. That is not the issue. The tenant has been evicted illegally and the police are not there to make judgments on rent. Usually the police do get involved but, unfortunately, it can take a significant amount of time, during which the tenant has nowhere to go. In quite a lot of cases, the police have not really done their job. As I understand it, there have never been any prosecutions, despite significant evidence that a crime has been committed.

Private landlords do not like their tenants getting their rights. They get quite huffy when you phone them up. They say, “Why’s the tenant going to a law centre?” You tell them that it is to get their rights. That is not the case with all private landlords, because some are decent, but private landlords need to know what they are doing. You get landlords putting in a handwritten note telling their tenants that they need to be out of the property by, for example, 12 o’clock on a certain day in August. I phone them up and tell them that that is not really a proper notice to quit and they come back to me and ask why, and say that they are going to put the tenant out. I tell them that if they do that, they are breaking the law.

Private landlords have the right to put people out—of course they do—but they need to do it legally. I love it when they do it legally because it means that somebody is not out on the street, terrified because they are homeless.

Jim Eadie: Do the other witnesses have any perspective on that issue?

Paul Brown: Our experience of private rented sector cases is that they can be very complex. If the short assured tenancy is created and ended properly, there is no defence, but sometimes it is a lot more complex than that. In the case of long-running tenancies that predate the assured tenancy regime, we are looking at an earlier statutory regime. I would agree that there is a problem of landlord education.

There is also a problem—it is to some extent in the bill—about repairs in certain sorts of stock. If the tenant has only a short assured tenancy, they do not really feel confident enough to take repairs issues up because they think that the tenancy will just be brought to an end and that is them out.

There is also an issue about common parts. The ideas about how tenemental repairs may be made easier will help private rented sector tenants, too. However, as I think Shelter was saying earlier, the long-term aim has to be to look at the assured tenancy regime and to increase the rights and security of short assured tenancy tenants. That would be worth looking into.

Jim Eadie: Do you have any other perspective that you can share with the committee on your experience of how cases in the private rented sector are currently dealt with by sheriff courts?

Paul Brown: We have little experience there, because very few tenants consult us. We have done some unlawful eviction cases, which can be very difficult if the landlord is intransigent. There is an education issue there. My impression is that some sheriffs quite enjoy the very complex cases, because they are getting their teeth into complex legal issues. However, those are quite few and far between at the moment.

Jim Eadie: I will move on in that case, unless Mr Clancy has anything to add.

Michael Clancy: Your question was also about access to justice. That can frequently depend on eligibility for legal aid, especially for tenants. Although there may be a wider eligibility for advice and assistance these days, legal aid availability is more restrictive. That is an area that needs examined. Matching eligibility and availability is a continual problem.

Jim Eadie: What are the views of the panel on the proposals contained in the bill to transfer certain types of civil court actions in relation to the private rented sector from the sheriff court to the first-tier tribunal?

Michael Clancy: The Law Society is in favour of the way in which the Tribunals (Scotland) Bill is proceeding. It is currently at stage 2. Tribunals, on the whole, have a different ethos from that of the courts. They are more accessible and more user friendly, and they can be more specialised. They are relatively less adversarial, and they are relatively more inquisitorial in the way in which they do their business. They are also quite informal. All of that adds up to a balance in favour of tribunals. Under the Tribunals (Scotland) Bill, a first-tier chamber for housing, land and property questions is envisaged.
There are two reservations, which we talked about just before the evidence session began, relating to legal aid. Although legal aid is widely available for courts—schedule 1 to the Legal Aid (Scotland) Act 1986 has a list of courts for which legal aid is available—there is a much shorter list of tribunals in that schedule. Employment tribunals and the Lands Tribunal for Scotland are included there, as are one or two others. We must be careful about the issue of ECHR compliance when it comes to shifting cases off to tribunals. In the past, one would have access to legal aid when going to a court. For a tribunal, one might not have direct access to legal aid—although advice and assistance would be available in those circumstances. That is one reservation.

Jim Eadie: You raise an important point about access to justice through legal aid. Do you have a sense of whether transferring the jurisdiction from the sheriff court to the newly established tribunal would be cost neutral, or whether there would be a cost implication attached? If it is the latter, how much might that be?

Michael Clancy: My capabilities in arithmetic and mathematics are so limited that I cannot answer that question just now.

Jim Eadie: I do not believe that for a moment. I do not believe that there are any limits to your capabilities.

12:30

Michael Clancy: You are charming as ever, Mr Eadie, and also overly optimistic. However, I shall take that question back and ask our access-to-justice team to look at it and see whether we can write to the committee at a later point during stage 1.

I was going to reflect on the fact that, under section 70 of the Tribunals (Scotland) Bill, there is a provision for Scottish ministers to make regulations for tribunals to charge fees. That, too, could be a barrier to using tribunals, which we must watch carefully. Of course, in court circumstances, there are already fees charged by the court for various steps in the process, so we just need to be aware of those possibilities.

Jim Eadie: That is helpful. Could the other panel members address the issue of legal aid and fees?

Paul Brown: Provision of legal aid for the tribunal process is crucial. There will be non-compliance with article 6 of the ECHR if that is not the case, and it would also make life difficult for the tribunal itself if none of the defenders in eviction cases in the private rented sector is represented. A proportion will have difficulties, such as communication difficulties, and will have no idea how to gather and deploy evidence or legal arguments. We are talking about a family losing their home, which is the removal of a fundamental freedom—with the obligation to pay rent and so forth, of course—so legal aid is crucial.

On the cost, I would have thought—I am taking a risk here—that the number of cases will not be great because most tenancies are short assured tenancies, and if they are properly created and brought to an end there will not be much of a defence for an eviction case. It would be a different matter if the tenancy regime was changed, and it would be an enormously different matter if registered social landlords' tenancies and secure tenancies go through a tribunal process. I would imagine that the cost would be very high indeed, because of the sheer numbers.

There are positive advantages to a tribunal in terms of programming, having an expert panel and the perceived informality of the process—although sometimes it is no less formal than the courts. However, I doubt whether it really ends up being cheaper where there is a substantive defence. At the moment, the Private Rented Housing Panel would not be used to having a case that would last two or three days, with scores of witnesses. When that happens, I cannot imagine that it is going to be cheaper for landlords or for anyone else. That is my guess, anyway.

Garry Burns: We would be concerned about not having a solicitor representing a tenant at a tribunal—the whole point of tribunals, as I understand it, is that there should not be—and about not having a sheriff. I am not so sure that sheriffs lack the specialism that the briefing says they lack. You can go to see a sheriff for small amounts and they can make decisions on whether or not you have bought a dodgy sofa—are we saying that it is more important for a sheriff to decide on that than to decide on your home? Our concern is that a person's home is vital; you cannot do anything in life without a strong home. So long as it does not have the power to evict, the tribunal could be a good forum, but only as an arbitrator. If it comes to making a decision on an eviction, we feel that that power should stay with the sheriff courts, as it is at the moment. We may disagree about that, but we are from different organisations, so that is fine. We do not think that it is a great idea to move into the tribunal system.

Jim Eadie: That is helpful. Perhaps we can pursue the need for clarification that you have highlighted.

Michael Clancy: Yes.

Jim Eadie: In response to an earlier question from Mr Ingram, you mentioned the level of rents in the private rented sector. Could you say a little more about that?
Garry Burns: The level of rents in the private sector just now is very high in comparison with the social sector. Brick by brick is the best way of looking at it: potentially, the rent for a two-bedroom house in Glasgow can be about £600 a month; the neighbours could be paying about half of that if they are in the social sector, for the exact equivalent flat. We do not see that as fair, and we think that the Government should take a role in dealing with that. For a lot of people, particularly those on the minimum wage, most of their income goes on housing costs. When most of a household’s income goes on housing costs—I was there myself not too long ago—it is not nice. It is not nice to pay half your wages to somebody else who is making quite a lot of money—and it is often the case that they are providing a poor service.

Everybody is talking about housing benefits. The housing benefit bill is astronomical, but a lot of it relates to the private rented sector.

Jim Eadie: What is the remedy that you suggest the Scottish Government should adopt?

Garry Burns: For the Scottish Government to do a review, looking into the matter at a deeper level. I appreciate that this might not be the greatest format, but there should be a big review on rent. If there is a legal way to proceed with this—we suggest that there is—and if there is a fair and just way to do it, what we are essentially talking about, to put it in a brutal way, is capping rents. I think that there is a way for the Scottish Government to consider that, potentially using legislation to protect people from having to pay exorbitant rent out of their income and at the same time protecting the public purse. That rent gets charged to people who are getting housing benefit to pay it, and they need a top-up with their £70-a-week benefits to pay off the rest of it.

People are in abject poverty. Solving high housing costs would free up a lot of money and would make Scotland a far fairer society.

Jim Eadie: I have a final question on this area. Do you think that the Government’s proposals for court reforms could achieve similar outcomes, in terms of efficiency and access to justice, to those that are envisaged through the transfer of jurisdiction from court to tribunal?

Michael Clancy: The court reform programme is broad and wide ranging. It has already begun in some respects, following on from the report of Lord Gill. There are other reports involved, too, including that of Sheriff Principal Taylor. It is a very big programme to improve efficiency in the courts and to ensure that the right level of court deals with the right level of matter.

As we can see from earlier consultations on the draft courts reform (Scotland) bill, proposals to raise the threshold for the jurisdiction of the Court of Session and to push cases into the sheriff court will mean that there will be more cases in the sheriff court. If one considers the civil justice system as a whole, the inclusion of reforms to tribunals along with reforms to the courts is a very sensible idea. I refer not just to the structural aspect with regard to the Scottish Court Service and the Scottish Civil Justice Council but to the more operational aspect. From our point of view, shifting jurisdiction from the sheriff court to the tribunals—not just in this area but in other areas, too—will perhaps allow for those cases that cascade from the Court of Session to the sheriff court to get dealt with more efficiently there.

I hope that that answers your question, Mr Eadie.

Gordon MacDonald: Should social rented sector cases also be transferred to the first-tier tribunal?

Garry Burns: We are in opposition to that for the private rented sector, so it follows that we will be opposed to it for the social rented sector. I will not add anything further.

Paul Brown: I did not realise that this would be such a hot potato. I would like to submit some more detailed written representations later. The fundamental issue is not between a tribunal and a court—it is about the resources that go into the provision of the court or tribunal facilities; ensuring that the judges, whether on a tribunal or in a sheriff court, know about the subject matter beforehand; and ensuring that there is legal aid. In the past—it is less the case now—there was an idea that a case going to a tribunal meant that it was not necessary to have representation and that, if someone did have representation, they did not need to be all that expert.

That idea is probably going, although it has not entirely gone. We hear stories about people being represented at employment tribunals, with very large sums of money involved. A lot of what happens can be intimate and upsetting for people, who could be represented by people with no knowledge or experience of that form of remedy at all. Sometimes they are solicitors, but the point is that sometimes they are not. If the case is approached with a degree of seriousness, if proper, full legal aid is provided—not some edited version—and if the right messages are given about the seriousness, importance and power of the tribunal, I am fairly neutral on the matter.

We at the Legal Services Agency appear before a wide range of tribunals and courts. Some of my colleagues are mental health tribunal chairs, in fact, and they have huge powers. I do not have any difficulty in principle with that route, as long as people do not think that that is an easy, cheaper approach. Landlords appear to think that that
would be the case, but it will not be. If there is a tribunal with three experts, they might spend a lot longer on difficult cases than a sheriff court would. I am not against such a transfer, but it needs to be done with one’s eyes open.

Gordon MacDonald: The rest of the questions that I was going to ask have been covered.

The Convener: Mark Griffin has some questions on other matters relating to the private rented sector.

Mark Griffin: What are your views on expanding access to the Private Rented Housing Panel by enabling third-party applications by local authorities to enforce the repairing standard?

Paul Brown: Great.

Garry Burns: Brilliant.

Michael Clancy: You have a consensus there.

Mark Griffin: Okay—that was an easy one.

I will move on to the subject of letting agents. The Law Society’s submission had a high focus on that. Do you agree that the regulation of letting agents is required? If so, why?

Michael Clancy: We agree with the regulation of letting agents. The policy intention is a clear one, and we support it. We have an issue, however, with the way in which the regulatory scheme is being set up, the extent of the regulation of letting agents by Scottish ministers and the functions that the Scottish ministers would perform as regulators. Those are our issues—as well as the inclusion of solicitors in the regulatory scheme.

Mark Griffin: So you would hope that solicitors would be excluded from the scheme.

Michael Clancy: In the scheme under the bill, Scottish ministers are to establish a register of letting agents, and it will be a criminal offence not to register yet to act as a letting agent. In order to be on the register, someone has to be

“a fit and proper person”,

which amounts to their not having been convicted of an offence involving dishonesty, violence, drugs or firearms or a sexual offence, and not having practised unlawful discrimination under the Equality Act 2010 or otherwise contravened the law on housing, landlord and tenant law or the law relating to debt. Not having been convicted of any of those things adds up to someone being a fit and proper person. However, there is no mention in section 30 of qualifications or training, nor of any consumer protections that would apply.

12:45

Ministers will provide a code of practice that will apply to letting agents, but our view is that solicitors already have to undergo a fairly extensive fit-and-proper-person test and are already regulated by the practice rules and code of conduct approved by the Lord President of the Court of Session. They also have an independent complaints body, the Scottish Legal Complaints Commission, to which complaints should be sent and which can award compensation of up to £20,000, stipulate the repayment of fees and expenses and take other action against solicitors. However, none of that seems to apply to letting agents under this bill. We have reservations about the robustness of the regulatory system under the bill as it applies to letting agents on their own and think that the scheme should not apply to solicitors, who already have a very robust and structured system of regulation that we believe is a significant improvement on what is in the bill.

Mark Griffin: Do the other panel members wish to comment?

Michael Clancy: Convener, if you do not mind, I would like to put on record some comments about certain drafting points in the bill.

We have already had discussions with the bill team and have offered to give them all the assistance that they might want from us. We certainly want to continue that dialogue, but I should note that, with regard to wording such as contravening

“any provision of ... the law relating to housing, ... landlord and tenant law, ... the law relating to debt”,

which can be found in section 30, it is quite difficult to find out what that means. I am not really sure how we find out what it means to contravene

“the law relating to housing”
or, indeed, what one might say about that and how it might be interpreted. Given that that is one of the strands of the fit-and-proper-person test, we need to look very carefully at that.

With regard to the business of being a letting agent, I also draw your attention to the definition of “letting agency work” in section 51, which refers to

“things done by a person”,

who is not defined,

“in the course of that person’s business in response to ... instructions which are ... carried out with a view to a landlord who is a relevant person entering into ... a lease”

so that

“an unconnected person may use the landlord’s house as a dwelling”.

That strikes me as being quite limited—in fact, it sounds like it relates only to the landlord’s own
house—and one would want to look carefully at that wording to ensure that it is broad enough to achieve the intention.

Moreover, the same section states that a letting agency would get instructions to repair, maintain, improve, insure or otherwise manage a house. Without being too flippant, I would suggest that that could mean that someone who is repairing a house—a roofer, say, or someone who knows about drainage—or a person such as a painter and decorator who maintains a house could be described as carrying out “letting agency work”. We have to be very precise about how such provisions are worded and how the bill fits together to ensure that we capture those who are actually doing letting agency work, not those who are not.

In my submission, I point out that a private member’s bill, the Private Landlords and Letting and Managing Agents (Regulation) Bill, is currently going through the Westminster Parliament. I do not know how far it will get, but you never know—it was high up the ballot in the House of Commons. By modifying that bill’s definition of letting agents’ work, we might be able to improve this bill.

A significant point is that that English legislation is being treated as an amendment to the Estate Agents Act 1979, which does not apply to solicitors. Again, I reinforce the point that we as a profession already have a group of client protections and an adequately robust code of conduct. We should be aware that in this area we would be creating an unlevel playing field across the UK but, of course, that situation might change after September.
Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they consider that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

There is the potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered letting agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

Careful consideration must also be given to the status of individuals who act as ‘agents’ but do not act on a commercial basis i.e. family relatives acting as agent on behalf of the absentee landlord who might be resident temporarily overseas. SAL argues that these individuals should not be required to register given that their sole client is a relative and that they are not carrying out the function on a commercial basis.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The proposed mechanism is appropriate in providing a simple and swift method of resolving disputes. It is also considered that all commercial agencies should be required to abide by the same statutory code of conduct; thus assuring landlords and tenants of easy access to the same redress mechanism.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. It will put an end to the current situation that some landlords can face in having to cover other peoples’ share of communal repairs in order to
comply with the repairing standard for their property and provide a compliant property for their tenants.

Scottish Association of Landlords and Council of Letting Agents
21.02.14
On resuming—

Housing (Scotland) Bill: Stage 1

The Convener: Item 3 is to take evidence from private landlord representative groups on the Housing (Scotland) Bill. I welcome John Blackwood, who is the policy and parliamentary affairs director for the Scottish Association of Landlords, and Sarah-Jane Laing, who is the director of policy and parliamentary affairs for Scottish Land & Estates. I also welcome Patrick Harvie MSP, who is joining us for this session. Adam Ingram will start.

Adam Ingram: Good morning. The Scottish Government’s vision for housing is that all people in Scotland should live in high-quality sustainable homes that they can afford and that meet their needs. To what extent do the bill’s provisions promote that vision?

11:45

John Blackwood (Scottish Association of Landlords): I will kick off. From our perspective, there are some positive elements in the bill. In effect, it is about redress and access to justice, and it also introduces the potential for letting-agent registration. It will help the consumer to get redress, if they feel that they need to do so. Overall that can only increase the quality and standard of the physical condition and management of properties.

Sarah-Jane Laing (Scottish Land & Estates): I support what John Blackwood says; we believe that the bill will help to increase standards and deliver on its aims. It is the next step in a long process that landlords’ organisations, tenants’ groups and the Scottish Parliament have been working towards for a number of years. As John Blackwood highlighted, a number of the bill’s provisions will help to deliver on the aims that we seek to achieve.

Adam Ingram: Good. My only other question is on the consultation process. Were you satisfied with the process? How did you participate? What are your reflections on the consultation?

Sarah-Jane Laing: The consultation process was very inclusive. We were able to participate as an organisation through the stakeholder group, but there were also a number of opportunities for individual landlords—certainly among our members—to participate. Over the past few years, there have been a number of routes for consultation on policy objectives and on particular provisions in the bill, so we are entirely happy with the process.
John Blackwood: I would say the same. There are a number of things in the bill for which we have been campaigning for some years, so we are delighted that those things will eventually—we hope—be introduced in legislation.

Jim Eadie: The bill makes provision for transferring jurisdiction for certain types of civil court action concerning the private rented sector from the sheriff court to a first-tier tribunal. It would be useful first to hear about your experience of landlords taking civil actions through the sheriff courts, and any problems with access to justice. Secondly, do you agree with the proposal to transfer jurisdiction?

Sarah-Jane Laing: Our experience to date has been pretty unsatisfactory. We have provided a number of pieces of evidence to the Scottish Government and to Parliament in the past few years concerning the speed—or, rather, the lack of speed in consideration of cases. The lack of specialist housing knowledge in the court system has also been a huge issue for landlords, and there is a lack of confidence in the court system’s ability to deliver adequate outcomes within defined timescales.

Looking to the future, our organisation initially wanted the court system to be improved—if possible improvements have been identified, it makes sense to carry them out. We thought that a number of the Gill review’s recommendations, for example, could have resulted in improvements. However, after discussing the matter with the Scottish Government and others, we bought in to the tribunal method, and if that is going to be progressed, the system that the bill sets out is the most appropriate plan to follow.

John Blackwood: Again, I largely agree with that. The current system involving the sheriff courts is expensive, for a start, and very cumbersome. There are inconsistencies in decisions and it lacks expertise. We have been campaigning for a number of years for a specialist housing tribunal. There are already a couple of tribunal services in Scotland, which are respected and could easily be built on. Such a service would be more cost effective for the public purse and would provide better access to justice where that is required.

Jim Eadie: You mentioned cost effectiveness and better access to justice. Can you say a bit more about the potential benefits for tenants and landlords, from your perspective?

John Blackwood: One of the main points concerns the speed of getting to the sheriff court in the first place. The process is very much a postcode lottery—it is based on where one lives—and many landlords and tenants alike feel that it is too adversarial. We need another system that takes a more holistic approach to dealing with the housing issues that are faced by landlords and tenants. A tribunal service would be much more appropriate, and mediation—which is already available in existing tribunal services—could be provided where that would be appropriate.

Sarah-Jane Laing: I agree with everything that John Blackwood has said. There would also be a financial benefit to landlords, especially in rent arrears cases. The time that is spent in court means that arrears continue to increase as one goes through the process. If the tribunal works as it should, there will be financial benefits for landlords because cases will be resolved much more quickly.

Jim Eadie: That is helpful. I have one further question. With regard to the licensing process for houses in multiple occupation, the bill will not transfer civil cases from the sheriff courts to the first-tier tribunal, but rather will give ministers an enabling power to do so at a later date. The Scottish Government has committed to consult further on the issue. What are your views? Are you open minded on the transfer taking place at a later stage?

John Blackwood: We would certainly encourage it to happen, because it is important that the tribunal would deal with all private rented housing cases, including HMO cases. We believe that the reason for the decision is that the issue has not been consulted on, but we would have no problem at all with those cases being transferred.

Sarah-Jane Laing: I echo those thoughts; we would have no issues with the transfer being included in the bill. We would not want to wait until a later date; as John Blackwood said, we would like everything to be brought together.

Gordon MacDonald: Continuing on the tribunal theme, it has been suggested that the Scottish Government may provide support for people to access the proposed tribunal, possibly through legal aid or an advocacy service. Do you have any views on what the policy on access to legal aid and expenses should be? You already touched on the location of tribunals.

John Blackwood: I believe that more work needs to be done on the cost benefits. Overall, the tribunal system will be cheaper for the public purse; we know that from experience of tribunals. Access is important, and the opportunity to use an advocacy service is even more important, especially for vulnerable tenants. Any system needs to have such provision built in. It would be for all users of the service—landlords and tenants. Where it is appropriate, people should be able to access any type of advice, support and information that they need.
Sarah-Jane Laing: I agree with John Blackwood. We do not want to create a system in which legal representation becomes the norm. It must be there for when it is required, but we do not want a system in which it becomes a business.

Gordon MacDonald: It has been suggested that there could be scope for the tribunal to charge a fee. What are your views on that?

John Blackwood: That would depend on the fee, as you can imagine. A charging system is currently in place in the sheriff court system. We are open to looking at the issue in the context of the tribunal service, when it has been properly costed.

Let us not get too bogged down in the charging process and who would pay for what. What is important is that we produce a system that is effective, robust and easily accessed by all, and in which all users—landlords and tenants—feel that the system will listen to their case and operate in their best interests. I think that tribunals can do that better than traditional court services.

Sarah-Jane Laing: What is important is that we have an effective system. If it is deemed necessary to charge fees to ensure that the system operates effectively, we will not object to that.

Gordon MacDonald: We heard from Shelter Scotland and the Govan Law Centre that the tenancy regime in the private rented sector should be changed to give tenants more rights. What is your view on that?

Sarah-Jane Laing: The Shelter proposals are not just about giving tenants more rights; they are much more complex, when we look at them in detail. They are about making the tenancy regime work more effectively. I do not think that landlords’ representatives would argue with that; where we disagree with Shelter is on how to achieve such effectiveness. Shelter’s view is very much that we should remove the short assured tenancy and move to assured tenancy.

However, we have been able to provide evidence on why the short assured tenancy is used. It is used largely for two reasons. First, it provides flexibility for both parties. We have evidence of landlords trying to offer longer tenancies, but tenants not wanting them. The other reason is to do with the lack of confidence in the court system, which I mentioned. If a landlord is not confident that they can get their property back as a result of rent arrears or another reason, their default position will be a short assured tenancy. If we can create confidence, I think that the sector will change and longer tenancies will be provided. There might even be a move to assured tenancy.

However, it is very much about change coming about as a result of increased confidence, rather than because of regulation.

John Blackwood: I concur with that. It is important that we get the message across that we support the current short assured tenancy regime. Research by the Scottish Government backs up the claim that both landlords and tenants feel that the regime is in their interests—there has been recent work on the matter. The Scottish Government is actively involved in reviewing the system and hearing from all stakeholder interests.

There is an argument for reconsidering the system. For example, landlords think that the grounds for repossession are not strong enough. We often hear from communities about antisocial behaviour. Landlords feel disempowered and feel unable to take action on it through the courts, and communities feel that no one is doing anything about the problem. There is an issue in that regard, perhaps more so than there was 30 years ago, when legislation to deal with such problems was introduced.

We need to consider how to modernise the service without throwing the baby out with the bath water. The current system works.

Patrick Harvie (Glasgow) (Green): The witnesses represent organisations that want bad practice to be driven out of the sector, and I am sure that all stakeholders share that view. A concern is that even if the tribunal system works well, there is a big disincentive to raising issues in the first place. Someone who has a complaint but knows that they can be given a month’s notice to quit will not make that complaint. If you are not convinced by Shelter’s proposal on security of tenure, what would be a better way of removing that barrier and ensuring that people have the confidence to express concern and to challenge bad practice where it exists, without feeling that they will lose their home?

John Blackwood: There is an issue to do with tenants getting used to the service and feeling that it is accessible to them. The current service is not publicised enough; tenants are not aware of it. I know that lots of tenants access the service after having been issued with notice to quit—the private rented housing panel is able to continue cases even when tenants have been given notice. The system needs to be used more, and perhaps that can happen if information, advice and support is given to tenants. Likewise, landlords need to have confidence in the service.

12:00

It is still a new system. The tribunals have only recently been introduced and many people out there are still not aware that they exist. I think that
they are important and that they do a good job. However, we must ensure that everybody is aware of the new system and can access it, and that there are no legal or financial barriers to their doing so.

Patrick Harvie: There may be no legal or financial barriers, but if someone still feels that they will lose their home, that is obviously a barrier that is very difficult to overcome.

John Blackwood: It can be, but I question whether that is much of an issue for tenants taking their cases to the tribunal, because that is certainly not what I have seen going through the tribunals so far. Perhaps some people are put off before they even approach the tribunal, but I am afraid that we do not know that that is the case. I do not see much evidence of that at the moment. I am sure that it must happen, but the point is that we need a system in which people feel confident. I do not know whether security of tenure alone would address the problem.

As I said, we often have tenants who have already been given notice to quit, so their security is gone but they still pursue cases through the PRHP because they want their case to be dealt with. That is an important message to get across.

Patrick Harvie: I am sure, however, that I am not the only member who has had such concerns raised by constituents who I do not think are making it up. Thank you very much, convener, for the opportunity to ask the question.

The Convener: Okay.

Mark Griffin wants to address other issues related to private rented housing.

Mark Griffin: What are the witnesses’ views on the bill’s provision to allow third-party applications by local authorities to the PRHP to enforce the repairing standard?

Sarah-Jane Laing: We are wholly supportive of the proposals in the bill.

John Blackwood: We think that the provision is a very positive step that would help tenants who feel disenfranchised in that respect. The provision would allow local authorities to take on their cases.

Mark Griffin: Is other action required to improve physical standards in the private rented sector?

John Blackwood: Overall, improved enforcement of the existing legislation is needed. We see that as being the problem, largely. As we have said many times, landlord registration is not being enforced properly by our local authorities. That is often put down to a resourcing issue. Even with cases that are going to tribunals at the moment, is anybody really enforcing that regulation and taking action against a landlord as a result? We are not seeing that. We therefore need to ensure not only that people can access the legislative provisions that we have, but that the provisions have teeth and are properly enforced. That is a big issue for us.

Mark Griffin: Do you therefore agree with the Government’s intention to introduce at stage 2 a provision on enhanced discretionary powers for local authorities to designate enhanced enforcement areas to tackle poor standards in private rented housing?

John Blackwood: Absolutely—we have no problem with that at all.

Sarah-Jane Laing: We originally suggested that approach a number of years ago in order to focus limited resources on problems that had been identified. We have no problem with the Government’s proposal.

Mark Griffin: Do you agree with Shelter Scotland’s suggestion that carbon monoxide alarms should be mandatory in all private rented properties in Scotland?

Sarah-Jane Laing: Yes.

John Blackwood: Again, we have no problem with that. Electrical safety should be taken into consideration, too. Safety measures are recommended at the moment, but there is no legal requirement to have them. However, it is in everybody’s interest to ensure that properties are as safe as possible.

The Convener: So, you would be quite happy for electrical safety measures to be made mandatory as well.

John Blackwood: Indeed. We are on record as supporting that proposal.

Mary Fee: Part 4 of the bill provides for the regulation of letting agents through the establishment of a register of letting agents, with the necessity for them to pass a fit-and-proper-person test. Do you agree with that general policy approach of a regulatory framework? If so, what benefits would that have for landlords and tenants?

John Blackwood: We agree with that approach. The regulation of letting agents is long overdue. There was always a question as to whether this Parliament had jurisdiction to deal with the matter, so we are delighted that it is considered that it does and that the issue can be progressed.

We have heard for a long time from landlords—tenants are saying the same thing—that somebody could set up an office in the high street of their local town without the need to be regulated by anybody at all. They can set up as a letting agent, take rent, carry our property repairs and take deposits, but nobody is checking that.
Ultimately, the landlord is the legally responsible person, but landlords say that it is not right that somebody can set up a business in that way. They assume that somebody, somewhere—at the very least, trading standards—has checked them at some point. That anomaly has always existed. I hope that the proposed system—we will need to ensure that it is properly enforced and has teeth—will make sure that letting agents are properly checked and registered and that a fit-and-proper-person check is carried out on those individuals.

There are issues when companies are checked out as opposed to individuals. What could happen—this is a concern of ours that we want to share—is that an agent who has run away with the tenants’ deposits and the landlords’ rents could close down their high street office one night and set up a new office on the same high street the next day under a new trading name and nothing can be done about those individuals. That situation—it has happened a number of times in Scotland—is wrong.

As part of the fit-and-proper-person test we must take into consideration previous offences carried out by a company’s principals, as well as the company name, if that is a legal entity in its own right. There are issues around how we enforce the fit-and-proper-person test when we are dealing with legal entities or, in other words, companies.

Sarah-Jane Laing: As John Blackwood said, both organisations are on record as saying that we support the proposals. Landlords, as well as tenants, have suffered through bad practice by letting agents. We do not oppose the proposals at all. However, we have an issue with the definition of a letting agent. Under the terms of the Antisocial Behaviour etc (Scotland) Act 2004, a tenant farmer is deemed to be a letting agent for the head landlord. We do not want to impose duties on a family relative who is managing a property on behalf of someone else.

Mary Fee: A code of practice will be developed. Will some of the concerns that you have raised be covered in that code? Should that code include other elements?

Sarah-Jane Laing: All the issues to do with good practice, unfair fees and widespread bad practice are fine to cover in a code, but the issues with the definition must be dealt with through the legislation.

John Blackwood: We welcome the consultation on the code to which the Scottish Government has committed. Our organisation has been looking at a range of things, such as whether agents should have professional indemnity insurance. That is the sort of thing that you would expect from a commercial outfit and which would be in the consumer’s interest. However, I question whether that would be appropriate in the case of a family relative who is managing a property on behalf of someone else.

Mary Fee: What measures should the Scottish Government undertake to ensure that letting agents, tenants and private landlords are aware of the registration requirements?

John Blackwood: It largely comes down to good publicity, to be honest. We had the same argument and the same issues with landlord registration. It is a bit easier with commercial firms, as letting agents are easier to identify—they tend to be more visible in our high streets and local communities, and they advertise their properties at some point, making them easier to access. Again, however, it is about ensuring that the information is proportionate and targeted.

People must be aware that enforcement action will be taken. At the moment, there seems to be a culture in our sector in which people think, “Well, nobody does anything about it, so it doesn’t really matter whether we’re registered.” That is not good
news for good agents, of whom there are many out there who are doing a really good job. They feel that they are always the ones who have to pay the dues and sign up to everything while nobody chases the bad agents. We must ensure that the bad ones are being chased. We believe that that would be in the interests of all consumers, tenants and landlords alike.

**Sarah-Jane Laing:** Lack of awareness has been an issue with all new regulation for the tenancy sector. One of the issues has been the fact that we have a plethora of acts and new legislation of which there is a lack of awareness not just among tenants, but among landlords. The Scottish Government is to be commended for having spent a lot of time and effort in trying to raise awareness. The most success has been achieved where action has taken place at quite a local level. Scottish Borders Council, for example, really took ownership of the awareness-raising aspect and there were radio campaigns and campaigns within the letting pages of the local newspapers. That approach seems to have achieved much more success than nationwide campaigns. All of us in the sector have a role to play—it is not just down to the Scottish Government to raise awareness.

**John Blackwood:** It is important to emphasise that agents, too, welcome registration, as they believe that it is a good, positive step in legitimising their businesses. Letting agents are not generally regarded by society as being the best of the bunch in providing a service to local communities, so those who are providing a good service welcome registration. We hope that it will distinguish them from others, and for the industry overall it is a positive step in legitimising what is already a very good service. We must make sure that it continues to be so and is seen to be so.

**Mary Fee:** Do you think that the proposals will provide landlords and tenants with easy access to a redress mechanism that will help to resolve disputes between letting agents and tenants?

**Sarah-Jane Laing:** I think that it will, but as part of the system. If it was on its own, as a stand-alone measure, I would have concerns. However, if it is linked to the new tribunal, I think that it will.

**John Blackwood:** Exactly. It is only a positive step. Who they feel they are contracting the service from is an issue for many tenants. They get the property from the landlord and the agent is the middle man, but the agent has not entered into any contract with the tenant. Tenants are not aware of that—nobody informs them of that and makes them aware of their rights and what they can do if something goes wrong. Equally, they could have a gripe with the agent as opposed to the landlord, just as the landlord could. Often, if the middle man does not communicate properly with both the landlord clients and the tenants of those landlords, that is where things start to go wrong. If there is a redress mechanism, at least experts can get round the table and have a really good look at the situation to see where bad practice is happening and how it can be stopped or changed.

**The Convener:** There may be cases in which the mechanism to resolve disputes just will not do that. Should there be more penalties for rogue landlords and letting agents, to hammer home the point that they have to be up there with the best or we are not going to get any improvement in the relationship between tenants and landlords and improvements to the properties?

**Sarah-Jane Laing:** As John Blackwood has touched on, we do not need more penalties; we need more use to be made of the penalties that we have and more profile to be given to penalising that bad behaviour.

12:15

**John Blackwood:** I think that that is true. We do not have any regulation for letting agents at present, so anything is welcome, but the point is that a number of bits of legislation are in place that are just not being enforced. There is an issue with the enforcement of that legislation and with its being publicised that it is being enforced. We could send that strong message to landlords and agents alike.

**Patrick Harvie:** The issue about enforcement of existing legislation has come up two or three times. Is there room for the bill to do a bit more to achieve that, particularly in relation to the deposit protection system? I have honestly lost count of the number of tenants who have contacted me to say either that they are being denied information to which they are entitled—it has to be said that that is most often by a letting agent, but sometimes it is by a landlord—or that they have not been told whether their deposit has been protected. In many cases, people are told that they will have other charges or fees or so-called advance rent, but that that is not really a deposit, when it is a deposit in all but name. Apparently, the Scottish Government still cannot gauge the level of compliance with the deposit protection system. What could the Government do, through policy, the code of practice or the bill, to get the system working better and to prevent bad agents and landlords—I am sure that they are in the minority—from finding workarounds rather than complying with the spirit of the system?

**Sarah-Jane Laing:** There are a couple of points to pick up there. On the scale of compliance, I think that, at the outset, the Government overestimated the number and levels of deposits...
held in Scotland. At the time, we certainly made representations on that, because we had canvassed our members, and we knew that only about 50 per cent of them actually took deposits. However, when the Government looked at the sector as a whole, it assumed that the figure was much higher. That is why the Government is struggling to gauge the level of non-compliance. Similarly, the discrepancy in relation to the level of non-compliance with registration arose because the number of landlords in Scotland was underestimated.

However, there is no excuse at all for non-compliance with the tenancy deposit scheme regulations, for landlords who take a deposit. Regulations are in place to say that any other fees are illegal so, again, the issue goes back to enforcement. Local authorities, through the landlord registration process, can take such issues into account. More instances should be being fed into the landlord registration process, and questions should be asked about whether someone is a fit and proper person to be a landlord. We have no problems at all with that being used as relevant information. However, there is no excuse for non-compliance with the tenancy deposit scheme standards.

John Blackwood: Again, I concur. It is difficult for us to gauge the numbers. We still do not know how many private landlords are out there, and we are going on the basis of how many have registered. On the assumption that the majority have registered, we are saying how many have lodged deposits. Often, we come to the conclusion that all landlords take a deposit but, especially in rural communities in Scotland, we find that that is not the case and that deposits are not taken. It is always difficult to know that.

Patrick Harvie: Yes, but it is pretty clear that some letting agents, including large and very professional ones, simply stop calling it a deposit and start calling it advance rent. Tenants find that they are in the same position as they would have been in previously, because in effect they have a deposit that is entirely unprotected.

The Convener: Alternatively, it is called a management fee or something like that.

John Blackwood: Advance rent is not a deposit, so I take issue with Mr Harvie on that. Advance rent covers only rent on a property and is not used for any deductions that a landlord could make for damage. However, I can understand the principle.

Patrick Harvie: In some cases, it is used for that. If tenants are told that they will not be charged a deposit any more, but that their advance rent will go from one month to two months and when they leave they will get some of it back if they have not damaged the property, that is a deposit in all but name—it is a workaround.

John Blackwood: Well, certainly, if landlords say that the tenant will get something back if there is no damage at the end of the tenancy, that is a deposit. I am talking about genuine cases of advance rent. In fairness, that happens and it has always happened; we should not automatically confuse the two. We argued that this would be a problem if tenancy deposits were brought in. We said that people would find a way round it. There will always be a way round it.

Patrick Harvie: That is what I am asking. How do we stop that? How do we crack down on that kind of behaviour?

John Blackwood: A good way could be through the new tribunals service. At the moment, it is not easy for tenants to take summary cause action through the sheriff court system. They are often not aware that they can do that. They could be made more aware of it through the tribunals service, if we get it right. It should be easier for them to access such a service. That would be a positive step, rather than having people take the cumbersome route of the sheriff court.

Patrick Harvie: If they had the confidence to do it without thinking that they are going to lose their home.

John Blackwood: Yes, although many who go through the system do not find that their deposit is not protected until the end of their tenancy. It is only when the tenancy comes to a natural end, or the tenant wants to move out, that they research everything and realise that the landlord or letting agent never lodged the deposit in the first place. Even beyond the end of the tenancy, the legislation is such that they still have three months to make a claim against their landlord.

A big issue is that many letting agents have not complied with the law, which has disenfranchised the landlords for whom they are acting, because the landlords are liable in law but the agent is not. That is wrong, and many letting agents have been hiding behind that. That is a major issue and it is probably bigger than we realise.

The Convener: We move on to discuss mobile home site licensing. Sarah-Jane Laing, your organisation’s response to the Scottish Government’s consultation on licensing of caravan sites indicated that it did not believe that the proposed licensing of mobile home sites would be the best way of preventing rogue operators from continuing to operate. Your organisation also expressed concerns about the fit-and-proper-person test for mobile home site owners, and about the three-year licensing period. Does your organisation still have those concerns and, if so, why?
Sarah-Jane Laing: Our concerns relate to the operation of landlord registration. They are built on our experience that the landlords who operate within the system and who are fit and proper are the first to register, and the first to reregister after three years, while the rogue landlords still have not registered. Our concern was that if a similar system is set up for mobile home parks, the ones that are already being run to standard will be the first to register and will already have reregistered before we have targeted the ones that need to raise their standards.

We have no problems with looking at ways in which to raise standards but, as it is laid out, the system has inadequacies. We wonder whether replicating a system that is almost aligned with landlord registration is the right way to go.

The Convener: I have a fair bit of experience in this area and it seems to me that some local authorities are much better at registration systems and keeping tabs on mobile home sites than others are. To be fair, we are not talking about a huge number of sites throughout Scotland, so what are your concerns? The local authorities should know where their mobile home sites are and which have registered and which have not.

Sarah-Jane Laing: Certainly you would think that. When I worked in the local authority and private rented sectors, we knew where some of the bad landlords were. However, how the system was set up meant that it was hard for local authorities to target the resources where they were required. The focus was very much on licensing the landlords who came forward. It was the same during the first round of HMO licensing. I know that the number of mobile home sites is not the same as that, so, if the local authorities are convinced that they know where all the mobile home sites in Scotland are, we have no issue.

The Convener: Do you have any comments, Mr Blackwood?

John Blackwood: No, the issue does not come within our organisation's remit, so we do not have a comment.

The Convener: Sarah-Jane Laing, I suppose that this question is for you as well. What are your views on the enforcement provisions for proposed site licensing? You might have answered this question already: do you think that they are an effective deterrent to rogue site operators?

Sarah-Jane Laing: I think that the Scottish Government’s proposals do deliver. They refer to the term "the polluter pays" and the Government has developed a system of sanctions under which the person who is responsible and who should be sanctioned and fined will be.
RICS Scotland

1. A global organisation, the Royal Institution of Chartered Surveyors (RICS) is the principal body representing professionals employed in the land, property and construction sectors. In Scotland, the Institution represents over 11,000 members comprising chartered surveyors (MRICS or FRICS), Associate surveyors (AssocRICS), trainees and students.

2. Our members practise in sixteen land, property and construction markets and are employed in private practice, central and local government, public agencies, academic institutions, business organisations and non-governmental organisations.

3. As part of its Royal Charter, RICS has a commitment to provide advice to the government[s] of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

4. RICS Scotland comprises many working professional group boards and forums relating to the aforementioned sectors, and recently initiated the member-based RICS Scotland PRS Forum.

5. This Call for Evidence was circulated to members of the forum for their assessment of the Bill’s provisions regarding letting agent registration, and their views have been collated within this response.

6. RICS Scotland tenders this submission having recently provided oral evidence to the Scottish Parliament’s Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill’s provisions for letting agent registration (part 4).

7. Additionally, RICS Scotland has discussed Part 6: Private Housing Condition of the Bill with expert members of the RICS Scotland Quantity Surveying and Construction Professional Group Board and the RICS Scotland Building Control Professional Group Board.
Part 4: Letting Agent Registration

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Oral Evidence

8. The Infrastructure and Capital Investment Committee’s Call for written views on the Housing (Scotland) Bill, solicited the following: Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

9. During the oral evidence session, RICS Scotland provided the following key points on various aspects of this query regarding letting agent registration:

10. Following consultation with relevant sector participants, including RICS, before publishing this bill, Scottish Government Ministers instructed officials to pursue ‘Option 2’.

11. RICS Scotland supported, like most of the letting industry stakeholders and representative bodies, the foundation of ‘Option 3’.

12. Whilst ‘Option 2’ falls short of the more consistent and targeted regulation of ‘Option 3’ that RICS Scotland supports, we recognise this development as a step in the right direction.

13. However, for option 2 to realise desired policy outcomes, in terms of raising professional standards and reducing consumer detriment, it is absolutely vital that there is a consistent and effective approach to enforcement of the proposed registration arrangements and associated code of practice.

14. RICS Scotland would like to emphasize that should letting agent registration go ahead, as set forth in the current provisions of the Bill, that it is important to ensure that Registration is not misperceived as Regulation – nor that “registered agents” are considered “regulated” or “accredited” agents.

15. It has been indicated that the Property Factors Act will form a ‘template’ (we use this term loosely) for the Letting Agent Registration element of the Housing Bill. RICS Scotland has published an impact review report on PFA, and is currently in dialogue with Scottish Government on its findings:
15.1 The compulsory registration of property factors has not stopped rogue factors. This is because the necessary “qualifications” for registering as a property factor are too low and very simplistic. So much so that some property factors with a history of malpractice are now legitimised to practice.

15.2 This shortcoming is coupled by both a lack of a visible policing body that enforces registration and monitors the sector, and the view that many owners and tenants are unaware of the need for their property factor to be registered, and abide by a code of conduct.

15.3 On a related note, the report indicated that the Code of Practice, and subsequent Standards, are too minimal.

**UN Global Compact for Sustainable Development**

16. During the oral evidence session, the Chair of the Committee asked the RICS Scotland representative “As a signatory to the United Nations’ Global Compact for sustainable development, what elements should a Code of Practice include to help the sector develop more sustainable business practices in line with the Compact’s 10 principles, in particular Principle 8, ‘undertake initiatives to promote environmental responsibility?’

17. The UN Global Compact is a strategic policy initiative created by the United Nations for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. By doing so, business, as a primary driver of globalization, can help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere.

18. To improve responsible business practices in the land, real estate and construction industry, the United Nations Global Compact and RICS (Royal Institution of Chartered Surveyors) are jointly developing a best practice toolkit for the sector. This collaboration was in January 2014 and will run for 2 years.

19. The primary goal of the collaboration is to support the process of developing a best practice tool kit for the real estate, land and construction sector. To this end, the UN Global Compact and RICS are working together to meet the following three objectives:

   a) To identify key opportunities and challenges for the land, real estate and construction sector pertaining to the Global Compact’s issue areas and United Nations’ goals;
b) To actively engage UN Global Compact participants from the land, real estate and construction sector as well as associated users and stakeholders to capture and scale up existing best practice efforts and initiatives in applying and implementing the Ten Principles of the UN Global Compact;

c) To elaborate on the Ten Principles of the UN Global Compact in order to develop a sector specific practical toolkit tailored to the needs of the land, real estate and construction sector and its "downstream users", by initiating a constructive intra-sectoral dialogue

20. By being signatories to the whole of the Global Compact, RICS has an obligation to “undertake initiatives to promote environmental responsibility”.

21. In considering the embryonic stage of the collaboration, RICS is not in a position to sufficiently advise the Committee on how the principles can be implemented into the proposed Code of Conduct beyond what we have stated above.

22. However, RICS would welcome the opportunity to discuss future activity and progress of this collaboration with the Scottish Government and Parliamentarians.

RICS Scotland Views on Letting Agent Registration

23. In considering the potentially pivotal role that letting agents will play in the lives of many Scottish citizens, RICS Scotland welcomes the prudent move by the Scottish Government in making provisions to raise standards in the sector.

24. As previously stated, RICS Scotland favours option 3 – the introduction of a legal obligation that all agents must be a member of a recognised professional or trade body.

25. If option 3 is not taken forward, RICS Scotland makes the following recommendations on letting agent registration:

25.1 The registration process system would need to be more robust than its Property Factors Act counterpart by comprising, for example, details beyond basic personal or company details.

25.2 There needs to be a visible policing body for the letting agent sector, with a purpose to inspect and investigate the industry, in a bid to scope out unregistered, or sub-standard, practitioners.

25.3 The letting agent registration system would 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 large firm i.e. not director level, as to avoid “detection” when the company applies for registration.

25.4 Registration should include a renewal that is more regular than the every three years proposal.

26. Members of RICS, and other accreditation or trade bodies, already have to adhere to a code of conduct that includes the elements mentioned above, and more to ensure excellency in practice standards.

**Costs of Letting Agent Training**

27. Article 220 of the Housing (Scotland) Bill Policy Memorandum (which illustrates the notions of option 3 *(A legal obligation to join a professional or trade body]*) states that “This approach would also be likely to place the most significant financial burden on the industry. All letting agent businesses would be required to undertake mandatory accreditation and training, before being considered for membership of a professional or trade body.”

28. RICS Scotland believes that the notion put forward in this statement was one of the key reasons for the rejection ‘option 3’ a suitable course of action to raise standards in the sector.

29. If the Housing (Scotland) Bill provisions are to eliminate poor or malpractice and raise standards in the sector, then it is imperative that personnel who practice as letting agents – as sole practitioners or as part of a firm – undergo regular training.

30. If training of letting agent businesses staff is not undertaken, then standards will more than likely decrease over time.

31. Therefore, an adequate level of training will be required, and this will naturally place a financial burden on sector participants.

32. RICS Scotland believes that the raising of standards can only been achieved through ongoing training, or Continuous Professional Development (CPD), of market participants in order to ensure letting agent business staff are knowledgeable and compliant with any legislative changes.

33. RICS members have to undertake 20 hours of CPD to ensure they are aware of new best practice methods and procedures and recent legislative changes. This is one reason why RICS Scotland, and other sector bodies, endorse ‘Option 3’. Members of other accredited bodies also have to partake in developmental programs of a similar nature.
34. In a letter to this Committee from the Scottish Government’s Bill team Leader, the proposed details of criminal offence if failing to register were outlined. This letter stated “It will be an offence to operate as a letting agent without registration (at section 39). A person who commits the offence is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale, or to both. It is also an offence (at section 40) for a person who is not registered to use a number purporting to be a letting agent registration number in any document or communication, without reasonable excuse. A person who commits that offence is liable on summary conviction to a fine not exceeding level 3 in the standard scale.

35. RICS Scotland wishes to raise key questions relating to the above points:

35.1 What mechanisms will be put in place to ensure that individuals who fail, or are removed from, the registration scheme cannot return to practice via alternate means?

35.2 Who will enforce or police the industry?

35.3 Can offenders apply for registration following their imprisonment term or payment of an imposed fine?

35.4 Where will the monies raised through fines, and potential registration fees, extend to?

35.5 Code of Conduct

36. RICS members already have to adhere to a code of conduct. Will there be provisions for RICS members, and members of other accreditation bodies to bypass the need to sign up to another Code? We refer to paragraph 14 of this submission regarding registered agents and regulated agents.

37. We would recommend that the Code of Conduct undergoes thorough consultation to ensure it carries weight and is accepted by the sector.

38. The code of conduct should be legally binding with and make obligations to ensure that practitioners:

- 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;
- Have access to separate client money bank account and client money protection; and
- Carry professional indemnity insurance.
39. We also believe that the Scottish Government should provide guidance for organisations and firms on how to adhere to all elements of the Code, and consider the provision of a rough template for the written statement.

40. RICS is well-placed to assist with the code of conduct formation should letting agent registration proceed as the preferred method, and offers expertise and knowledge on this particular element.

**Reason for Regulation as the Preferred Option**

41. RICS Scotland has put forward this element in its submission to the Scottish Parliament Finance Committee, but wishes to reiterate the benefits of option 3.

42. Principles-based regulation, targeted where the risks are greatest, have the following three distinct elements:

   i. legislation/standards;
   ii. enforcement; and,
   iii. redress.

43. RICS consumer surveys indicate that consumers want more consistent and targeted regulation of residential agents.

44. Other supporters of regulation of letting agents include: ARLA, CLA, Ombudsman Services, The Property Ombudsman, and Which?

45. Recent RICS impact assessment research shows there is a robust business case for full regulation – this was included in our written submission to the Scottish Parliament Finance Committee’s Call for Evidence on the Housing (Scotland) Bill.

46. In short, the summary figures from this research indicate that the benefits will outweigh the costs in less than 2.5 years (if regulation was obligatory on a UK-wide basis).

47. RICS’ proposed approach to regulatory reform mirrors the now well established approach in the financial services market. The benefits of introducing clear, consistent, and targeted regulation covering all aspects of the UK residential property market will include:

   - consolidated and reduced legislation/regulations;
   - a simplified regulatory framework – easier for consumers and businesses to understand;
   - reduced costs associated with business compliance; and
   - enhanced consumer protection.
48. A copy of RICS Scotland’s submission to the Scottish Parliament Finance Committee, which outlines the benefits and costs of professional body membership, can be found here: http://www.scottish.parliament.uk/S4_FinanceCommittee/ROYAL_INSTITUTION_OF_CHARTERED_SURVEYORS_H.pdf

Redress Mechanism

49. The Housing (Scotland) Bill Call for Evidence queried. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

50. RICS Scotland agrees that a redress mechanism is required – but it will all come down to the detail.

51. RICS Scotland would not have an issue with a nominal charge, £25 as an example, for dispute body applications. This could deter vexatious cases and “serial complainers”

52. The dispute body members would not only have experience in the sector, but also have to undertake regular training to ensure they fully understand new legislative provisions that affect the sector, and the possible impact of their decisions.

Part 6: Private Housing Condition of the Bill

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

53. Building maintenance is key to sustaining the fabric of the built environment - its value to the economy in employment and expenditure terms is equally significant.

54. RICS Scotland suggests the introduction of a mandatory Scotland-wide Planned Maintenance scheme for residential property in multi Ownership or Estate situations, following the example of ‘Home Reports’, is considered through legislation.

55. This legislation would also make provisions for ‘Scheme’ Planned Maintenance documentation and Guidance.

56. This scheme could be provided for by a mechanism within legislation for punitive measures, such as fines or similar, for non-compliance, to be imposed (Belgian Monument is a case example here).

57. The fabric of the Built Environment could be maintained, and therefore reduce hazards and subsequent risk to owners and public from building failures, collapse or decay.
A requirement for ‘Sinking Funds’ could be put in place, managed and maintained by all Owners.

This proposal recognises the following:

a) Money spent on this area should not be considered as money waste - in the long term, sustainability performance will influence capital value, as buildings which show good performance are likely to suffer less obsolescence and value depreciation.

b) Maintenance plans need to incorporate some flexibility in budgeting in case resources become more restricted or more available during the course of the maintenance plan.

c) Curtailing maintenance budgets should be presented clearly to the client.

d) Increased risk of disruption to building use due to breakdowns if planned maintenance is cut back.

e) A potential decline in the overall standard of the building and its probable effect on rents, asset value or salability.

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

RICS Scotland supports an Electrical Safety Council (ESC) proposal to introduce mandatory electrical safety inspections in private rented housing.

RICS Scotland co-signed an open letter to the Housing and Welfare Minister Margaret Burgess in October 2013 to introduce a requirement for five yearly checks, by a registered electrician, of both fixed electrical installations in all rented property and any electrical appliances supplied with lets.

This proposal, and letter, was supported and co-signed by 12 trade associations, businesses and charities. A copy of this letter is attached in Appendix 1, and we refer the Committee to the ESC written submission for further background and information on this proposal.

RICS Scotland would like to suggest the expanding of the ESC proposal so that the Repairing Standard includes provisions for compulsory smoke and carbon monoxide alarms.

The mains operated smoke alarms should be fitted by an approved electrician, such that multiple alarms are interconnected; properties on more than one level must have a smoke alarm on each level; and that
the entrance to each room must be within a maximum allowed distance of an alarm unit.

65. We would also suggest that The Repairing Standard is further amended to state that every property must have suitable CO alarms in each room that has a gas appliance or, if in a cupboard, then immediately outside the door to that cupboard.

66. This could be based on the standard set by Edinburgh Council for HMO properties such that they must be long life (5 years plus) and have batteries which last as long as the alarm.

RICS Scotland
28 February 2014
Dear Ms Burgess,

ELECTRICAL SAFETY IN THE PRIVATE RENTED SECTOR

How we live is changing. The Private Rented Sector (PRS) in Scotland has more than doubled in size over the last decade, with ever more families and vulnerable people renting privately. As a consequence, the PRS will continue to play an important role in meeting housing need. But all too often, private renters face poor conditions and serious safety hazards.

According to government statistics, over two thirds of all accidental fires in Scottish homes (more than 3,000 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.¹

Whilst we welcome the Scottish Government’s efforts to improve conditions in the sector and drive up standards, more must be done to reduce risks to private renters by putting precautionary measures in place to ensure their safety.

We the undersigned believe that housing standards in the PRS can be improved without placing a significant additional burden on landlords, and that improving electrical safety for tenants should be a core part of any new requirements.

Given that a new Housing Bill is due to be considered in Holyrood before the end of this year, we urge you to seriously consider any future regulation that would further improve the PRS, including:

- Mandatory five-yearly safety checks by a competent person of electrical installations and any electrical appliances supplied with lettings
- Mandatory provision of RCD protection in all properties²

Improving standards will not only benefit tenants but also help landlords keep their properties safe from the risk of fire. Making private renting a better option is crucial to ensuring everyone has a safe, affordable home to live in so we hope that you will seek to introduce these much-needed changes and will await your response with great interest.
ASSOCIATION OF RESIDENTIAL LETTING AGENTS (ARLA)
WRITTEN SUBMISSION

Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.

2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.

3. ARLA members are governed by Codes of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands, and the Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to belong to an independent redress scheme which can award a consumer financial redress where a member has failed to provide a service to the level required.

Part 3: Private Rented Sector

Q7: Do you have any comments on the proposals for transferring certain private rented sector cases from the Sheriff Courts to the new First-Tier Tribunal?

4. ARLA welcomes the proposals to transfer certain private rented sector cases from the Sheriff Courts to the new First-Tier Tribunal. Many organisations, including ARLA, have longed caller for cases involving the private rented sector, particularly landlord possession claims, to be moved out of the standard court system and into specialist tribunals.

5. However, we feel the provisions of the Bill could go further and would suggest the Scottish Government should consider transferring all landlord possession claims to the new First-Tier Tribunal. Such a course of action should have several positive benefits:

   a. Providing the First-Tier Tribunal is well resourced, this should speed up the possession process; meaning cases will reach court hearing dates much faster and allow landlords to gain Possession Orders in a much more timely fashion than currently exists. Indeed, anecdotal evidence suggests that landlords currently have to wait several months before a court hearing date becomes available; all while, in many cases, tenants have stopped paying rent. This delay causes landlords and letting agents
significant financial hardship and places their businesses in financial jeopardy.

b. The Sheriff Courts are, by their very nature, generalists. This has resulted in some Sheriffs hearing landlord possession cases despite not being experts in housing matters and not always aware of recent developments in case law. The First-Tier Tribunals could appoint members who are experts in housing law and landlord possession cases to solely hear such matters. This will ensure decisions are made by experts in the field of the case and that Tribunal members can be easily updated on relevant developments in case law. This will result in much greater consistency in the application of the law than currently exists through the Sheriff Courts.

c. Only moving certain private rented sector cases to the First-Tier Tribunal is likely to cause confusion for letting agents, landlords and tenants as to where to bring a claim. This is particularly true for cases that may involve both rent arrears (brought by the landlord) which would sit in the Sheriff Court and repairing standards (either brought by the tenant or used as their defence to a rent arrears case) which would sit in the new First-Tier Tribunal (assuming the provisions in this Bill come into force). The result may be that two cases have to run simultaneously in two different courts. This will increase costs for all parties and may act as a significant disincentive for tenants to bring legitimate claims against unscrupulous and criminal landlords and letting agents.

d. Finally, in moving landlord possession claims into the new First-Tier Tribunal, much needed time will be made available in the already overstretched Sheriff Courts for other matters.

Q8: Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector

6. ARLA has always supported targeted enforcement by local authorities of the minority of unscrupulous and criminal landlords and letting agents who provide substandard accommodation and poor property management. They blight the industry and bring the entire private rented sector into disrepute.

7. It is regularly reported by tenant organisations and local authorities that tenants do not bring complaints against landlords and letting agents for fear of eviction. Therefore, we can certainly see the benefits in allowing third parties, such as local authorities (as outlined in Section 23(1) (a)), to bring repairing standard claims. This would both remove the fear of eviction from tenants and; as part of a targeted, intelligence-led enforcement operation; should help raise property standards in the sector.
8. However, we would suggest that any persons “specified by order made by Scottish Ministers” (as outlined in Section 23(1) (a)) should be restricted to public bodies in order to ensure a consistent approach to such third party applications.

**Q9:** Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

9. As has been stated at paragraph 6 above, ARLA supports the targeted enforcement by local authorities of the minority of unscrupulous and criminal landlords and letting agents who provide substandard accommodation and poor property management.

10. However, until the intended provisions have been announced, we are unable to comment on whether an area-based approach is the most appropriate method of achieving these aims. We would also suggest that before additional powers are created, robust scrutiny is required in order to determine why the extensive statutory powers local authorities already have to deal with poor conditions in the private rented sector are not being effective. Without such scrutiny and a clear understanding of why existing legislation is not being effective, the Scottish Government risks creating additional ineffective regulation.

**Part 4: Letting Agents**

**Q10:** Do you have any comments on the proposals to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

11. ARLA has long called for more regulation of the lettings industry. As you will see from paragraphs 1 – 3 above, we have strict entry criteria for membership (including the need for professional qualifications) combined with a requirement for Continued Professional Development (CPD), compliance with our own Code of Practice, participation in an independent redress scheme, the need for robust Client Money Protection procedures and regular financial reporting. Failure to comply with these strict conditions can result in financial penalties, compensation to tenants and the termination of membership.

12. As such, we do not feel a register of letting agents is sufficient to remove the criminal operators from our sector. We also do not think that the proposed Code of Practice (outlined at Section 42) which will contain a prescriptive set of requirements is sufficient to raise standards in the industry. Codes of Practice are only effective if users understand the background to why certain provisions are
contained within the Code and why they need to comply with them. The only way
letting agents will gain this level of understanding is by undertaking appropriate
training and qualifications which is then backed up with CPD. This is the way the
medical, legal and many other professions already operate and we would
strongly urge the Committee and the Scottish Government to look to these
professions as a model for how the lettings industry should be governed.

13. Therefore, we feel the Scottish Government may be missing an opportunity by
only creating a register of letting agents and a Code of Practice. Last year ARLA
produced a comprehensive proposal for regulating the property sector (attached
as Appendix One). We would urge the Infrastructure and Capital Investments
Committee as well as the Scottish Government to consider our suggested
approach with a view to using the Housing (Scotland) Bill as an opportunity for
much more comprehensive regulation of the letting industry. We firmly believe
this is the only way of removing those criminal letting agents from the sector and
feel the Scottish Government has both the ability and political will to show real
leadership over the other legislatures of the United Kingdom on this issue.

Q11: Do you have any views on the proposed mechanism for resolving disputes
between letting agents in Scotland and their customers (landlords and tenants)?

14. We consider the proposals outlined in sections 43 – 46 as sensible and
reasonable mechanisms for resolving disputed between letting agents and their
customers. If the committee were to take forward our recommendations outlined
in paragraph 5 above the PRS Tribunal could become a very effective body for
dealing with all issues relating to the private rented sector in Scotland.

15. Indeed, if the committee and the Scottish Government take forward the
recommendations we have outlined in this Call for Evidence, ARLA believes
Scotland can create a model framework for the sensible, appropriate and
practical regulation of the private rented sector.

Association of Residential Letting Agents
28 February 2014
Why the letting industry needs regulation

The Association of Residential Letting Agents (ARLA) has campaigned over many years for regulation of the letting agency sector. The majority of letting agents are professionals, working in the interests of their clients and consumers. However the sector is tarnished by the conduct of a minority of agents who fail to adhere to basic standards. Failure to protect client money, mis-advertising of properties, failure to properly maintain leased accommodation and provide a safe environment for tenants – all of these issues must be addressed.

Failure to do so will mean that rogue agents continue to blight the sector, failing consumers and undermining trust in the majority of responsible agents.

Industries including energy, telecommunications and transport are currently regulated, and rightly so. Energy bills constitute a significant proportion of the average family’s budget, consumers should be able to expect basic standards from digital communications providers, and promotion of safety on our roads and railways is paramount.

Yet the property sector on the whole – and the lettings sector in particular – remain largely unregulated. Given that the average member of the public spends significantly more on rent or a mortgage than they do on energy or transport, for example, it beggars belief that such an important industry is not properly regulated. This needs to change, and soon.

ARLA believes that the best way to tackle rogue agents and promote professionalism and basic standards in the letting sector is to introduce a system of mandatory regulation for those working in the letting, sales and management of property.

Currently, anyone can set up a letting agency. They can do so without appropriate qualifications or industry knowledge – leading to a public perception of ‘wheeler dealers’ dominating the sector. There is also no requirement to participate in a client money protection scheme, meaning that significant sums of money belonging to tenants and landlords are put at risk. And agents can operate without any sort of professional indemnity insurance. It is little surprise that as a result, not all letting agents operate with the professionalism, expertise and ethics that ARLA agents do.

In the absence of full, mandatory Government regulation, ARLA has introduced a licensing scheme for its members. We believe this scheme provides the most effective protection for consumers currently on offer. However not all agents are members of professional bodies such as ARLA, and the levels of professionalism and consumer protection vary widely as a result. There are many agencies that are failing consumers – and the time has come to do something about them.
Why we need regulation now

At a time when the Government is working to reduce red tape and bureaucracy – which is to be welcomed – new regulation may not be seen as desirable. However the private rented sector (PRS) in the UK is growing at a rapid rate, and more households are renting privately than any time in the past fifty years\(^1\).

According to the Government, more than 3.6 million households in England rent their home from a private landlord\(^2\) - making up one in six UK households.

The PRS is also expanding at a rapid pace – it made up just 8 per cent of housing tenure in 1993/94, but by 2010/11 this figure was 16 per cent\(^3\).

In the past, private renting was broadly used for short term tenures – often by young people and students. Yet today, the PRS is no longer the 'stop gap' that it once was. More than one million families with children are renting privately\(^4\) – almost double the number that were just five years ago – and this figure continues to rise year on year.

Likewise the PRS is increasingly becoming an involuntary mode of tenure for young people, many of whom are unable to build up enough capital for a deposit to buy a home (or unable to secure a mortgage from increasingly cautious banks).

<table>
<thead>
<tr>
<th>The Private Rented Sector – Key Facts</th>
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<tbody>
<tr>
<td>• 3.6 million households in England rent their home from a private landlord</td>
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<tr>
<td>• The PRS has <strong>doubled in size</strong> in less than 20 years</td>
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<tr>
<td>• During the last year, there were over <strong>85,000 complaints</strong> about private landlords</td>
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<tr>
<td>• <strong>Complaints</strong> about private landlords have <strong>risen by 27%</strong> over the last three years</td>
</tr>
<tr>
<td>• 37% of privately rented homes fail to meet the Government's <strong>Decent Home Standard</strong></td>
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</tbody>
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Of course, many who use the private rented sector do so voluntarily – it offers flexibility, choice, and an alternative to investing in buying a home. However with more and more private tenancies come more unscrupulous landlords and letting agencies. As a result, standards in the sector are, according to many measures, slipping:

- 37 per cent of homes in the PRS in England fail to meet the Government's Decent Home Standard\(^5\)

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\(^1\) http://www.labouremail.org.uk/files/uploads/a350eec8-d1ff-36b4-857c-47450d6fc0d7.pdf  ['Link no longer operates']


\(^3\) http://england.shelter.org.uk/campaigns/why_we_campaign/Improving_private_renting#1

\(^4\) http://england.shelter.org.uk/campaigns/why_we_campaign/Improving_private_renting#1

\(^5\) http://england.shelter.org.uk/campaigns/why_we_campaign/Improving_private_renting#1
• The total number of complaints made to councils about private landlords has risen 27 per cent over the last three years\textsuperscript{6}
• During the last year, there were over 85,000 complaints about private landlords\textsuperscript{7}
• 62 per cent of those complaints were about serious hazards – e.g. dangerous gas and electrics\textsuperscript{8}
• There were 487 successful prosecutions against private landlords last year – up by 77 per cent\textsuperscript{9}
• Calls to a Shelter helpline from PRS tenants about concerns over how their deposits are being protected have increased by more than 80\% over the last two years\textsuperscript{10}

Furthermore as availability of social housing stock drops and pressure on housing stock grows, more and more vulnerable people are moving into the PRS.

In short, we have a rapidly growing sector serving more and more people, with all projections pointing towards further rapid growth in the years ahead. And as the economy recovers from recession, we will likely see rents rising across the sector. In these circumstances, consumers will need better basic protection.

ARLA believes that we need to address these issues as a matter of urgency, with mandatory regulation of the sector, to ensure that tenants are protected in the future. Without government action, millions of PRS tenants – many of whom are vulnerable – will potentially face poorer housing conditions and unscrupulous agents.

Consumer confidence is paramount to revive faith in the letting sector. ARLA sets out below how we think that this can be achieved.

The problem

With the majority of letting agents operating legitimate, professional practices, one could argue that it is the responsibility of consumers to make an informed choice about which agent they use. In reality, the system is much more complex.

At present, there are a huge number of organisations, industry bodies and government departments involved in the letting and property sector more widely, all playing a different role, which complicates the industry for consumers:

\textsuperscript{6} http://england.shelter.org.uk/news/october_2012/complaints_about_landlords_up_almost_30
\textsuperscript{7} http://england.shelter.org.uk/news/october_2012/complaints_about_landlords_up_almost_30
\textsuperscript{8} http://england.shelter.org.uk/news/october_2012/complaints_about_landlords_up_almost_30
\textsuperscript{9} http://england.shelter.org.uk/news/october_2012/complaints_about_landlords_up_almost_30
\textsuperscript{10} http://media.shelter.org.uk/home/press_releases/rent_deposit_complaints_up_80_in_two_years
Multiple Government Bodies

Various Government Departments have oversight over the sector – for example BIS is the sponsor department for the estate agency sector whilst DCLG oversees the lettings sector. However given that many agencies offer both lettings and sales, this arrangement clearly does not make sense.

DECC also has oversight of environmental standards in rented accommodation, whilst the Office of Fair Trading (OFT), a non-ministerial government department, and Trading Standards also hold various responsibilities within the sector.

Multiple Means of Redress

Likewise in terms of bodies offering some sort of redress, the landscape is very complex. Trade bodies such as ARLA and the NAEA offer a complaints process for their members’ clients, ensuring that agents acting unprofessionally or against ALRA policy are dealt with appropriately. However a number of other means of lodging complaints also exist.

Local Trading Standards are a port of call for many, whilst complaints can be made about private landlords to local authorities. The OFT handles complaints about estate agents, and The Property Ombudsman (TPO) and Ombudsman Services – Property are able to consider disputes referred by landlords or tenants relating to lettings and management – but only if the agency in question is a member of the relevant scheme.
In short, it is not always clear to tenants – and consumers more generally – where and to whom they should complain about their agent or landlord, and who holds responsibility for oversight of the sector.

**Kite Marks and Accreditation Schemes**

Finally, and serving to increase the complexity of the sector further, several ‘kite marks’ and accreditation schemes are also emerging – in part as an attempt to remedy the lack of regulation in the sector.

ARLA and the NAEA, like RICS and others, operate a comprehensive licensing policy for their members.

Other ‘kite mark’ schemes have however emerged, particularly in recent years, which have served to complicate the sector – particular for consumers who are looking for a simple, known brand that denotes quality and professionalism.

- **SAFEagent** – a mark denoting firms that protect landlords and tenants money through client money protection (CMP) schemes – is one recent example – although these schemes have different rules and parameters
- Likewise, the Mayor of London has recently proposed a **London Rental Standard**, which accredits both landlords and letting agents through a voluntary scheme
- Finally, and like London, new and emerging schemes are being developed in both Scotland and Wales, serving to complicate the landscape further

Whilst these schemes are inevitably well intentioned, the result is a hugely complex system which consumers do not understand.

**The Complexity of the Letting, Sales, Management and Landlord Sectors**

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<tr>
<td>BIS</td>
<td>• Government oversight of the estate agency sector, including some regulatory functions</td>
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<td>DCLG</td>
<td>• Government oversight of the private rented sector</td>
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<td>DECC</td>
<td>• Government oversight of environmental performance standards of rented accommodation</td>
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<td>OFT</td>
<td>• Enforcement of laws pertaining to estate agency sector – including the Estate Agents Act and Consumers, Estate Agents and Redress Act</td>
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<td>• Handles complaints about estate agents at a national level</td>
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<td>Trading Standards</td>
<td>• Port of call for complaints about the estate and letting agency sectors at a local level</td>
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<td>TPO</td>
<td>• Operates a Code of Practice for Residential Estate Agents</td>
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<td>• Deals with unresolved disputes in the estate agency sector, but only for those agencies registered with a TPO scheme</td>
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| **Ombudsman Services - Property** | • Operates a Letting Code of Practice  
• Deals with unresolved disputes in the lettings sector, but only for those agencies registered with a TPO scheme |
| **ARLA** | • Voluntary membership body offering full licensing based on a code of practice and best professional standards in the letting agency sector |
| **NAEA** | • Voluntary membership body offering full licensing based on a code of practice and best professional standards in the estate agency sector |
| **NALS** | • Voluntary membership organisation without educational requirement for members |
| **ARMA** | • Trade association for managing agents, offering a self-regulatory regime for members |
| **NLA** | • Voluntary membership association for private residential landlords  
• Helps landlords to understand the legal and regulatory environment in which they operate |
| **RLA** | • Voluntary membership organisation operating a professional Code of Conduct for members |
| **SAFEagent** | • A ‘kite mark’ denoting firms that protect landlords and tenants money through client money protection schemes operated by other bodies |
| **Tenancy Deposit Schemes – e.g. The Dispute Service** | • Various schemes that adjudicate issues around deduction disputes for deposits at the end of a tenancy |

**Too much complex legislation**

Finally, the lettings sector – like the estate agency sector – is subject to multiple pieces of legislation, creating an unclear, complex environment in which agencies must operate. The RICS ‘Blue Book’ – a best practice guide developed in conjunction with consumer groups and industry bodies – lists no fewer than ninety pieces of legislation currently on the statute book that apply to the sales and lettings sectors across the UK.

Navigating such a complex legislative landscape is a burden for agents. Furthermore, different laws and regulations are overseen by different government departments, serving to complicate things further. In short, an overly complex legal landscape only increases the likeliness of agents failing to adhere to the law.
The solution

ARLA believes that through the implementation of a new, comprehensive regulatory structure for the whole property professional sector, a simpler, more transparent system would emerge – trusted by consumers and industry alike.

The following section sets out ARLA’s current thinking, and proposes a simple, feasible model for regulation. However we are not wedded to one model, and are open to discussion on how regulation should work. ARLA would welcome the views of parliamentarians, government, other industry bodies and consumers about how a new regulatory structure could, and should, work.

Under this simplified regulatory structure, letting agents and other property professionals would be licensed, registered and monitored by an accredited industry body – such as ARLA, NAEA, RICS and others. These bodies in turn would be audited and overseen by a single industry regulator. ARLA would propose that The Property Ombudsman would be the most appropriate body – its structures already exist, and would only need to be ‘beefed up’ and better resourced, as opposed to created from scratch. We would also encourage a wider debate about which body would prove the most appropriate for industry oversight.

We would propose that for each level of the regulatory structure, the roles are as follows:

**Industry regulator**

- A single industry regulator would oversee the work of a number of accredited bodies across the lettings, sales, management and landlord sectors
• It would audit these accredited bodies and, should it be necessary, remove their ability to grant licences
• It would also act as a final port of call for complaints from consumers – handling complaints in instances where the complaints process of the relevant accredited body has been exhausted without satisfactory results

Accredited industry bodies

• All letting, estate and management agencies, and landlords, would be required by law to be members of an accredited industry body
• In the letting, sales and management sectors, accredited industry bodies would be required to register all members, and to license members based on a comprehensive set of criteria, including:
  ✓ Education and qualification to a satisfactory level
  ✓ Use of an approved client money protection scheme
  ✓ Holding of professional indemnity insurance
  ✓ Proof of external examination of client accounts and satisfactory accounting practices

• Accredited industry bodies would be the first port of call for consumers looking to complain about the service that they are receiving from an agent
• These bodies would also be responsible for provision of relevant training – for example on legal issues – and for the promotion of best practice throughout their memberships
• Finally they would be responsible for monitoring the activities of their members, and where unprofessional conduct has taken place, use their powers to take disciplinary action – including revocation of licenses if necessary

In the case of landlords, licensing would be overly onerous, given that many landlords own just one or two properties. However landlords would be required to register with an accredited industry body, which in turn would be responsible for promotion of best practice

Property Professionals

All companies and landlords operating in the property sector should be required by law to hold membership of one of these accredited bodies. This regulatory structure allows for a choice of memberships, which is essential given that some letting agents also manage properties; some estate agents also offer lettings etc.

In order for an agency to be licensed, they would need to demonstrate to the accredited industry body that they are promoting professionalism amongst their client facing staff – for example through provision of qualifications. Without a basic ‘entry level’ criteria for those working in the professional property sector, there needs to be a degree of flexibility in this regard. For example, we cannot expect a letting agency to sponsor their staff through significant amounts of training before taking up a client facing role.
ARLA would propose therefore that licences are granted at a company level. Companies would then hold responsibility for ensuring that their staff attain relevant qualifications. Basic criteria for licensing should be established – for example a requirement to ensure that all client facing staff are fully qualified within three years. Failure to do so would result in an agency risking their licence, and the accredited industry body would hold responsibility for monitoring this.

Landlords should also be required to hold membership of an accredited industry body – for example the National Landlords Association (NLA) or Residential Landlords Association (RLA). Given that in the UK many landlords own just a few properties let out for private income – as opposed to being full time property professionals – ARLA would propose that registration is compulsory, but licensing is not.

We would envisage that under this new regulatory structure, the burden on local authorities would be reduced, as landlords would be required to register with an accredited body, and professional standards would be encouraged across the sector.

**Ultimate oversight – the Department for Communities and Local Government**

ARLA believes that one government department should hold responsibility for overseeing the property sector more broadly, as well as the appointed sector regulator (e.g. The Property Ombudsman). When so many estate agents offer lettings, and vice versa, it seems illogical that BIS currently oversees estate agency, whilst the DCLG oversees lettings.

The establishment of clear lines of accountability will ensure a transparent regulatory structure. Oversight by just one department will reduce the burden on industry bodies and agents to understand a highly complex legislative landscape, and will also ensure joined up thinking across the estate and letting sectors, which currently is somewhat lacking.

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**Case Study – Medical Regulation in the UK**

ARLA’s proposed regulatory structure for the property sector is similar to that utilised to regulate medical professions in the UK. The [Professional Standards Authority](#) is the industry regulator, overseeing nine organisations – for example the General Medical Council – and auditing their performance. These organisations in turn oversee one or more of the health and social care professions (e.g. opticians, or dentists) by regulating individual professionals across the UK. This structure ensures that an expert body oversees specific professions – as ARLA would oversee letting agents for example – whilst also providing for overall industry supervision and audit, with clear lines of responsibility and accountability, as well as a clearly defined and transparent complaints procedure.
The advantages

ARLA envisages that the introduction of mandatory regulation of the property sector will result in a number of advantages – for consumers, industry and government alike.

Advantages for consumers

- **Consumers want a simple and recognisable quality standard.** A key problem for consumers is that there is currently no one, clear mark of a responsible, professional agent or landlord. Multiple industry bodies and ‘kite marks’ exist, resulting in confusion. A simple regulatory structure should remedy this.

- **A clear means of redress.** Consumers will be able to look for ARLA accreditation – or similar – as a clear signal that the agent in question is reputable, licensed and monitored. There will be clear means of redress should a consumer not be satisfied with the service that they receive. There will also be a single body to which a consumer can raise their complaint, in the case that an initial complaint to an accredited industry body is not resolved satisfactorily.

- **Illegitimate agents will be easy to identify.** With all legitimate agents registered with an accredited body, consumers can be confident that they are dealing with a professional agency, adhering to basic standards.

- **Raising standards.** As a result of compulsory licensing, the quality of rented accommodation should rise, resulting in more satisfied customers, and better safeguards on health and safety.

- **Consumer trust in the sector will improve.** All evidence suggests that current consumer trust in the letting sector is very low indeed. Through licensing agents and promoting professional practice, consumer trust will improve. Vulnerable consumers will receive the same level of protection, and rogue agents will be forced out of the market – or forced to change their practice – as a result.

Advantages for industry

- Although some within the property industry are opposed to mandatory regulation, these individuals tend to be those that would be forced to improve their practices as a result of regulation. **Rogue agents operating illegitimate agencies would suffer as a result of statutory regulation.** Shelter has argued that for the landlord sector, regulation “would protect, not affect, good and law-abiding landlords”\(^\text{11}\). The same can be said for letting agents sector.

- Professional, reputable agents on the other hand – including those represented by ARLA – have been calling on the Government to introduce mandatory regulation for many years. The

\(^{11}\) [http://england.shelter.org.uk/__data/assets/pdf_file/0004/206779/A_Licence_to_rent_Briefing.pdf](http://england.shelter.org.uk/__data/assets/pdf_file/0004/206779/A_Licence_to_rent_Briefing.pdf)
reputation of letting and estate agents is poor – almost exclusively as a result of unlicensed, unprofessional agents damaging the reputation of professionals.

- Not many industries call on the Government to increase or strengthen regulation. Yet in the property sector, a regulatory vacuum has allowed rogue agents to thrive. ARLA therefore believes that mandatory regulation would be a positive move.

- The system does not need to be overly complex or burdensome – letting agents are not calling for more red tape and bureaucracy. What is needed is a simple structure and clear lines of accountability within which legitimate agents can operate, whilst unprofessional practices are weeded out.

- Finally, the property sector is currently burdened by both a considerable range of relevant legislation, as well as a number of government departments with which the sector must engage. By simplifying legislation, potentially repealing repetitive laws, and giving one government department – the DCLG – oversight of the entire sector, a simpler, more transparent system emerges. Industry would welcome this.

**Advantages for government**

- ARLA understands that the Government is working to reduce the regulatory burden on businesses – this is to be welcomed. However regulation does have a legitimate place in some areas, and the property sector is one such sector.

- The Department for Business, Innovation and Skills is operating a ‘one in, one out’ policy on regulation at the moment. ARLA’s suggested regulatory structure would add new regulation for businesses – the DCLG – oversight of the entire sector, ample opportunity to reduce regulation elsewhere.

- Numerous pieces of legislation – from across different Government Departments – apply to the property sector, including many that are decades old. ARLA believes that the Government should look to consolidate these laws, scrap unnecessary red tape and use the opportunity to legislate for a basic regulatory structure. Much of the organisational infrastructure is already in place – including The Property Ombudsman and industry bodies. As such, a new regulatory system would be about structuring these bodies in a meaningful way to promote accountability, as opposed to creating new regulatory bodies.

- ARLA also believes that the Government can save taxpayers’ money by using our proposed regulatory structure. By giving one government department responsibility for oversight of the sector, multiple workstreams will be merged and result in economies of scale. Likewise the need for joined up thinking across Departments will be reduced, saving effort and time. We would envisage that the number of civil servants working in this area could be marginally reduced.

- By simplifying legislation, savings could also be made. Likewise savings would be made at the Office of Fair Trading (in the short term) and at Trading Standards, allowing these
organisations to concentrate on their core roles, and local authorities would have to spend less capital overseeing landlords locally.

- Finally, by introducing mandatory regulation of the property industry, we can expect the amount spent in the courts on disputes to fall rapidly. The Government estimates that tenancy breakdowns and evictions currently cost around £120 million per year\(^\text{12}\). Regulation and the promotion of professional practice should result in this figure falling significantly.

**Wider advantages**

As demand for private rented housing increases, so too must the supply. In the UK, much of the private rented sector is owned and run by relatively small private landlords and agents. Indeed only 1% of landlords in the UK own more than ten properties\(^\text{13}\). This alone is unlikely to satisfy demand – we need to do more to encourage institutional investment in private housing for let.

This was the recommendation of Sir Adrian Montague in his recent report for the Government on barriers to investment in private rented housing. Sir Adrian pointed out that in 2009/10 there were just 115,000 new build housing completions in England, whilst projections suggest that the number of households will grow by an average rate of 232,000 per year until 2033\(^\text{14}\).

One barrier to institutional investment in the sector is the reputation of the lettings and management industries – and ARLA believes that promoting a more professional industry is vital to encourage investment. We need to expand and improve the managerial capability of the sector to demonstrate to investors that the PRS is ripe for both investment and returns.

As Sir Adrian Montague also argues, the benefit of building more homes for private rent is not just satiating rising demand – it is also a key driver of growth. Housing construction, repairs and maintenance are worth an average 3% of GDP over the last decade\(^\text{15}\), whilst housing construction supports jobs – for every £1m of new housing output, 12 additional jobs are supported\(^\text{16}\).

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12 http://england.shelter.org.uk/__data/assets/pdf_file/0004/206779/A_Licence_to_rent_Briefing.pdf
13 Private Landlords Survey 2010. Published by DCLG, October 2011
Conclusion

ARLA believes that the exponential growth that we have seen in the private rented sector – and the growth that is widely expected over the coming years – means that the time is right to regulate the letting industry. ARLA also believes that a cross-industry approach – encompassing the estate agents, managing agents and landlords that lettings agents work with every day – would ensure a simpler, yet more comprehensive system. Clear lines of accountability, compulsory licensing and statutory regulation will lead to a more professional property sector, weeding out rogue agents and promoting consumer protection.

Like all industries, we do not want to see over-regulation. We support the Government’s drive to rid industry of unnecessary red tape and bureaucracy – particularly during tough economic times. However regulation – if implemented in a pragmatic way – does have its place. For most people, monthly rental payments (or mortgage repayments) are their biggest single expenditure. When so many other industries, which account for less of the average person’s outgoings, are regulated, it rather begs the question – why shouldn’t we regulate the property sector?

The advantages of regulation are numerous. Consumers can expect a better experience when dealing with letting agents and other property professionals, their money and rights are protected and better quality rented accommodation will result. Industry too will benefit – unprofessional practices will be weeded out and the reputation of the sector will improve as fewer members of the public have to deal with the small number of agents that tarnish the reputation of the industry. And the Government too will reap the rewards in the medium term, with fewer laws to enforce, fewer civil servants to employ in this sector, and the cost of resolving property disputes through the courts falling.

This paper sets out ARLA’s current views, and proposes a feasible model for regulation. However we are open to discussion on how regulation should work – our position is not set in stone. Indeed in order to make regulation work as best it can, a full and open debate – encompassing agents, landlords, consumers, industry bodies and the Government – is paramount. We hope that this paper catalyses that debate.

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<th>Advantages in brief...</th>
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<tr>
<td><strong>Tackle rogue agents</strong> – force them to improve or force them out of the market – and improve the reputation of the sector as a result</td>
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<tr>
<td><strong>Encourage investment</strong> in the PRS, and <strong>encourage economic growth</strong> as a result</td>
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<tr>
<td><strong>Simplify governance</strong> of the sector by taking BIS, Trading Standards and the OFT out of the equation</td>
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<tr>
<td><strong>Reassure consumers</strong>. improve their experience of the sector and encourage better housing stock</td>
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<td><strong>Provide a clear means of complaint</strong>, and <strong>prevent complaints</strong> by ensuring that all agents’ activities are monitored by an accredited body</td>
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<td><strong>Ensure that client money is always protected</strong></td>
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<tr>
<td><strong>Save taxpayers’ money</strong> by resolving disputes before they end up in court</td>
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LETSCOTLAND

WRITTEN SUBMISSION

LetScotland was formed in 2013 and currently has a growing membership throughout Central Scotland, the mission statement for LetScotland in representing the Letting Agent industry in Scotland is, LetScotland – the Association of Professional Letting Agents in Scotland, is the new representative voice for professional letting agents in Scotland. It is making the case for a strong, sustainable and successful private rented housing sector.

General comments

Letting Agents fulfil an important role within the broader housing market.

The improvement in services provided by landlords, letting agents and property managers is vital.

In the same way as individual landlords need to be encouraged to invest and supply good quality housing so do the national and international investors to provide scale to this supply chain which is in urgent need of additional numbers both for sale and rent.

Renting housing has to be encouraged as an option by householders as a matter of choice. Improvements in the supply and quality of houses and the associated services has the potential to achieve this along with attracting the required investment.

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing
poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards. It is essential that the reputation of the industry is improved while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

We believe there should be a new stand-alone Letting Agent Register operated by the Scottish Government.

The Register should include all businesses which let and manage private rented residential property in Scotland. However, we would not support simply replicating the processes and principles established for the Property Factors Register. Whilst it has improved that sector, this system is not robust enough in our opinion for the letting and management sector, and considerable consideration needs to be given to the detail of implementation for our sector.

A strong Code of Practice is needed. Along with the other representative organisations, we welcome the planned consultation in preparing the Code as secondary legislation.

Registration should include:

an annual renewal (not every 3 years)
a legally binding commitment each year to possessing the following:
professional indemnity insurance
client money protection
a ring-fenced client money bank account
annual audit of client accounts
membership of an Ombudsman scheme to ensure an easily available and
cost effective redress mechanism for tenants and landlords.

Depending on the registration processes put in place there could be a
requirement for the agent to produce annual documentation to confirm the
above. It may be more appropriate to consider the registration process to be
more the issuing of a Licence approving the Letting Agent.

We believe that any Registration process should be Government operated
free of any involvement with professional bodies such as the RICS or ARLA
and others. Agents should aspire to differentiate themselves in the market
place by achieving the standards required to gain membership. Within the
code of practice there may be the requirement over a period of time to require
owners of and staff employed in an agency to be say 50% qualified to a
certain level of professional knowledge and competency.

The operation of a Licensing system could be carried out within the same
departments that effectively implement the HMO Licences issued by the
Councils in Scotland. They have the skills; it would be a case of achieving an
acceptable licence fee to the letting agent industry balanced with the cost of
operating by the respective Councils.

The impact of these proposals on our industry is to be welcomed. It will
however highlight even further the disparity in enforcement that currently
exists on compliant letting agents and landlords and those who operate below
the required standards. The passing of legislation and implementation of
registration of Letting Agents will create an environment where landlords who
are self-managing will perceive the enforcement of regulation on them to be
far less onerous. We recommend that at the same time as these regulations
are implemented that the Landlord Registration regulations are enforced more
robustly

Q11. Do you have any views on the proposed mechanism for resolving
disputes between letting agents and their customers (landlords and tenants)?

See the above comment about Ombudsman services in response to Question
10; under these schemes redress is readily available to customers of such
organisations at no cost to the claimant.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to
local authority enforcement powers for tackling poor maintenance, safety and
security work, particularly in tenemental properties?
For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners cannot be identified or are unable or unwilling to contribute. 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.

LetScotland are pleased to have been part of this consultation and would be pleased to explain further its comments as and when requested by the Committee.

LetScotland
28 February 2014
On resuming—

Housing (Scotland) Bill: Stage 1

The Convener: Our third agenda item is evidence on the Housing (Scotland) Bill from representatives of letting agents organisations. I welcome Kathleen Gell, who is convener of the Council of Letting Agents; Jonathan Gordon, who is chair of the Royal Institution of Chartered Surveyors Scotland private rented sector forum; Ian Potter, who is managing director of the Association of Residential Letting Agents; and Malcolm Warrack, who is chairman of Let Scotland.

I also welcome Patrick Harvie MSP, who has joined us.

I invite questions from members.

Adam Ingram: Good morning, lady and gentlemen.

I will start with a gentle general opening question. The Scottish Government has a vision that all people in Scotland “live in high quality, sustainable homes that they can afford and that meet their needs.”

To what extent do you think the bill’s provisions support that vision?

Ian Potter (Association of Residential Letting Agents): I think that the bill goes some way towards that. It is like any other piece of legislation: it depends on how well it is enforced. Currently, we have legislation that looks at the fitness of property generally, but there is a lot of evidence that it is not overly enforced by local authorities, which have the statutory powers. If we are just going to create another piece of legislation that will not be meaningfully acted on, it will not achieve what you are trying to achieve with it.

There are other areas in the private rented sector that provide examples of that. We know that not every landlord is registered. Some local authorities are very good and are working on that, but others are simply ignoring it. That is what is happening. Last week, I was at a landlord registration review meeting with representatives of local authorities and that is what they said is happening.

Tenancy deposit protection came in last year past November. Again, we know that there is a lot of compliance, but we also know that many tricks are being looked at to try to get round that, and there is no real evidence of anyone tackling that issue at the moment.

With the caveat that legislation needs to be seen to be enforced, I think that the bill could do an awful lot.

Kathleen Gell (Council of Letting Agents): I think that your aim is good, and the CLA welcomes it absolutely in order to give the good letting agents a better voice. There are rogue agents out there, although probably not as many as the public perceive, and the bill will help.

There are two issues. First, what is in the code of practice will be critical. We would certainly be keen to help to draft that code and feed into it at that stage.

Secondly, how the code of practice is enforced will be very important. We are all aware that enforcement has been a hot topic with landlord registration. That enforcement is patchy throughout Scotland, and landlords are very dismissive of that legislation.

I was very interested to hear Professor Duncan MacIennan at a recent RICS conference. His view is that we are perhaps lacking a longer-term strategy for housing in Scotland. Perhaps that needs to be looked at as part of the consideration. If we are seriously looking to have good-quality housing for the longer term, we need to encourage the private rented sector, and not just stamp down on bad practice. There must be a mix of both.

If I look at the fit-and-proper-person test for letting agents—

The Convener: We will come on to that.

Kathleen Gell: That test is very negative. I would like to see some positive things coming out.

Jonathan Gordon (RICS Scotland): The bill covers a diverse range of initiatives across the social and private rented sectors, and we think that the key issue is the right of redress for people across those sectors. Those are the most important positive aspects of the bill.

The RICS is the leading organisation of its kind in the UK. That is a bit of a plug for us, but it means that chartered surveyors are already qualified and regulated by their own self-regulating body to be letting agents, so we at the RICS have a good understanding of what regulation means. Client, consumer and public protection are at the heart of everything that RICS Scotland does and are part of our professional standards and our ethics.

As we see it, the bill does not include enough of that, specifically in relation to the private rented sector initiatives on letting agent registration. The Government’s vision of

“A private rented sector that provides good quality homes and high management standards, inspires consumer...
is an aim that we welcome, but we do not think that the measures in the bill are quite strong enough. They could be adapted and amended through the bill process, but without proper enforcement and professional standards in the industry, a list of things that have to be done will not be self-enforcing. There are many examples of cases in which that approach does not work.

Malcolm Warrack (Let Scotland): Without repeating what has been said, I would like to pick up on the word “vision”. As we move through 2014 into 2015, we have a wonderful opportunity to develop a vision to make the private rented sector something that, in the years to come—sitting within the broader housing market—operates well, has a good supply chain leading into it and is well managed and provided for from the point of view of services, and which allows us to look back and say that we got it right in 2014-15. We will come on to talk about the detail, but as far as the vision is concerned, I think that we are in a wonderful place to make some real changes and to create something that works for the future.

Jonathan Gordon: An issue that is often mentioned is how to improve standards in the industry. One of the most important ways of doing that would be to bring more new, high-quality properties into the market to compete with the existing stock. Much of the existing stock is made up of old properties that have old heating systems, are inefficient and do not meet many of the Government’s energy efficiency aims. New-build properties are built to a much higher standard on that side of things. If a whole block of new flats were built in each area that has a high rental demand, that would do much more than any of the measures in the bill to drive up standards, because people with properties to rent would have to compete with those flats and improve standards in their properties.

The Government commissioned research on the issue—“Building the Rented Sector in Scotland” was published before Christmas—and a lot more focus should be put on that, but I think that that is outside the scope of the bill.

The Convener: Before we proceed, do you have any idea of what proportion of letting agents your organisations cover? How many letting agents are still outwith your sphere of influence, if I can put it that way?

Kathleen Gell: The CLA has slightly more than 320 members at the moment, about 84 of whom have opted to sign up to an accreditation scheme as letting agents—the landlord accreditation Scotland scheme. I believe that there are 155 ARLA members in Scotland, but Ian Potter will be able to correct me if I am wrong.

Malcolm Warrack: We are a relatively new organisation, as we were formed in the middle of last year. We currently have around 50 members.

In answer to your question, about 30 per cent—maybe 40 per cent—of agents around Scotland are probably not members of groups such as ours.

The Convener: How many letting agents does 40 per cent represent?

Ian Potter: The key question is how an agent is defined. Are you speaking about someone who operates on the high street, someone who operates on the internet or Uncle Tom Cobbleigh who acts for his Auntie Mary? In our opinion, the latter example is often where the worst of the problems lie. It relates to cases in which someone acts purely for half a dozen landlords—who are often members of their own family—has absolutely no knowledge of the law that they are operating within and does what they want. That is when the consumer gets the worst experience. It often involves the worst quality of property, too.

The Convener: How many hundreds or thousands of those cases do you think there are?

Ian Potter: We can look at where other jurisdictions have started to try to identify agents through legislation. I will give the London borough of Newham as an example. Newham Council has now discovered, 15 months into its scheme of licensing all agents, that nearly three times as many agents operate in its borough than it had thought. It thought that about 3,500 to 4,000 landlords owned about 25,000 to 30,000 properties. It now knows that in excess of 10,000 landlords operate 38,000 properties.

An achievement of bringing in a measure such as this is identifying an accurate picture of the size of the market. We are all using best guesses. I have worked with civil servants on this as well, and they would accept that we have always been guessing how big the market is.

The Convener: Can you explain a bit more about how Newham went about that? Did it go through virtually every single property?

Ian Potter: Newham Council marketed a requirement—I used the word “marketed” advisedly. It created the legislation, which it had the power to do under the English Housing Act 2004, through which it created a licensing scheme, which it advertised from 1 January 2013. All landlords and all agents had to register with that.

The council has been seen to be out there, knocking on doors. It has been looking at its London Housing Authority payment records and asking whether benefit is being paid to a tenant in
a property that is not registered to a landlord on the register. Is the agent who is dealing with the property—and quite often showing on a tenancy agreement that would have been taken in for an LHA claim—showing on the records? There has been lots of joined-up thinking and practical measures to identify agents and make that happen. Newham is now at the stage at which it is looking at active prosecution of people who have not but should have registered.

The Welsh Government is looking at a similar set-up. It is putting through a bill that is in some ways not dissimilar to what the Scottish Government is doing at the moment. I was at an evidence session there last week and exactly the same issues are coming up. In the meantime, in anticipation of the act, it has started trying to identify landlords and agents. Their numbers are going up exponentially.

Jonathan Gordon: There is a lot of information and it is hard to know how much of it you have seen. Around 12 per cent of households are in the private rented sector at the moment. That figure doubled in past years and Shelter estimates that it is expected to rise to 20 per cent over the next few years.

About half of those properties are managed by letting agents. We guess that there are about 1,000 letting agents in Scotland, but it is hard to tell, because there are so many individuals who manage five or 10 properties. They start off with their friends’ properties and then move on.

The biggest problem, which the bill would need some adaptation to cover, is that, although 40 per cent of agents are members of bodies, only 150 are regulated in any way. The RICS and ARLA provide a regulation scheme for licensed members, which leads to client money protection for their clients and professional standards and training, and all the benefits that come with that.

Although only a small number of letting agents might be rogue agents—as we call them—some of those are very large, well-known firms. Patrick Harvie mentioned one in a previous committee meeting, when he said that a well-known, large and very professional firm was trying to get round the tenancy deposit scheme. We would say that a very professional firm would not do that, so that firm is not professional. An RICS member—and I assume an ARLA-licensed member—would not try to flout the law; it would try to comply with it as best it can. It would work in the spirit of the law and not employ advocates to try to find wee nuances that would allow it to charge a fee. Professional standards are one of the key things that are important in an industry such as this, because consumers cannot be relied on to understand the market themselves and it needs to be laid out more clearly for them.

Adam Ingram: That is an interesting range of answers and I am sure that my colleagues will explore the issues that you have raised. Do you have any observations on the bill consultation process? Are you quite happy with how you have been consulted?

Ian Potter: I am nodding my head, so I might as well say yes, I am happy that the bill has been consulted on. Once the bill becomes an act, a lot more consultation work will be required on the impact of the secondary legislation. We would all welcome the opportunity to contribute to that consultation and we all believe that we have something to contribute to it.

Kathleen Gell: I feel that the consultation process was good. It is a fairly standard process, I believe, in the Scottish Government. The difficulty is that people are short of time and they do not make it a priority to respond. That is a weakness, but it has nothing to do with the Scottish Government—it is really down to apathy, you could say. I would like to know what happened with the tenancy reform proposals—I believe that somebody was tasked to set up focus groups throughout the country. That would be another avenue for gathering information and responses.

Jonathan Gordon: I sit on the tenancy review group that I think Kathleen Gell was referring to. I think that the key stakeholders who sit on that group are the right people to look at that issue. The same stakeholders were involved in this process. As Kathleen said, there has been very good research within that process involving the real stakeholders, if you like—the tenants and landlords out in the field. Some qualitative data has come out of that research, with some very interesting results in relation to that group.

The Scottish Government consulted the RICS and other bodies on three options before publishing the bill. Nobody was keen on the first option, which was to expand the landlord registration scheme. Option 2, which was chosen, is in the bill and is clear. Option 3 was to introduce a legal obligation that all agents must be a member of a recognised professional body. It was assumed that legislation would establish in law how that body or bodies would regulate their members. Scottish Government ministers instructed officials to pursue option 2. Although we recognise that that is a step in the right direction, we think that it falls short of the more consistent and targeted approach to regulation of option 3, for some of the reasons that I have mentioned already. We think that option 2 could be amended to get as close as possible to option 3.

The Convener: We will look at that area in more detail but, in general, were you able to put
Jonathan Gordon: Yes.

Malcolm Warrack: Yes.

The Convener: Thank you. As set out in the policy memorandum, the Scottish Government has two main aims in part 4 of the bill:

“The first is to promote high standards of service and levels of professionalism across the country and the second is to provide landlords and tenants with easy access to a mechanism that will help to resolve disputes where these arise.”

We broached the subject earlier, but do you agree with the Scottish Government that there is evidence of poor practice? Can you expand a bit more than you did in your introductory remarks about how we can manage to promote higher standards of service across the country among your members and among those people who are not your members? Also, how can we try to get those people to the level of realising that they must register?

Ian Potter: For me, education is key. At the moment, anybody can be a letting agent. They do not need high street premises or any training; they can simply advertise for landlords to give them their property to let. They do not need to know what they are doing and, generally speaking, that is part of the problem.

The other part of the problem is lack of knowledge on the landlord’s part. When I operated as an agent in the west of Scotland, I spent a lot of my time explaining to my landlord clients what they could and could not do. It would be fairly typical for a tenancy agreement to say that once rent is 14 days late, the landlord would start to take action. A landlord might think that that means that after 14 days they can change the locks and the tenant is gone. We all know that, practically speaking, that cannot happen, because there is a legal process that has to be gone through.

Tenants are similarly uneducated in lots of ways. There is plenty of evidence to show that they do not read tenancy agreements. The student market is a brilliant example of that. Tenants do not need to know high street premises or any training; they can simply advertise for landlords to give them their property to let. They do not need to know what they are doing and, generally speaking, that is part of the problem.

Clear, simple language in guidance is needed. At the moment, virtually 100 pieces of legislation—consumer law, lettings law or housing and property law—impact on a letting agent in one way or another. An awful lot of primary and secondary legislation impacts on the sector. We acknowledge the ethos behind the legislation, but we have had several new housing acts in Scotland over the past few years and bits of all of them impact on the private sector. There are more and more different pieces of legislation to consider and we have to understand which pieces of legislation impact on others and which pieces supersede others. I think a long-term objective for the Government should be to introduce a consolidation bill.

Malcolm Warrack: I support what Ian Potter said. The education of all the main stakeholders—tenants, landlords and letting agents—should be brought up at the same time. I see a differential between how landlords and letting agents should behave under regulations. As the letting agent regulation comes through, it is important that landlords are encouraged to come up to similar standards. It all comes back to education.

Kathleen Gell: I agree with Ian Potter and Malcolm Warrack that education is key. As you know, I represent the Council of Letting Agents. I work closely with a group of fantastically dedicated people in a steering group. We are about raising standards, which is what our members want to see, so that letting agents are respected. We give freely of our very limited and precious time, because we think that this matters very much. We are a division of the Scottish Association of Landlords. SAL has its own complaints process; we are working on a complaints process for the CLA, which is very important.

We are working closely on education with Elspeth Boyle at Landlord Accreditation Scotland. We are looking at providing more training modules for letting agent members. Such training would be on-going and tailored to what letting agents want. We might decide as a body to insist on continuing professional development for our members.

My firm, which is a small family firm, happens to have chosen to be a member of the RICS, ARLA, the CLA, Landlord Accreditation Scotland and the safe agent fully endorsed—or SAFE—scheme. Very often, those things mean nothing to the man in the street. It is not just about educating the letting agents; it is about educating tenants and landlords as to why they should choose to use a member of a particular body. That is very important.

The Convener: I agree that education is key, but I do not agree with Mr Potter that students do not know about these things. My student children have been telling me what I should be doing with my landlord. Student associations are keen to ensure that university students know their rights and responsibilities when they rent properties.

Ian Potter: The National Union of Students says that its members do not read as much as they should. They perhaps do research once they have
a problem—I would not disagree with that—but if we can eradicate the problems in the first place, that will help.

I will add to what Kathleen Gell said. We are—and have been for several years now—an awarding body that is regulated by the statutory body in the area, and we have a formally regulated qualification for letting agents. That is the only route by which we take in new members, who have to be qualified.

The Convener: Is there a queue to do the course and join?

Ian Potter: A lot of people are studying. They do not necessarily come and join us, although we wish that they would, but last year more than 500 people passed the technical award in residential letting in Scotland.

The Convener: Should regulation include a requirement for people to do that course or a similar one?

Ian Potter: That is what I was getting at in saying that people need to be educated. The course does not tell people everything—nothing ever will—but it makes them more aware of key problems and where to go to get advice on how to solve them.

Jonathan Gordon: This comment might move us slightly off topic. It is about misunderstandings about types of tenancy. The tenancy review group is looking closely at simplifying the tenancy regime so that people have a better chance of understanding it. Tenants have to sign up to eight pieces of paperwork for a letting agent, but our experience from taking over properties from other letting agents is that we rarely get all the pieces of paperwork, perhaps because people have not issued the tenant information pack or the prescribed information for the tenancy deposit scheme. That really comes down to training, so the point is relevant to our discussion.

Most letting agents are not trying to break the law or get round the legislation. We need enforcement where agents are doing that, but the problems are really about a lack of knowledge. There are so many letting agents in each town and city that it is hard for people to choose the best one, and there is no real competition because nobody understands what a letting agent should and should not do or how to judge them.

Going back to the registration scheme, I note that the RICS has some recent evidence that registration schemes in themselves do not improve standards. We have to start with a list of who is fit and proper, but people who are not fit and proper know that and will not apply; they will stay under the radar. We need something that hunts those people out.

The Property Factors (Scotland) Act 2011 is only a year and a half old but I believe that the registration scheme in the bill, although it is not going to match the provision in that act exactly, is intended to be similar to it. The RICS produced an impact review report on the act last year and is in dialogue with the Scottish Government on its findings. There are some issues with the registration scheme, which factors believe is not working.

Three key things came out in the review. The compulsory registration of property factors has not stopped rogue factors operating, because the necessary qualifications for registering as a property factor are too low and simplistic. Some property factors with a history of malpractice now see themselves as being legitimised to practise. A more robust registration process or system would help. It should comprise details beyond basic personal and company details so that we can explore a bit further who is registering.

11:45

I turn to one of the key dangers or risks of the current legislation as far as registration is concerned. Even in evidence to the committee, people keep asking about this part of the regulations or that part of the registration process. Regulation does not happen unless there is enforcement. There needs to be a code of practice, a list of people who are fit and proper and a redress system. There need to be professional standards and enforcement. There really needs to be a professional body overseeing what happens and making judgments on whether people comply with the code of practice.

We operate as a factor in a very small way—we factor one block of rented flats, as well as renting out those flats. We had to register through the property factors scheme. This is anecdotal, but we have read a number of written statements of services, which people produce to comply with the legislation, and found that they were misrepresenting the code of conduct in those written statements of services. How are consumers supposed to be able to unravel all that themselves? It is just not going to work.

Alex Johnstone: I return to a point that was raised earlier—we stopped that discussion because this question was coming. I want to hear your general views about the Scottish Government’s proposed model of regulation. In particular, how do you think it compares with the other potential options?

Jonathan Gordon: As I have said, the RICS thinks that it would be better to have a single professional body that is regulated. The best example is the RICS itself. It is established by
royal charter and operates in accordance with a self-regulation model, and its members are heavily regulated. That regulation is enforced.

There is a requirement for people to do 20 hours of continuous professional development each year—people must comply with that. That does not mean that people cannot make things up, but the standards are there to be enforced by the body.

We have had auditors in our office, checking that we manage our client accounts properly. There are specific ways to manage client accounts. We must not let any one person’s ledger go into a negative balance; otherwise, if the company goes bust, the money has to come from somewhere else. Unless somebody is checking that and ensuring that people understand it, there is no point having a code of conduct that requires client accounts. Of course, that still means that if a company is going to go bust or is already engaging in malpractice and causing trouble for its clients, and if it can see that everything is going to blow up, it can easily move all the money out of the client accounts. In such a case, the clients would not be able to get their money back when the company goes bust.

Client money protection is one benefit of involving a professional body, with standards, training and enforcement. However, that is impossible without enforced regulation. People can buy various insurance policies, but policies do not cover the same things. It is like a big failsafe. For example, if someone puts £50,000 in the Royal Bank of Scotland, they might not know what is going to happen with RBS, but they know that the Government will give them their money back. RBS could have been allowed to go bust, but perhaps one of the reasons why the Government protected it was so that the Government did not have to give all the depositors their money back.

We need that basic level of client money protection, backed up by a professional body. That is another key thing that must be brought in. Three key things are already there, but one final piece of the puzzle is missing.

**Malcolm Warrack:** I have a fear that that route is somewhat exclusive. There is a route by which registration could be strengthened: all registered letting agents could be invited to carry out the requirements for membership of ARLA or RICS. That would include having professional indemnity, client bank accounts and an annual audit of those client bank accounts, and ensuring that all the certification takes place annually, not every three years, as proposed in the Property Factors (Scotland) Act 2011 and the current proposals. A letting agent would be required annually to provide online legal confirmation that they were carrying out each of those activities. Something along those lines could be explored in detail so that we could reach the point at which the wish for everybody to be properly qualified would become an aim. That is not being achieved today.

**The Convener:** I do not want the witnesses to get into a bun fight about which body is better.

**Kathleen Gell:** I take issue with what Malcolm Warrack said. I make it clear that a client bank account is very different from client money protection. Members may or may not be aware that brokers out there offer client money protection to firms that act as letting agents and are not members of professional bodies such as ARLA or RICS, which require firms to have such protection. We in the CLA are tossing around whether we want to look at asking our members to move towards that.

If an agent has client money protection through those bodies, it is required to buy professional indemnity insurance and to sign up with one of the two ombudsman services. I have looked at that and spoken to Simon Morris from Ombudsman Services: property. Such a scheme is not hugely expensive and would in a sense be self-regulating.

**Jonathan Gordon:** I hope that a bun fight will not happen, because we four witnesses are all from regulated bodies. The RICS regulates my company; Kathleen Gell’s husband was my predecessor, so I know that her company is also regulated by the RICS; ARLA is a regulation body; and Malcolm Warrack’s company is a member of ARLA.

There is no argument about the principles; the key issue is what is cost effective for letting agents. We must remember that, if a letting agent carries out their business poorly and adopts poor practice, which affects landlords’ investments and the homes that tenants live in, it is essential that somebody checks what is happening. Malcolm Warrack’s self-audit idea is good but, if nobody checks, it will not work.

There are different types of client account. It is often said that an agent needs to have a non-designated client account or, indeed, a designated client account. Does anybody know what that means? I did not know until I got such an account, when the RICS told me what it had to look like.

There are different types of professional indemnity insurance. That insurance is key, because it is the ultimate backstop against a landlord’s investment being ruined. It is possible to sign a lease in the wrong way that ties in a landlord for ever, so that the tenant never has to leave. Some people might like things to be that way, and in some ways it might not be a bad thing, but at the moment, the legislation is complex and things need to be done in a particular way—the process is not simple.
My professional indemnity insurance quote this year included a different retroactive date, which meant that we would not have been covered beyond a certain date. The quote was cheaper because of that, but I had to adjust it, because the RICS tells me that my retroactive date must go all the way back. I hardly even know what “retroactive” means, but I have to fill in a thing for the RICS that asks whether my insurance is retroactive. I then have to check that the insurance is fully retroactive. Nobody understands that.

Alex Johnstone: I am keen to hear what Ian Potter has to say, but it is clear that the Scottish Government’s opinion is that requiring letting agents to be a member of a recognised trade or professional body would amount to self-regulation by the industry and would force smaller letting agents out of the market. How do we reconcile that?

Ian Potter: To be honest, I do not think that smaller agents would be forced out. I have a huge concern about the self-certification of compliance. Like the RICS, we have a compliance regime. The quality of what comes in—from agents that think that they are complying and which are trying to comply—leaves a lot to be desired. We must work with them to achieve full compliance. They let their professional indemnity insurance run out and forget to renew it, or they open a new bank account and do not get it designated as a client bank account. The annual audit picks those things up, but would there be that awareness with a self-certification scheme? The agents often come back to us and say, “The bank has made a mistake”. They provide evidence that they asked for a designated client account, but were not given that by the financial institution. That is where we need the audit; otherwise we break away all the protection we have been speaking about.

Another problem with client bank accounts at the moment—I do not know whether it has come across RICS’s radar; I only came across it recently in a meeting with the successor to the Financial Services Authority—is that banks are probably breaking anti-money laundering regulations by allowing an agent to open a designated client bank account. What due diligence was done on the client, who is the ultimate beneficial owner of those funds? A whole piece of work is going on to ensure that we can get regulation down that route, which would mean agents having to do a lot more due diligence work on their client. Letting agents are not covered under the money laundering directive, although estate agents are. You can go into a shop where half the business is regulated and the other half is not. That does not help the consumer.

One of the key things in the proposals in terms of impact is the fact that dispute resolution between an agent and a client through the Private Rented Housing Panel is very expensive. If you look at the evidence, you will see that the ombudsman schemes that currently operate for Jonathan Gordon’s members and my members are far cheaper to operate. The majority of consumer complaints are easily fixed—that is where the evidence about lack of education comes in. Let me give the example of a tenant who complains that they have been given notice to leave their property. The tenancy has come to an end—the landlord is legally ending it through the agent—but the tenant is unhappy. They do not want to leave, so they complain to the ombudsman. Taking such a complaint through the PRHP route would probably cost, according to the figures that have been quoted, between £1,600 and £1,800, which would be disproportionate to the problem. The consumer needs to be advised about that issue.

Some people take negatives out of the rise in the number of complaints that have gone to ombudsman schemes over the past few years. However, the rise in the number of complaints that have gone to ombudsman schemes—to which lettings agents have signed up voluntarily—is a positive, for the simple reason that it is evidence of the consumer starting to understand that a route exists that did not exist previously.

The number of agents that have signed up to the existing ombudsman schemes has grown exponentially since 2006, so you would expect the number of complaints to rise. When the bill is enacted, whichever body looks at complaints against letting agents has to be prepared to accept that the figures on impact that are in the papers are the equivalent of holding a finger to the wind to see what way it is blowing. I think that the figures will turn out to be much higher. The better agents, who are trying to do it right, have signed up voluntarily to those schemes. When we start to bring in the rest—as I believe that we should—we have to be prepared to see the numbers go up, but that is what consumer protection is about.

Jonathan Gordon: Alex Johnstone might want to ask about the redress situation itself, which I would have comments on. I think that his last point was about the specifics of letting agents going bust or going out of business if too much is forced on them.

I was not in the stakeholder groups myself, but someone from our policy team was, and there was a genuine feeling that the third option that I mentioned earlier was the preferred option. The key thing that stopped that was the issue of small agents not being able to afford the training and accreditation. The Government was concerned about that and that those small agents could go out of business, but the nature of any well-
regulated market is that there must be some basic entry requirements.

12:00

I do not think that most letting agents, or even a significant number of them, would go bust, but if agents are not qualified to operate in the market and cannot afford the costs of training, they will not improve standards or provide basic protection for their customers, and those agents should leave the market.

For the bill to realise its desired policy outcomes of raising professional standards and reducing consumer detriment, consistent and effective approaches to the enforcement of the proposed arrangements and the associated code of practice are vital. Summary figures in a recent RICS impact research paper, which we can make available to the committee, suggest that the benefits will outweigh the costs in under 2.5 years. Those are high-level research findings on the costs to society and so on, but we have to remember that we are dealing with tenants’ homes that need protecting and tenants who cannot get what they need from their letting agent or landlord.

Quite a big study is being done for the tenancy review group, which has been mentioned a couple of times, and it will report soon. Qualitative research was commissioned, paid for by the Government, and interviews were conducted with tenants all over the country—in small towns such as Dumfries and Inverness, for example—to gather views on how well they felt the tenancy regime was working for them, whether they understood the lease that they had signed and whether they wanted a longer tenancy or more security of tenure. However, what the research fed back in was that they did not really care about those things. Few people—landlords or tenants—understood exactly what was happening with the tenancy regime. The comments that came back from the tenants were distressing to the group. Its report is the first research that I have seen on the issue, and I would recommend that everyone get a copy of it. It shows that there are people sitting at home with a boiler that does not work, so they cannot heat water to give their children a bath. Those vulnerable tenants are at the bottom of the ladder of ability.

We tend to manage properties in the centre of town that are let out to professional working people, or sometimes to students whose guarantors are professional working people, and those tenants can move. There have been landlords who have refused to do a repair, and we have given up those properties. In trying to get things sorted and make repairs happen, we have told tenants’ parents that landlords are not meeting the repairing standard and that we will give up those properties. We have also told them how they can resolve what is a repairing standard matter by going the Private Rented Housing Panel.

As I said, those people can move. For example, one tenant’s parents told the tenant just to leave and not to pay the next month’s rent, because the landlord was not fixing the problem. The tenant moved into a more suitable property and never came back. However, people who are living in more deprived areas and who are more vulnerable are not able to leave or to demand their rights. They do not feel empowered to act. It is those people who need to be protected.

Letting is not a simple process. Agents look after complex obligations, and there are letting agents who will allow landlords to manage their own maintenance. The question is whether that maintenance is being done poorly or well, and there are letting agents out there who will allow landlords not to meet the repairing standard while still collecting the rent, passing it on and signing the lease. That practice will not disappear with a registration scheme, but a bit more enforcement is required to create more compliance, even with existing legislation.

Mary Fee: Sections 26 to 52 set out the detail of how the regulatory regime will work in practice. I would be interested in the panel’s views on the proposals for registration of letting agents, the definition of letting agents, the fit-and-proper-person test, and the requirement for agents to reregister every three years. I note that Mr Warrack from Let Scotland takes the view that renewal should be annual. Why do you think that, Mr Warrack?

Malcolm Warrack: We have touched on the weaknesses of the property factors legislation. Letting agents will have a pivotal role in the housing market over the next five to 10 years. Whether they are controlled by the Government overseeing the certification of auditing and all the detail that my colleagues have just talked about, or by the RICS, a three-year period is too long to leave something before it is tested properly.

Whatever the fine detail that is determined at stage 2 with regard to letting agent registration, I think of it in almost terms of a licence. Perhaps letting agents should have an annual licence to operate. To be licensed, they could be required to provide certification to demonstrate that they have the things that we have been talking about: the right professional indemnity; the correct client bank account; and the correct audit of that bank account. There are other things, too, but the list is quite long so I will not go into it.

As we go through stage 2, the devil will be in the detail. We hope that the proposed legislation will
provide an excellent example of what being part of a wider housing market can be in the years to come. I would like us to look back in five or 10 years' time and say that what we have is envied by the world. People refer to the private rented sector in the US and Europe in that way. I like to think that we can cherry pick the best elements of what happens in the global private rented sector, bring it to the bill and ensure that we get something that works for the long term.

Mary Fee: I agree that the devil is in the detail, and I am sure that we will get more detail as we go along. However, in relation to the fit-and-proper-person test, what would you like to see? What do you think should be required for someone to become a fit and proper person?

Malcolm Warrack: Ideally, it should be a professional qualification, but—

Mary Fee: If you want to think about it, you can come back to it later.

Malcolm Warrack: I will have to think about it and come back to you.

Kathleen Gell: I will comment on the fit-and-proper consideration as it is set out in the bill. As I said earlier, I feel that it is coming across in a very negative way, that it is not particularly helpful and that it does not set a minimum standard. The CLA wants to see a minimum threshold for a letting agent to be able to operate.

The situation with regard to qualifications is a little patchy in Scotland. I believe that one of the London universities is considering offering a degree specialising in residential property management. In Scotland, the highest level that can be reached by someone who wants to develop their career path in the PRS is a level 3 certificate, which is equivalent to a Scottish higher. It is not possible for an ARLA member to go beyond that in Scotland.

There are training opportunities—an excellent one is afforded by Elspeth Boyle through Landlord Accreditation Scotland. It is not for me to say this, but the Scottish Government could perhaps look at putting some funding into the bodies that are out there—for example, the Chartered Institute of Housing and Landlord Accreditation Scotland. It would be good to feel that the Scottish Government was helping letting agents to meet a minimum standard of competence.

When we look at the age profile of letting agents in Scotland, it is clear that we need to think about the future. The average age of most of us is certainly not in the 20s, so we need to develop career paths for people and enable them to become qualified and even better qualified. Let us set the standard in Scotland—please let us do that.

Mary Fee: What is your view on reregistration every three years?

Kathleen Gell: I agree with Malcolm Warrack that three years is far too long. Let us just get in there and check the position every year. A lot can happen in three years.

Ian Potter: There is a halfway house. I have no issue with the three-year licence; the issue is the checking that is carried out during that period. The suggestion about annual documentation offers a practical way forward.

My concern, from my practical experience of looking at the documentation, is about who will look at issues to do with client accounts, for example. We have succeeded in having registered auditors—chartered accountants—struck off for making false declarations on behalf of members. Whoever is looking at the documentation, whether it is the Scottish Government or a body such as my association, the question is how robust they can be. That is the key.

Jonathan Gordon mentioned professional indemnity insurance and retrospective cover. That is hugely important, because someone could have made a mistake two years ago and subsequently changed their insurer, and if they do not have retrospective cover, when the problem comes to light there will be no insurance in place—their current policy will not cover them.

People are generally comfortable with what something like motor insurance covers. They understand that if they change their insurer and then say that they had an accident three months ago the insurer will say, “Well you didn’t tell us—tough.”

Jonathan Gordon: I echo all that. Mary Fee asked about the registration scheme and the fit-and-proper-person test. I understand that the test for landlord registration in the Property Factors (Scotland) Act 2011 involves checking high-level details about criminal activity and so on.

It is important to know who the letting agents are and to have a list of them, and it is important that certain types of person should not be allowed to operate. The register is therefore a key starting point. In all the evidence that I have given, I have said that a fit and proper person should be a member of a professional body that regulates their activities and protects the public.

We have to keep going back to what we are doing. There has been a lot of research into problems in the sector and complaints about landlords and letting agents, but it is common for surveys to show that 79 per cent of tenants are satisfied with their agent—the statistic is cited on letting agents’ websites as a key reason why there is no requirement to legislate in relation to letting.
agents. However, we are talking about 300,000 properties, so perhaps 60,000 households are living in homes that are in poor repair—with no working boiler, mould in the bedroom and so on. That is a lot of homes, and the sector is growing.

I am here to represent the RICS, but as a letting agent who is regulated I have other comments to make. Whenever we take over properties from other agents or access properties that other agents manage—our company often has to get access to a property above one of ours, for example if there has been a leak—we find that the standard of knowledge among the letting agents that we meet is poor, even when they are from well-known companies, which are on the high street. There is no training, and agents show a lack of knowledge about the legislation and the documents that are required.

12:15

Some letting agents do not even know how to deal with simple maintenance problems. Regardless of tenants’ rights, landlords’ rights and everything else, they are meant to be managing the property and inspecting it every three or six months, depending on the type of property. What do those inspections involve? A landlord will expect the agent to look at the property and not only assess what is happening with the tenant but find out whether maintenance is required, whether anything is going to fall down, whether the tiles are coming off the wall or whether the grout is cracking. If they can catch, say, a grouting problem, it can just be regouted; otherwise it could end up as a £2,000 repair job. That is the kind of thing that we look at as a property-managing organisation.

Training is key. As far as the highest standards are concerned, I am not suggesting that everyone should be a chartered surveyor—although that would be good for us—but I studied for seven years to learn how to manage property, carry out structural surveys and inspecting it every three or six months, depending on the type of property. What do those inspections involve? A landlord will expect the agent to look at the property and not only assess what is happening with the tenant but find out whether maintenance is required, whether anything is going to fall down, whether the tiles are coming off the wall or whether the grout is cracking. If they can catch, say, a grouting problem, it can just be regouted; otherwise it could end up as a £2,000 repair job. That is the kind of thing that we look at as a property-managing organisation.

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Ian Potter: Ms Fee alluded to the business models of agencies and the question of who should satisfy the fit-and-proper-person test, which is an issue that we have begun to find quite interesting. There are plenty of examples of agencies in which the shareholders and the board come nowhere near the day-to-day running of the business. In such cases, the person who is likely to be left to meet the fit-and-proper-person test will be the office manager, the business manager or the lettings manager who, in practice, cannot always comply with what they should be doing if the owner of the business is telling them to do something different and they want to keep their job. That issue certainly needs to be addressed.

The route that has been suggested in Wales to get round that particular problem is to apply the fit-and-proper-person test that is set out in houses in multiple occupation legislation to the principals, partners and directors of a business and ensure not only that they have an educational qualification at a particular level but that two thirds of their staff who work in a customer-facing position also have a level 2 or 3 qualification. Although that might be a minimum level, it is felt that such a move would begin to raise standards. We very much support that ethos. We have to set the bar at an achievable height to begin with, and we can crank it up later when we start to get the mass that people are concerned about. As for the impact on smaller business, the bar can be set at a lower level to begin with and when they begin to see the business benefit they will be able to achieve a higher level. I do not think that setting the bar at a level to begin with is a bad thing, so long as there is a planned strategy to achieve a higher level.

Jonathan Gordon: As far as smaller letting agents are concerned, we have six staff members; on the other hand, some agents have 10,000 properties. The scale can be huge, but professional bodies tend to regulate all of that quite well.

Someone can become an RICS member by going through the associate qualification process. It is fairly straightforward; they have to prove their competence and, depending on which route they take, they might have to undergo training. If they have worked in the letting industry for five or 10 years, they might be able to take a direct route but, even so, they will need to undertake continuous professional development after that. They also have to understand professional standards and ethics; there are basic tests on those that have to be sat before a person can join. Routes to becoming a chartered surveyor already exist for people who, unlike me, have not done a degree. I might be slightly jealous of that but it is a good approach because it brings everyone up towards the right standard.

My only other point was going to be a repetition of a point that Ian Potter made, so I will leave it there.

Mary Fee: Ms Gell, do you want to come back on that before I move on?
Kathleen Gell: Yes. Actually, I have a query. Is the committee thinking about how the legislation might capture agents south of the border who act as agents for and manage properties in Scotland? The fact is that they never go near those properties, which are in a shocking state of repair. I simply wonder whether you have given thought to such agents, because they are out there and we frequently get calls about them.

Mary Fee: That is something that we are aware of, but I thank you for pointing it out.

The bill makes provision for a letting agent code of practice. I know that many letting agents already comply with existing professional codes of practice. Will the panel members give me a bit more information on what is in the existing codes of practice and, more important, how they are enforced when there is a breach?

Ian Potter: The bodies that Jonathan Gordon and I represent have codes of practice and requirements. ARLA has, in effect, two bits to our code of practice. We require all our members to belong to one of the two ombudsman schemes that were created under the Consumers, Estate Agents and Redress Act 2007 for sales agents. Those schemes also cover lettings complaints.

The Property Ombudsman service developed a code of practice that is based on a code of practice that ARLA had developed previously. The code has got to Office of Fair Trading stage 1 approval. It covers many of the wider issues around what the consumer should experience and it offers the consumer—landlord or tenant—redress, if financial recompense is looked for, for actions that have impacted materially on them.

To complement that, we have a disciplinary process. If we receive a complaint that is not just about looking for redress, we take that complaint through the process. The punishments under that process can be anything from a warning, to a requirement to do further training, to expulsion from membership.

Last year, nationally—within the UK—we removed 270 members for non-compliance, so we do act. The problem is that because it is a voluntary self-regulatory scheme, expulsion does not stop those people from practising. There is no route in any of the UK jurisdictions for banning a person from being a letting agent.

Mary Fee: So, you can expel agents, but they can just carry on working.

Ian Potter: That is what happens in practice, unless the agent has totally gone bust and disappeared with all its clients' funds. We had one case last year from which the agent has risen again like the phoenix from the ashes and is doing exactly the same thing. Those agents belong to no body, so there is no consumer protection. We need to make sure that that loophole is closed in order to stop that sort of thing from happening.

Jonathan Gordon: There is lots of evidence from work that has been done by the Property Ombudsman and the RICS itself, for example. The RICS has not formulated a view on what the code of conduct should be—we understand that that will be part of another consultation.

The RICS has significant experience of direct relations with its members. There are lots of differences between us and ARLA, but in relation to regulation of our members, the key things are client money protection and what must be in place to achieve that. ARLA licenses members; a principal can be a member. You can be a member of ARLA and work for a company, which means that you have gone out and got the qualifications yourself, but your company is not necessarily a member. That is the key difference. If you are a chartered surveyor, you have to comply with the professional practice and codes of conduct.

The code of conduct is generally about checking some basic high-level things. I can leave a copy of the code of conduct with the committee. The key things are client money advice for firms and professional indemnity insurance advice for firms. There are also professional and ethical standards with which we must comply.

The key element of the code is that there must be a complaints-handling procedure to deal with low-level complaints, to provide people with a redress system that they understand and can deal with themselves, and to help firms to avoid statutory interference or complainants having to go to an ombudsman.

The procedure is very similar to how the Financial Conduct Authority deals with complaints about mortgages. We have eight weeks to deal with the complaint—if we are not dealing with it at all, I think that there are other redress mechanisms—and after that point the person can go to the ombudsman. That would cost us a £230 fee; the consumer pays nothing. It is up to the ombudsman whether it takes on the case, but if the case is valid there is a procedure to go through, including an appeals system and everything that goes with that.

Client money protection and professional indemnity insurance advice are the other two key elements. The fact that advice on them is dealt with in separate documents illustrates their importance. Compliance with those two elements leads to the client money protections, which are the ultimate protections for investors.

The code of conduct deals more effectively with the landlord side of things, as the investor. We must remember that most landlords are not
sophisticated investors, but happen to have a house that their parents owned, or have moved in with their partner and are renting out their home. Most landlords in the rented sector are not institutions, and most properties in the rented sector are not owned by institutions. The properties are owned by individuals who are using the property as their pension pot for when they retire. It may be that their mortgage costs more than they get in rent, so it is important to them that their agent manages matters properly. However, that might be the only normal consumer investment that is not regulated in a properly enforced way, so it is vital that the bill is not only passed but amended to ensure that how the investments are managed is enforced in the same way as management of other investment products.

Mary Fee: It would be very useful if you could leave those details with us.

The Convener: It would be more helpful if you could send them to us electronically.

Mary Fee: The code of practice would raise the standards for tenants. I also imagine that, in your view, it would help to weed out rogue landlords and letting agents.

Ian Potter: The code has the potential to do that. What is not particularly robust in either code—I say that despite the fact that we signed off a new code yesterday at a board meeting—is provision in respect of property standards. That issue, which is covered under different legislation, is key. Both the RICS code and our code include the requirement for the agent to act within the law. A catch-all phrase encapsulates the issue in the code of practice. Concern has been raised about the coverage of the property standard in the bill; it is a difficult matter for a code of practice to enshrine properly or to have teeth on when there is already legislation and, as I have mentioned, a body—the local authority—that has statutory powers to deal with the issue.

If the agent or landlord was found guilty of breaching the statutory obligations and that information got back to us about one of our members, we would view the code as guidance on what disciplinary action we could take. I do not sit on the tribunals that look at such cases, so I cannot say what the regulation should do; neither can the membership part of the body. The regulation must be ring fenced and independent. However, if we are talking about just one incident, the member might very well just get a formal warning, which would count as one strike against them. If we saw a repeated pattern, we would look at other means. We recently amended our code of practice so that we can impose a fine of up to £5 million.

Jonathan Gordon: That is a good point to make. Other than that being a part of professional standards—we give up landlords’ properties and will not manage them if they do not comply with the repairing standard—the property standard is probably missing from our code of conduct. I had not thought of including it in the code of conduct, although that would be a good idea; it would bind the letting agent to the landlord’s obligations.

All the evidence is anecdotal, however. For instance, someone might take over a property from another letting agent and look for the gas safety certificate, but find that it is three years out of date. They go back through the paperwork and find email from the landlord to the previous letting agent, saying, “Don’t worry about it. I’ve already spoken to the tenants; I have keys and will deal with it myself”. Then the landlord says, “That’s fine”, but the matter is not dealt with.

In other situations, which are more common in London, letting agents offer a rent collection and legal service only: they find the tenant and move them in but do not manage the maintenance. When they do viewings they know fine well that the property is not in good condition, but at the end of the day they are going to get 10 per cent of £500 for doing nothing. There are lots of significant landlord obligations, but the letting agent has no obligation, other than a general duty of care that anybody has under law to look after the property. To bind agents to the landlord’s obligations would be a good idea.

12:30

Ian Potter: That area of law is still unclear. The OFT recently produced guidance for letting agents on the Consumer Protection from Unfair Trading Regulations 2008 in consultation with the industry. Simply put, that legislation has a requirement that the agent should tell the consumer everything they need to know that would impact on their transactional decision making. Landlords should be told everything they need to know when agents take a new instruction from a landlord client. Similarly, the tenant should know everything they would be likely to need to know before they even go to see a property. Although that has been law since 2008, there is no case law yet. The industry is on guard.

As I mentioned earlier, Newham London Borough Council says—under consumer protection regulations, I can understand this—that when advertising a property the maximum occupancy rate should be advertised. Its licensing scheme says how many people can be in any one property. For instance, a two-bedroom property might be allowed a maximum of five people, or a family, or a combination. That should be made clear to the consumer.
The Private Rented Housing Panel in Scotland has looked at occupancy rates and over-crowding. It is a problem in Scotland; it comes back to the Govanhill discussion, which I think this committee had two or three years ago.

The Convener: It was not this committee.

Ian Potter: One of the committees certainly discussed overcrowding, anti-social behaviour and landlord registration. They all come together: we just need some joined-up thinking.

Mary Fee: That was very helpful: thank you.

The Convener: The RICS is a signatory to the United Nations’ global compact for sustainable development. What elements should a code of practice include to help the sector to develop more sustainable business practices, in line with the compact’s 10 principles—in particular principle 8, which is about undertaking initiatives to promote greater environmental responsibility?

Jonathan Gordon: I had to refer to my policy adviser for that one. The UN global compact is high-level stuff. I have talked about the environmental side of things. Driving up standards by having more new housing stock to rent is probably the best way forward. RICS Scotland believes that consideration of principle 8 in the code of practice is a good starting point, but the whole compact has the potential to play a role. RICS Scotland will be able to provide further detail in its written submission.

The Convener: Should the compact be considered in secondary legislation in relation to drawing up codes of practice?

Jonathan Gordon: Each part of the code of practice could be looked at. You would not need a separate part of the code, but would need to consider whether each part of the code related to the compact.

Patrick Harvie (Glasgow) (Green): The panel has given very clear evidence on the scale and nature of the problems that the bill is intended to address, which has been very helpful. It is recognised that we need to talk not only about competence and qualifications but about ethical practice.

On the balance between what should be in the legislation and what would be in the code of practice, I want to float a couple of suggestions to find out whether you think that they fall on one side or the other. I suggest that the issues would be well addressed in the code of practice.

Mr Gordon mentioned my comments in a previous meeting about a letting agent who had clearly decided, “I cannae be bothered with this deposit protection lark, so I’ll just charge more advance rent,” and was finding legal workarounds. If a person pays two months’ rent and is given a month’s notice to quit, they will still have a fight on their hands to get their money back, and will probably also need to come up with rent for a month or two to get another place to live in. The question how we could close those loopholes is therefore serious.

The other issue is the continuing problem of discrimination against housing benefit claimants. We have seen a recent media outburst from a big landlord south of the border who wanted to give all his housing benefit recipient tenants notice to quit. Even in Scotland, there is a significant problem, with the historic phrase “No DSS” still being familiar in the private rented sector. Would that kind of discrimination be effectively dealt with in the code of practice?

Kathleen Gell: My understanding is that that term is illegal, but nobody has challenged it.

Patrick Harvie: I am talking about the practice as well as the term.

Kathleen Gell: Yes. The practice is really driven by mortgage providers. I believe that the Bank of Scotland is guilty of not permitting buy-to-let borrowers who are looking for a mortgage to rent to people who receive benefits. I think that that was driven by the introduction of the universal credit. That is my take on the matter.

Jonathan Gordon: “No DSS” is a common phrase. I stated earlier that the majority of landlords whom we speak to are not wealthy people; the majority of our clients are not wealthy people. The majority of properties that we look after have a mortgage, and often the mortgage is more than the rent. Those people cannot afford not to receive the rent, so the affordability test is critical.

People who receive benefits are not excluded from our process, but we have an affordability test that is carried out by an independent company and for which we pay. It checks the tenant’s suitability for the property in order to meet what we have told the landlords we will do.

In addition to the banks, many insurance companies will not allow people who would have been called DSS tenants. The cheapest insurance that people can get, which is advertised everywhere online, specifically excludes students and people who would have claimed DSS benefits. I do not know how it defines what a benefit is, because there are obviously tax credits and other different types of benefit. Therefore, a person could be—or is likely to be—working, as well.

We have a couple of people who receive housing benefit, and we get the money direct from the council. It will reduce that amount without
I know exceptionally well the English case to which you referred. I have had to face it in the media on more than one occasion, as the landlord did the same thing back in 2004 and 2006. I have to be careful what I say publicly, but I do not think that the reason that he gave was the right reason.

One of the big problems for the benefit tenant is that the rent that they can afford or that they will receive benefit for is often below the market rent and the landlord wants to know that they are maximising the return on their property.

Patrick Harvie: You have to look at it from both perspectives, though.

Ian Potter: Of course we have to look at it from both perspectives, but if people were told that they would make a more socially acceptable investment by putting their money into one bank interest free as opposed to getting even what they would get in today's market—0.25 per cent—from another bank, what percentage of the population would think that that was a good deal?

The rent return on a landlord’s property is no different. We want institutional investment in the private rented sector of the type that Jonathan Gordon spoke about earlier, and quality new stock coming into the private rented sector will be very much yield driven.

We must address the issue. I know that the Scottish Government has had concerns about universal credit and has said that it will do what it can to support people in that situation, but it is a fact of life.

The Convener: I think that we are veering off the subject, and we are rapidly running out of time. Does anyone have anything to add on the current subject before we move on to dispute resolution and enforcement?

12:45

Jonathan Gordon: I have a very quick point to make. The Scottish Government would do well to look at investing in the rented sector as the way to improve the situation, with the right proportion of affordable homes being created as part of building a new sector. Encouraging the sector would play a massive part. If 20 per cent of houses have to be affordable, that will create more homes that people can afford.

If the Government is not able to do everything that is required to allow a tenant to stay in a property when they fall on hard times, it is not feasible for an individual person—who has just enough money to feed their own family and who happens to be a landlord—to be the one who steps in to support the tenant who cannot afford to pay the rent.
Nobody would be thrown out for losing their job. They would be thrown out—or, rather, the correct legal process to evict them would be started—if they could not afford to pay the rent or if they stopped paying the rent. A professional and ethical body that looked after a landlord who tried to do anything else would not last very long.

I will stop there so that the committee can move on.

**Kathleen Gell:** I will make one final point. I come back to the point that I made at the outset in support of Professor MacLennan, which is that there needs to be a bigger strategy. The barrier to investment in new build in the private rented sector is apparently cited as being the cost of land. Investors are, in effect, sterilising land that could be used for building. The Scottish Government could look at freeing up or ring fencing land and not allowing it to be bought by investors.

**The Convener:** That is for local authorities.

Let us move on to dispute resolution and enforcement.

**Gordon MacDonald:** What mechanisms currently exist for resolving disputes between letting agents and their customers? How effective and fair are those procedures for resolving customer complaints? How aware are people of the existing schemes?

**Ian Potter:** The ombudsman schemes that we referred to earlier are the ones that are most commonly used. They are independent; the ombudsman bodies are not controlled by the industry. The schemes work and they are cost-efficient business models. I have concerns about the costs of using the Private Rented Housing Panel that are given in the documents that accompany the bill. Typically, the cost of dispute resolution that goes to either of the ombudsman is less than £250 as opposed to the figure that is given of £1,600 to £1,800 for the PRHP.

One thing that we have to look at is whether, for some issues that are likely to be areas of complaint, we could come up with something as simple as alternative dispute resolution. ADR works quite effectively for tenancy deposit cases: the cost of ADR schemes that are running for tenancy deposit protection ranges from about £80 to £150, and the process is a desktop exercise. I do not have a problem with the suggestion that there might be a requirement for a higher-level, more complicated route, but we have to look at how quickly and efficiently some of the problems can be addressed.

Obviously, there has to be a code of conduct that requires an agent to have a dispute resolution and internal complaints procedure. Often, a more junior member of staff digs in their heels and says, “No, that is not right,” but when the problem gets to the boss, they have a solution. I know that, as an agent, I used to spend money to keep both sides happy.

**Malcolm Warrack:** Another element is the education and empowerment of the tenant. The better their education about the circumstances and their rights and responsibilities, the more likely we are to be able to move to the situation that Ian Potter has been talking about, in which problems are captured and dealt with sooner rather than later. It is the escalation process that is often the problem. Tenants need to be better informed.

**Gordon MacDonald:** What are your views on the bill’s proposals regarding how tenants and landlords could seek to enforce a letting agent’s compliance with the letting agent code of practice? Do you agree with the Government that the proposals provide easy access to a redress mechanism?

**Jonathan Gordon:** The Government’s proposals are good and it has thought about the issue in the right way. The difficulty is that the Private Rented Housing Panel is the best example of a tribunal at the moment, and it is not operating as it is meant to. People who have problems in relation to the repairing standard are not going to the panel, or their cases are taking too long to be resolved. Investment in that is therefore key.

The RICS’s view is that the best-placed people to manage disputes between letting agents and their clients, whether they are landlords or tenants, are ombudsmen. The two ombudsman schemes that are in place are credible and, as Ian Potter said, they provide good low-cost solutions and easy access for people.

**Gordon MacDonald:** Tribunals would be fine, if that is what is wanted, but it is unnecessary to add another layer that the Government gets involved in. If a scheme that already operates can be used, why introduce another one? Extending the scope of tribunals to take cases away from sheriff courts is a good idea, but perhaps issues to do with the registration of letting agents should lie with ombudsmen.

A disparate set of organisations is involved and there is a huge number of codes of conduct. Nobody understands the position at the moment. What need is there for the Scottish Government to add another level?

ARLA is well known in England as a licensing body for letting agents and it has a strict code of conduct. The RICS has an additional element in professional development—the on-going training on what is required is slightly more entrenched. However, as Ian Potter said, ARLA provides training to its members, and that is something that it is supposed to do. Why would we not use something that exists already? Why spend
£500,000 or £1 million on setting up a scheme that nobody will comply with or which requires an enforcement body to be set up?

If someone tries to call the trading standards department at the City of Edinburgh Council, they will not get through, but they can get through to a citizens advice bureau helpline. I understand that that is the route that people would use to complain about a letting agent at the moment. Why not take advantage of existing bodies?

The RICS has white-labelled the regulation of other sectors. Members of the Institute of Residential Property Management and the Association of Residential Managing Agents, which work in similar sectors, are regulated by the RICS. The RICS also regulates every surveyor who values a house that is for sale.

Experienced practitioners in RICS regulation have written to the Government to offer advice on three ways in which they could help. At the top level, people could be required to be surveyors. At the next level, the RICS could provide the regulation in a white-label format. Finally, the RICS could set up the code and manage it for the Government.

Lots of stuff could be done. The fit-and-proper-person test will need to be set up, and a code of practice that everybody must stick to will have to be established. We should use the existing low-cost ombudsman services, which work well for consumers. We should also use something that already exists to manage all that, such as ARLA, the RICS or a combination of them.

We could follow what was done with tenancy deposit schemes. The Government said what a company would have to do to run a deposit scheme, and three companies, including one in which the RICS is involved, set up independent schemes for that—although those bodies are not involved in enforcement, which would need to be added in this case. All the schemes have their own rules and sets of guidance, but they do pretty much what the Government wrote that they have to comply with.

Why do we not do something like that and let the market, which already has experienced people, take over the role? That is my main suggestion.

**The Convener:** Are there any other suggestions?

**Kathleen Gell:** I do not know whether this is a suggestion; it is really an observation. We have a lot of different bodies, not all of which know what they are meant to regulate. For example, Highland Council’s trading standards department was—sadly—not aware that it was meant to oversee the display of energy performance certificates. It needed me to tell it where it could find out about that.

Local authorities regulate landlords, the Scottish Government is to regulate letting agents, and the police regulate some aspects. The Private Rented Housing Panel, ombudsmen, the RICS and ARLA are also involved. We need just one body that has an overview and the ability to regulate the system. That would be much clearer and would make the system much easier to enforce. I do not have a suggestion on who that should be or how that should be done.

**Mark Griffin:** We have heard concerns that existing private rented sector legislative requirements such as private landlord registration schemes are not being enforced effectively. That came through in your opening remarks, when you said that enforcement was key. Are there any concerns about the Government’s ability to enforce their letting agent registration requirements?

**Ian Potter:** My main concern is whether the Government can enforce its own legislation effectively. Where things are sitting in the proposals, the enforcing body is the Government. I am still trying to work out how that will be devolved: where it will go and who will have that responsibility.

Kathleen Gell made a point about something that has happened south of the border, which has not been able to be extended north of the border, which is a scheme known as primary authority. Through it, one local trading standards department can provide what is known as assured advice, which every other trading standards officer in the jurisdiction—remember that I am speaking about England—will abide by. That leads to uniformity of standards and enforcement, which makes it much easier for everyone to know where to get advice.

I will be perfectly honest and say that the scheme is in its infancy for the private rented sector. However, since we launched our scheme in October, almost 1,000 agents have signed up to it and we are starting to see cases coming through. Cases are referred, advice is given quickly and clearly, and other local authority trading standards departments are accepting it. Something like that is workable and could be made to happen in Scottish legislation.

**Kathleen Gell:** I can think back five or six years to when the City of Edinburgh Council ran the letwise scheme—correct me if I am wrong—which was excellent, with very high-standard training sessions for landlords. We travelled down from Inverness to go to them, because there is such a lack of training opportunities.

People are eager for knowledge; they want to do a good job. Many of us are out there, trying to
raise the bar. It is something that could be looked at and which could cover a lot of areas.

Jonathan Gordon: There is a theme in what I am saying about regulation needing enforcement by a proper professional body. The fact is that there are good letting agents, who do everything right and know exactly what they are doing—the top percentage—and there are a few bad ones at the bottom, who either do not care whether they do everything right as long as they get the money, or deliberately do things to make more money.

A big percentage of letting agents have a lack of understanding and knowledge, but the vast majority want to do a good job. The self-regulation model is something that even the hardest campaigners and others such as the press support. The Government is trying to improve redress for tenants in the court system, by moving their cases away from the court system to specialist tribunals where housing people will look at them. The best people to regulate the sector are the people who know how the sector should work.

There is a massive lack of information for tenants, landlords and the Government. Whenever the Government looks at something, it interviews people such as us and gets anecdotal evidence of things that are happening in the market. However, there are 1,000 letting agents and we do not know anything about those who are not members of a trade body. Even for those who are, there is no compulsion to do anything right—there is no formalisation of stuff. Why not take the opportunity to change that? The Scottish Government is unique in the UK in that it wants to regulate housing to improve standards. The best route to doing that is to create a single body that will self-regulate, using people who understand the market. Why would the Government want to get tied up in something that people will complain about? Why not set it off in the market in the right way and have proper self-regulation, enforced by an independent body?

13:00

Mark Griffin: What are your views on the proposed offences in the bill? Are they proportionate?

Jonathan Gordon: The level of fines is set out clearly, but the RICS is concerned that they appear to be lower than the fines for non-compliance with landlord registration, which seems strange. I spotted that but did not have time to look into the detail. I think that for a particular offence, it is level 3—I apologise; I am not sure how it works, but I think that you will find that the approach does not match the approach to landlord registration.

Mark Griffin: What will letting agents be required to do to comply with the registration scheme? Will the approach create undue regulatory burdens?

Kathleen Gell: My feeling is that it should create regulatory burdens—otherwise why do it?

Jonathan Gordon: That is my view, too.

Malcolm Warrack: Yes, it should do.

Jonathan Gordon: We all agree.

Ian Potter: What agents will have to do will vary across the market. Some agents will not have to do anything; others will have to take a long, hard look at their current business model and everything else. The impact will be greatest on the latter group, but that is the group in relation to which we—and, I am sure, members of the committee—think that the biggest problems arise. Therefore, we should not be frightened of the regulatory impact.

Malcolm Warrack: There are cost implications, of course. I said in a meeting with Shelter some months ago that the cost of landlord registration is too low. It is about finding a balance, to ensure that the regulatory costs and efforts to comply with the code of practice and everything else are in balance with the size of the business.

Jonathan Gordon: Cost is an important issue for RICS members and particularly for its regulated firms, which operate as limited companies or whatever. For us, the cost of regulation can be well over £1,000, not counting the high level of professional indemnity insurance that we must have. We think that to require regulated firms of chartered surveyors to pay another fee to a Government registration scheme—in order to adhere to a lower set of standards—would place an unnecessary burden on those firms. The RICS heavily regulates its members already, and it might create confusion in the market and among its members’ operations if firms had to comply with two codes of conduct.

The Law Society of Scotland made similar points. Its members deal with particular pieces of legislation in relation to signing documents, I think, and are covered by the society’s code of practice.

The management of property is core to what surveyors do. Why would they be regulated by someone else, when strong regulation is already in place?

Kathleen Gell: We accept that there will be a cost, but I echo what Jonathan Gordon said. I am here speaking on behalf of the CLA, but let me put this in the context of our firm, which is very small— it is me and my husband. The fee for membership of the CLA is £295; I think, so my firm pays that. We also pay into the SAFE—safe agent fully
endorsed—scheme, the Landlord Accreditation Scotland scheme, ARLA and RICS. My accountant tells me that last year our fees to those bodies were just short of £3,000. Therefore, some of us might not take kindly to a hefty fee of several hundred pounds, unless it will achieve what the Government is trying to do—so please give the approach teeth.

Jonathan Gordon: There is a competition issue and a risk to businesses that are already accredited and are already providing a good service, in that everyone else will be legitimised by the term "regulation", even though agents will be unregulated if the bill is enacted without change.

People will automatically start talking about regulation, even if they mean registration, and that would be extremely unfair. At the moment, we are able to set ourselves apart as being qualified and regulated, but once the scheme comes into force as set out in the bill at the moment, other letting agents will also be able to say when asked, "Yeah, we’re regulated by the Scottish Government," and the perception will be that surely that is better.

The Convener: I think that we have got the point.

Would the witnesses like to add anything that we have not covered? We have had a fairly long and detailed session, and it has been of great benefit to the committee.

Kathleen Gell: I have one last concern. If a letting agent has been removed from the register, can that letting agent set up as a new partnership, a new limited company or whatever, and reregister? How do you propose to deal with that?

The Convener: We shall certainly pass that question on.

Jonathan Gordon: I have talked a lot about enforcement, and I want to make it clear that we support the Government’s intention to regulate letting agents. We just feel that it needs to address another couple of points.

I have watched videos of the evidence sessions that have taken place and I know that electrical safety and fire safety have been mentioned, so I would like to say a quick word about that. The Scottish Government’s own figures show that the number of accidental residential fires is falling each year. However, faulty electrical wiring or installation is the number 1 cause of fires and the number of such fires is rising. In 373 of the 5,000 accidental dwelling fires noted last year, the source of ignition is listed as the electricity supply. There were more than 600 more in which an appliance is listed as the cause. Unfortunately, the data is not clear enough on whether those fires were in rented properties, but we can assume that 20 per cent of them were in rented properties—or perhaps that the rented sector is worse, because people look after their own property first.

Legislation on gas safety is clear, and all landlords have a duty of care to the tenant and must provide safe gas installations. The relevant legislation also makes it clear that that must be achieved by way of an annual gas safety inspection. Legislation on electrical safety is also clear, in that all landlords have a duty of care to the tenant and must provide safe electrical installation and appliances, but unfortunately, the relevant legislation is not clear about how that is to be achieved, with the result that most landlords do not carry out electrical wiring and installation checks by way of an electrical installation condition report or portable appliance testing. Strangely, anecdotal evidence suggests that more people check that the kettle works than check the socket that it goes into.

That is likely to mean that many properties that are let out privately, or perhaps even the majority of such properties, are not safe. It is relevant to the bill that letting agents—people from whom we are trying to win business—often advise people that they do not have to carry out electrical safety checks. We believe that that is not correct, because they are failing in their duty to the tenant to provide a safe system.

The issue of smoke alarms in the repairing standard is also confusing. Having a suitable smoke alarm is a requirement, but nobody is telling anyone what is meant by a suitable smoke alarm. Battery smoke alarms are unreliable: tenants take the batteries out and such alarms often fail and do not work as well as mains-operated smoke alarms do. The Housing (Scotland) Act 2006 introduced the repairing standard, which is quite well drafted, but we think that it should be amended to make the provision of suitable mains smoke alarms, as well as electrical safety checks, mandatory.

Given that the new building standards say that any new gas installation should have a carbon monoxide—CO—alarm in the same room, it seems strange that that is left out of the letting legislation. We feel that CO alarms should be compulsory in rooms in which people have a gas appliance.

Kathleen Gell: Letting agents who choose to sign up and be members of Landlord Accreditation Scotland have to insist that landlords provide an EICR, fire blankets and so on, so there are higher standards, and that is an excellent thing.

The Convener: Thank you for your evidence, which has been really good. I shall allow the witnesses to leave the room and then the
committee will continue for a couple of minutes in private.
BRITISH HOLIDAY AND HOME PARKS ASSOCIATION

WRITTEN SUBMISSION

SUMMARY

Government’s work to ensure local authorities work more proactively in monitoring parks’ site licences is welcomed.

BH&HPA asks the Committee to consider, above all, the dangers of unintended consequences of the Bill with its potential for adverse impacts on park owners and park home owners. In particular:

- The Association recognises the need for good, targeted enforcement by local authorities where significant breaches of site licence conditions occur. Decent park owners with businesses where there are no ‘wrongs’ to be ‘righted’ are finding the burden of legislation increasingly difficult to manage.
- The principle that the ‘Polluter Pays’ should apply in site licensing. At-fault businesses should rightly pay for local authorities’ work in enforcement, good businesses should not be penalised for the faults of others.
- Time-limited site licences would have adverse consequences for all stakeholders; we would support measures requiring local authorities’ five yearly review of site licences.
- We are not convinced that the fit and proper person licensing regime, as proposed, would be practicable and as such would not deliver the desired outcomes.
- It would be a retrograde step if honest, decent and diligent park owners were driven out of the industry by unworkable red tape, feeling they had no option but to sell their parks to the highest bidder.
- The Bill includes provision that a series of regulations may be made by Scottish Ministers; we would urge the fullest possible consultation with the industry in the course of that work to ensure the practicality of further proposed measures.
- Close attention should be given to the transitional and commencement arrangements, especially given the proposed measures to limit the duration of site licences.
- Notwithstanding that local authorities’ site licensing work is proposed to be charged for, park owners’ experience is that there is often poor understanding among many local authorities who sometimes fail to understand site licensing and the role of Model Standards.

Finally, we would note that the Consumer Focus report, (‘Living the Dream?’ 2012), and the SPICe briefing paper for the Infrastructure and Capital Investment Committee (15th January 2014), arrive at their conclusions based on a small sample and the failure to identify the nature of respondents. We are concerned at the weight given to these reports in formulating these measures.
Introduction

The British Holiday & Home Parks Association (BH&HPA) is the UK’s national representative body of the parks industry. Across the UK, BH&HPA members own and manage 384,137 pitches. These include 969 parks accommodating 47,612 residential pitches.

In Scotland, BH&HPA members own and manage 227 parks providing 30,901 pitches for caravan holiday homes and lodges, touring caravans, motorhomes, tents and residential park homes. Members in Scotland own and operate 52 residential parks with 1,892 pitches for residential park homes.

BH&HPA Scotland supports efforts to introduce measures to prevent the actions of the small minority of park owners who abuse park home owners and welcomes the opportunity to provide evidence to the Infrastructure and Capital Investment Committee on behalf of its members. Our concerns are of a practical, legal and economic nature with regard to the detail of the Bill.

Responding to the questions of the Infrastructure and Capital Investment Committee

Q12. Do you have any views on the proposed new licensing scheme?
Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

In reviewing the proposed measures, we have identified the issues of concerns and the some of the potential consequences in each case.

1. Charges for a site licence (32C in the Housing (Scotland) Bill)

1.1 What objective justification is there that a fee should be levied for local authorities’ site licensing work?

We have seen no evidence of a robust Economic Impact Assessment in advance of these measures proposed in the Housing Bill. The Policy Memorandum accompanying the Bill states:

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

The evidence base for these assertions is not provided.

1.2 The principle that the ‘Polluter Pays’ should apply in site licensing. At-fault businesses should rightly pay for local authorities’ work in enforcement, good businesses should not be penalised for the faults of others.

1.3 While Government is empowering local authorities to levy fees it should be included in supporting regulations that:

- all site licence charges must be on cost-recovery basis and ring-fenced so that good park owners would not pay for the work to ensure licence compliance by rogue park operators
- charging regimes must be transparent in each local authority area, be on a cost recovery basis and any future increases justified according to these criteria
- any fees would be proportionate to the size of the park/number of pitches and the work required by the local authority in administering the park’s site licence
- any fees should reflect the targeting of local authority enforcement – it would be unjust for a park to pay the same rate for five-yearly inspections as one requiring six-monthly checks.

1.4 Our underlying concern is that most parks are well run and require minimal attention from the local authority. Why should decent park owners, and the park home owners on their parks, be required to foot the bill for local authorities’ work in policing the rogues? Why should home owners on rogues’ parks be required to pay for the site licensing necessary to protect them?

1.5 Adopting a ‘polluter pays’ approach, whereby the rogue is charged directly – and without the ability to pass on the cost to his/her customers – would:

- provide a stronger deterrent against park management failures
- give a stronger incentive to local authority staff to act, and,
- be fair and proportionate.

1.6 Where is the incentive to take action for the local authority who can charge what they like, essentially, whether or not they take action and/or provide good service?

1.7 If local authorities are going to be able to charge for licensing parks, it is essential that any fees should reflect the targeting of local authority enforcement – it would be unjust for a park to pay the same rate for say five-yearly inspections/reviews as one requiring six-monthly checks.
1.8 Adopting a ‘polluter pays’ approach, whereby the rogue park operator is charged would:
- provide a stronger deterrent against park management failures
- give a stronger incentive to local authority staff to act, and,
- be fair and proportionate.

2. Issue, renewal and transfer of site licences (32D in the Housing (Scotland) Bill)

2.1 The reprehensible activities of a minority of rogue park operators should not be taken as typical of the sector. The vast majority of park owners have committed no civil or criminal wrong. Why increase the administrative burden on those businesses by having them re-apply for their licences within a 24 month period following the introduction of the Housing (Scotland) Bill?

2.2 Park businesses are typically established small family businesses where little changes year on year; for good reasons, some park owners have had no contact from their local authority in connection with site licensing for many years, nor have they, or their customers, had any need of it.

Renewal of existing Site Licences within two years

2.3 There is no sound reason for making park owners apply for a new Site Licence within 2 years as proposed. The Local Authority has the power at any time to alter licences under the 1960 Act, item 8 (1), which states: ‘The conditions attached to a site licence may be altered at any time whether by variation or cancellation of existing conditions, or by the addition of new conditions, or by a combination of any such methods by the Local Authority but before exercising their powers under this subsection the Local Authority shall offer to the holder of the Licence an opportunity of making representations’.

2.4 If there is a case for government to act to tackle criminality in the sector, it will not be best served through requiring good park owners to reapply for their site licence, or similar regulatory change, but rather through targeting police and local authority resources at the issue.

3. The time to be allowed for a local authority to decide whether or not a licence should be granted (32F in the Housing (Scotland) Bill)

3.1 The Housing (Scotland) bill states that local authorities will have 12 months to decide whether or not to grant a site licence. That timescale is far too lengthy -how can parks can be expected to do business on that basis?

3.2 We would ask the Committee to consider the practical implications for the sale of residential parks if potential purchasers had to wait up to 12
months for a decision. It could be disastrous for the seller of the business, make the situation untenable for the buyers and indeed work against the interests of home owners who may be in the process of selling/buying a home. Such uncertainty would have grave, adverse consequences for all parties.

3.3 The matter of the suitability of the location for establishing the park will have been addressed in the granting of planning permission for the park. As stipulated in the Caravan Sites and Control of Development Act 1960, in issuing the site licence, local authorities can control the maximum numbers of caravans permitted, make provisions about the amenity of the park and ensure adequate and appropriate facilities and service provision for customers of the park in the interest of hygiene, health and safety etc.

3.4 Leaving aside the matter of a Fit and Proper Person Test, it is difficult to imagine circumstances in which a decision to approve a site licence would take more than a few weeks at most. To grant planning consent and then deny a site licence after the developer has invested what are usually considerable sums would be unjust. In the process of granting planning permission the local authority will have carried out the usual enquiries as to the appropriateness of the site for the establishment of a park.

3.5 Two months is adequate for the issue of any Site Licence in Scotland. A similar timescale is in place for Local Authorities to deal with applications for planning permission most of which are far more detailed than a site licence application. It is our understanding that the Scottish Government is considering whether penalties should be applied where Local Authorities don’t deal with planning applications in a timely manner. The same arrangements should be put in place for site licensing applications.

3.6 Virtually all deals to purchase a caravan park have a condition stating the purchase is subject to the transfer of the Site Licence. It is therefore critical that there is a sensible practical time limit for dealing with the issue of, or transfer of, a Site Licence. The deal cannot be completed until a licence is issued so time is of the essence.

3.7 We would urge that the Committee recommend a shorter time period within the legislation, say two months maximum, to enable the process of a new site licence being granted, or an existing one being transferred to a new owner, to be completed within a practical time frame in the interests of all stakeholders.

4. Transfer of a site licence on sale of a park/death of a park owner (32E and 32H in the Housing (Scotland) Bill)

4.1 The procedure for Local Authorities to transfer a licence on the sale of a park or death of an owner should be simple.
4.2 If the Local Authority is undertaking its responsibilities appropriately, residential parks in their area will be of a good standard and complying with their Site Licence conditions. The Local Authority should therefore be capable of transferring a licence in a short time - certainly within eight weeks.

4.3 On the death of a park owner similar legislation to what currently exists should be in place (the licence automatically transfers). If that is not the case, on a park owners death the person who becomes entitled to the park will be trading without a licence until such time as they receive Fit and Proper status and a transfer of the Licence.

4.4 The existing legislation allows for an automatic transfer of the site licence on the death of a park owner and this should be retained, albeit it is understood that the new licence holder would require Fit and Proper person status. Item 10 (4) of the 1960 Act states:

“Where any person becomes, by operation of law, entitled to an estate or interest in land in respect of which a site licence is in force and is, by virtue of his holding that estate or interest, the occupier of the land within the meaning of this Part of this Act he shall, for the purpose of this Part of this Act, be treated as having become the holder of the licence on the day on which he became the occupier of the land, and the local authority in whose area the land is situated shall, if an application in that behalf is made to them, endorse his name and the said date on the licence”.

Item 11(1) of the 1960 Act states that:

“A local authority who has issued a site licence may at any time require the holder to deliver it up so as to enable them to enter in it any alteration of the conditions or other terms of the licence made in pursuance of the provisions of this Part of this Act”.

This leaves the Local Authority with all the powers they require if they wish to add conditions, etc. to the licence transferred after the death of a park owner.

5. Proposed 3 yearly renewal of site licences (32J in the Housing (Scotland) Bill)

5.1 Introducing a 3 yearly renewal system would create uncertainty and destroy confidence in the sector. It would be detrimental in terms of funding for park businesses.

5.2 In Wales, funding has become hugely problematic where, from October 2014, the licences issued to residential parks must be renewed every 5 years. Funding for park business or park home purchase has virtually dried up. Banks are unwilling to finance the purchase of parks, and worryingly, finance companies are also unwilling to finance the purchase of park homes. Estate agents and lawyers are also
discouraging people from purchasing park homes as they advise their clients against buying park homes on parks licenced for just five years.

5.3 There is no indication that any economic impact assessment has taken account of this serious matter. Impacts are likely to include a reduction in values of privately owned park homes and a fall in the values of parks themselves with serious danger of a downward spiral in the sector. This would have disastrous consequences for, not only parks, but also the homeowners whose circumstances these measures seek to improve.

5.4 It is noteworthy that the proposed new legislation for holiday parks in Wales begins with the statement that licences for holiday parks should continue to be granted in perpetuity although they will be subject to five yearly reviews (not renewals). Taking such an approach avoids the funding problems arising in the residential park sector in Wales as a direct consequence of the introduction of time limited licences and should be considered for Scotland.

5.5 Moving to 3 yearly licences will impact on the level of confidence and security of consumers in purchasing a home on a park and potentially have a knock on effect on the upkeep/investment on parks. Rather than provide protection to consumers, which is the Scottish Government’s avowed intention, this change could put consumers off a park home purchase with disastrous knock-on impacts for the viability of residential park businesses and their customers’ assets.

5.6 We would strongly recommend a change from the proposed 3 year renewal for licences to a system whereby ‘rolling’ licences are subject to a 5 yearly review with a legal presumption in favour of renewal of the licence unless there have been problems within the 5 year period.

5.7 The significant support for a move to a 3 yearly licence referred to in the ‘Reason for Taking Power’ document issued by the Scottish Government was primarily from local authorities. In that document it says ‘once the new licensing regime becomes established, it may be desirable to review whether 3 years remains the most appropriate licence period.’ Surely it would be more practical to start with a workable system of 5 yearly reviews? Licensing for residential parks is in no way comparable with HMO style licensing or other forms of licensing which don’t involve people investing in the purchase of their own home or ongoing investment by the business owner.

6. **Fit and proper person test (32O in the Housing (Scotland) Bill)**

6.1 BH&HPA Scotland understands the appeal of the proposal to introduce a Fit and Proper Person Test as part of the residential parks’ site licensing regime.
6.2 The Association has long supported the principle of a ‘fit and proper’ licensing regime as measures are necessary to prevent those who abuse park home owners from continuing to purchase and manage parks. However, this support is given with the caveat that a workable solution must be identified that is practical and sufficient to deter the rogues.

6.3 Typically, local authority environmental health departments oversee parks’ site licences; while they have the expertise and proximity to administer a site licence addressing the physical infrastructure of a park, are they best placed to assess the proposed ‘fit and proper person’ criteria?

6.4 There is a need for more clarity on what criteria will apply for a fit and proper person test. The criteria for judging ‘fit and proper person’ status should be:

- objective, fair, transparent and clearly defined
- consistently applied across the industry
- start with the assumption that an individual is ‘fit and proper’ unless there is evidence to the contrary

6.5 There is also a need for clarity on what is required of a potential park purchaser to achieve ‘fit and proper’ status and for reassurance that this process can be undertaken (perhaps in advance) in a sensible timescale to avoid unwarranted delay in the park sales process.

6.6 There is no legal definition within the proposed legislation to enable identification of ‘the holder of the most senior position within the management structure’ and no mention of the role of controlling park owners and/or shareholders and their associates when a ‘fit and proper’ person test is being applied.

6.7 Difficulties will arise in situations where there is a gap between a manager who has been the subject of a fit and proper person test leaving and a new person taking their place. Park managers may come and go and this should not be able to place the park owner in breach of the law.

6.8 The vast majority of parks in Scotland have only one employee, usually a site warden rather than a manager, as the average park size is small. The park owner must therefore, for practical reasons, be in a position to appoint a new employee quickly. They would not be able to do that until the person has been deemed a fit and proper person and could find themselves ‘unlicensed’ and unable to remedy the position despite their best efforts.

6.9 To ensure practicality, we would suggest that the proposed legislation should not preclude continuation of the site licence while the local authority carries out its enquiries.
6.10 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.

6.11 There are many park managers/wardens already employed in Scotland. The Bill needs to address their employment protections if they are not found to be fit and proper under the new regime.

6.12 We would ask the Committee to consider that:

- The likely success in achieving the goal of ridding the industry of rogue operators, or otherwise, through the application of fit and proper person criteria to owners/managers of residential parks is unknown. Welsh Local Authorities will start to gather experience after October 2014 once they begin to apply the new regime to the managers of 93 residential parks in Wales.

- For English residential parks, the Coalition Government has not introduced a fit and proper person regime. Instead, these powers are held in reserve in case unscrupulous residential park owners ‘choose to remain in the sector without reforming their practices’. This approach would meet the concerns to ensure the industry and local authorities are not overburdened given the volume of changes, whilst creating a ‘Sword of Damocles’ encouraging the industry to ‘shape up’, without the cost and red tape.

6.13 We would recommend the Scottish Government adopt measures akin to those allowing Ministers to make regulations in due course, allowing the measures in the Housing Bill to bed in, also permitting careful reflection on the impacts of the introduction of comprehensive, revised Implied Terms (in all agreements between park owners and park home owners) that took place in September 2013.

7. **Fines (32R and 32S in the Housing (Scotland) Bill)**

7.1 In considering the matter of fines, it should be noted that breach of site licence conditions can occur due to circumstances beyond the park owner’s control. For example, the action of a home owner may put the park owner ‘in breach’; matters may only be able to be resolved through the courts where the determination could find in favour of a home owner leaving the park owner still in breach of their licence conditions. How is this matter to be resolved ‘fairly’ between the park and the local authority?

7.2 The level of fines proposed is exorbitant and disproportionate – a maximum of £50,000 if a park is operating without a site licence or not
complying with an improvement notice, or £10,000 if a park is not complying with a site licence condition.

7.3 Fines in Scotland will be imposed at a relatively high level, given the maxima are set so extremely high. It is noteworthy that in Wales the fine applicable for non-compliance with a site licence condition on a holiday park is being set at £500.

7.4 The Association understands that the figure of £50,000 is included in the Housing (Scotland) Bill on the basis of having consistency with the level of fines included in other legislation.

7.5 We question the practicality of having such a high maximum fine for operating without a site licence; we have seen no evidence to support this proposed measure and no justification for consistency with the level of fines included in other legislation.

7.6 Although the likelihood of the vast majority of park owners being in a situation whereby they will be fined is very minimal, the fact remains that a risky situation could arise through a technical oversight which may or may not be of the park owner’s making.

8. Improvement notices (32U in the Housing (Scotland) Bill)

8.1 The measures proposed for improvement notices must be set in context; in many areas, local authorities have not proactively monitored site licence conditions for many years. It is not in the interests of park owners or home owners that unrealistic expectations with regard to site licence compliance should exist and overly challenging deadlines set where local authorities have not been proactive in the past in terms of visiting parks. A new regime may bring things to light which have not been brought to the attention of a park owner previously.

We note that on Item 65 (32X) (4) it states:

‘the Local Authority must, as soon as practicable after serving a notice under this section (Improvement Notice) and in such manner as it thinks fit, notify the occupiers of caravans on the site of the existence of the notice’

This will trigger the residents into not making any payments to the park owner.

8.2 It is BH&HPA’s view that payment to the park owner should not be withheld at that point as the park owner has a right of appeal within 28 days. Payments should therefore continue as normal either until any appeal has been determined by the Sheriff or the appeal process has been abandoned. Natural justice dictates that payments to the park owner should not be capable of being stopped on the say so of the
local authority before the opportunity to lodge an appeal has expired or an appeal determined.

8.3 If payments were to be withdrawn prior to any appeal and the appeal was subsequently successful, the residents may well not have the funds for back payments of pitch fees, electric, gas, water and sewerage charges, unpaid commission etc. Such a scenario would clearly cause severe difficulties for the park owner. Would he then be faced with seeking reimbursement from the local authority via the Sheriff Court?

We are of the opinion that a Local Authority should not have the power to deprive a park owner of his livelihood. Only a Sheriff should be in the position to take that decision after hearing all the available evidence and only where the park has been put under local authority management.

8.4 Most residential parks in Scotland have between 30 and 40 pitches, are family owned and charge very reasonable pitch fees. Given that this is the case, one of the main reasons that a park owner would not comply with an improvement notice would be because he could not afford to do the work requested. For example, it is not unknown for Local Authorities to impose a condition that older parks upgrade/resurface all the roads in the park. This is a very expensive undertaking. Taking away the income from the park owner in such circumstances would only make matters worse. Other examples of local authority requests that cannot be complied with in the short to medium term include increasing the distance between homes, adjusting the distance from the home to the boundary or increasing the width of the roads on the park. None of these actions can be taken as the homes are privately owned and cannot be moved.

8.5 Under the 1960 Act 1(5) Local Authorities are not constrained in what they are able to request. The Act states that:

‘for the avoidance of doubt, it is hereby declared that a condition attached to a Site Licence shall be valid notwithstanding that it can be complied with only by carrying out works which the holder of the Site Licence is not entitled to carry out as of right’.

This could result in the park owner being deprived of their income, brought to court and fined for not complying with a condition which they are unable to comply with.

8.6 There is also concern about the lack of a level playing field in terms of local authorities’ approach to parks throughout Scotland. There is a need for consistency across the country.

9. Non-payment of pitch fees when a park has no site licence (32X in the Housing (Scotland) Bill)
9.1 The proposal that home owners on a residential park would be entitled to withhold payment of pitch fees, rent and amounts due for gas, electricity, water, sewerage, commission and other services on the park where a penalty notice has been served, causes great concern.

If, for example, no payment is made by the home owners using the gas, electricity etc on the park, how are the bills for these utilities to be paid? The park owner is unlikely to be in a position to settle these accounts if his income has ceased. There is then a risk of these services being cut off by the supplier which would obviously cause great difficulty for the residents on the park.

9.2 If no income is being received by the park, how will any maintenance required for the benefit of the residents be carried out?

9.3 Under the proposed new licensing regime it would be quite possible for a park owner to have to operate without a licence as, on the death of a park owner, the beneficiary will have to apply to be considered a fit and proper person before they can apply for a transfer of licence. This could take some considerable time during which, technically the park will not have a valid licence holder; therefore, no licence will be in place.

10. **Ability to appoint an Interim Manager (32Y in the Housing (Scotland) Bill)**

10.1 Whilst it is technically correct that the security of tenure of home owners is not affected by the withdrawal of a site licence, there are practical concerns for them - particularly when they want to sell their homes.

10.2 Buyers want to know what they are getting when they buy a park home and that includes who will be managing the park. They are unlikely to be attracted by the prospect of an apparently responsible operator facing a renewal of his licence every 3 years, with failure resulting in the appointment of a local authority nominee, who is unlikely to be versed in the complexities of running a park, to undertake the management role.

10.3 Much more detail is needed about the responsibilities of, and powers available to, any Interim Manager such as:

- who will be responsible for funding the cost of their salary?
- how will any existing loans secured against the park be serviced?
- who will negotiate sales of homes owned by the park?
- who will be empowered to enter into new agreements with new purchasers?
- what will be the legal standing of the interim manager entering into contracts with third party contractors carrying out work on the park?
- where will funding be found to carry out maintenance etc. where this is not covered by pitch fee income?
• compliance with Site Licence conditions is a requirement under the 1960 Act – how will this work in practice during the tenure of an Interim Manager?
• has government identified potential candidates, competent in residential park management which includes matters as diverse as compliance with health and safety obligations, financial management and control, park operation including repairs and maintenance, as well as park home law, to assume such a role?
• will an Interim Manager appointed by the local authority be required to be a fit and proper person?
• given many parks hold Credit Licences to allow them to sell park homes on finance, how would this be accommodated during the tenure of an Interim Manager; without such provision, the park’s income, and in consequence its viability, could be seriously compromised.

10.4 We would urge the committee to recommend that this proposal be subject to further more detailed consideration before being progressed.

British Holiday and Home Parks Association
10 February 2014
Housing (Scotland) Bill: Stage 1

The Convener (Maureen Watt): Good morning, everyone, and welcome to the fifth meeting in 2014 of the Infrastructure and Capital Investment Committee. I remind everybody to switch off their mobile devices, because they affect the broadcasting system. People may see some members consulting tablets because they get their papers in digital format.

The first item on our agenda is the Housing (Scotland) Bill. We will hear evidence from two panels on the provisions that relate to mobile homes. On the first panel, we have witnesses from groups that represent mobile and park home residents. I welcome Brian Doick, who is president of the National Association of Park Home Residents; Barry Plews, chair of the park home legislation action group; and David Tweddle, senior consultant with and membership secretary of the independent park home advisory service.

Adam Ingram will start the questioning.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): Good morning, gentlemen. The Scottish Government’s vision for housing is “that all people in Scotland live in high quality, sustainable homes that they can afford and that meet their needs”.

To what extent do you think that the bill’s provisions support that vision?

Brian Doick (National Association of Park Home Residents): The bill supports that vision by addressing the need for extra security for the people who live in mobile and park homes. One of the main problems that has occurred over the years concerns security of tenure for those people and the unscrupulous nature of the people who own the land and lease it to the residents for them to make their homes on.

As the committee is probably aware, although those residents have purchased a home, they do not own the land. Consequently, a lot of unscrupulous people treat residents badly, and those residents are given no security. There are all sorts of rules and regulations that suit the owners but do not relate to any legislation.

The fit-and-proper-person test in the bill is one of the most important developments that we have seen for many years. The criteria that someone would have to meet to be considered a fit and proper person cover quite a big area.

The Convener: We will come to that specific issue later on.

Brian Doick: Okay—that is fine. Criteria and security are important factors.

Living in a mobile or park home is a cheaper way of living, apart from the cost of renting the land, which goes up every year and becomes dearer and dearer. People buy a cheap house, but staying on the land can be more expensive.

David Tweddle (Independent Park Home Advisory Service): Our organisation has found that our membership is increasing in Scotland. Living in a park home is a more affordable way of living and is becoming more popular here. The numbers are nowhere near those in England yet, but it is catching on and we anticipate that it will become more prevalent in Scotland. Of course, what we are here for, and what you are trying to do, is to make that way of living secure for the people who choose it.

The work that we have done so far has been okay. We have agreed with park owners the new implied terms, which are better for residents, and we are now discussing site licensing, which is very important.

In England, we have found that local authorities just do not enforce things. That is a massive problem. Some local authorities never visit the parks that they are responsible for and do not do anything about them. People change jobs within the local authorities and do not know what their responsibilities are. The situation is very poor.

The Convener: We will go into enforcement in more detail later.

Barry Plews (Park Home Legislation Action Group): I think that I am probably unique in being the only person in the room who lives in a park home in Scotland. I have been there for the past six or seven years. I have been there for the past six or seven years. Strangely enough, many of the issues that we are discussing today do not exist in the park where I live. I got involved because I started to visit other parks to see what was happening in those places—basically, to see whether we were missing out on anything. I found that lots of the problems that we are discussing exist in Scotland in quite a bad way. I have come across some shocking situations concerning elderly residents in parks across Scotland. Many of them contact us looking for advice, and many of them are at the end of their tether.

If, six or seven years ago, I and my colleague Mike Larkman, who cannot be here today because he has health problems, had known that we were going to have a Scottish bill such as this one, we
would have been very happy. We started off with help from Angela Constance, who happens to be Mike’s MSP and managed to get us an interview with Keith Brown, who I think was the housing minister at the time. That is where all of this started. Mike and I have been working on the issue, along with other colleagues, for that length of time. It has been a struggle but, if this is the sort of bill that we are going to put in place in Scotland, we will be well satisfied.

David Tweddle: We are constantly told that some of the English problems are not prevalent in Scotland, but I should say that one of the worst park owners in England, who operates 36 parks, is already in Scotland. Some of the rogues and unscrupulous park owners in England will come up here if they can get in. The problem is one for Scotland as well as England.

Adam Ingram: Are you happy with the way in which the bill was consulted on? Are you happy with the degree of input that you had?

Brian Doick: Yes, I think that we are. I first came to the Parliament in 2005, which was when the process of consultation and evidence taking started. It has taken a long time to get where we are today, but I think that the consultation has been good. Nothing has been left out. We have been given all the information that we have asked for, or have been sent it automatically by Government officials. There has been no problem with it at all.

David Tweddle: I echo that.

Barry Plews: The young people who have been taking us through the process have been extraordinarily helpful and clever in what they have done for us. We are all elderly people and we tend to get a little bit anxious about things and a little bit annoyed at times, but they have carefully taken us through every step of the process. I can give them nothing but praise.

The Convener: Before we go on to look at licensing in particular, can you give us an oversight of how many parks there are in Scotland and how many people live in them?

David Tweddle: I think that we are looking at about a couple of hundred parks.

Barry Plews: I think that we have about 450 parks in Scotland, and there are probably now about 4,500 to 5,000 people living on them. I did a survey some years ago, and the numbers will have changed since then. However, the numbers that I have given are about right, and they are increasing.

The Convener: Are the parks all over Scotland or are they concentrated in particular areas?

Barry Plews: They are basically all over Scotland. The tendency has been for owners of holiday parks to suddenly realise that having a residential park, rather than a holiday park, is a better and more secure way to make money.

Brian Doick: Some of the parks are quite small, with five or six—or even fewer—homes on them. In our last survey, we had to search for the parks. If we do not have members on a park, we do not know where it is. Councils have the same problem. Since our survey, Barry Plews has come up with the 450 figure, which is about right.

The Convener: The Scottish Government says that there is evidence, which I think you have backed up, that there are unscrupulous site owners who exploit vulnerable residents and fail to comply with statutory obligations. How widespread is the problem?

Brian Doick: It is quite widespread.

David Tweddle: That is not so much the case in Scotland but it will happen more, because, as I said, one of the worst park owners in England is now up here. He operates 36 parks throughout the UK—that is his total stock.

In England, such behaviour is fairly widespread. Unscrupulous park owners do not really obey the law. The law is there to stop them doing such things but, as in every area, lawbreakers break laws. They just do it—they do not care. The parks are run by a certain type of person and a certain type of community. It is awful for vulnerable people who have sunk their life savings into their home. The houses are not cheap. In the south of England, they are expensive—they can cost £250,000. People are buying into a way of life but suddenly they find that the guy in the office is an absolute tyrant and rides roughshod over them, and that is their life destroyed. It is important for organisations such as ours to keep on top of that, which is what we do. Brian Doick and I belong to two different organisations but we work together and pursue people’s problems for them on the parks. We have expertise in site licensing and mobile home legislation. We have been doing it for many years.

The Convener: With respect to the 450 parks in Scotland, are there 450 owners or do some people own quite a number of parks?

David Tweddle: There are owners who have multiple parks.

The Convener: How many?

David Tweddle: I have no idea.

The Convener: Okay. We can ask the second panel.
Would you say that the majority regulate themselves pretty well through associations such as the British Holiday & Home Parks Association?

Brian Doick: Quite a few do. BH&HPA membership is not as strong as it could be but quite a lot of owners are regulated through that organisation. I think that there are more park owners in Scotland who do not belong to an organisation because of the way they are and the way they want to be. They are in a fraternity that is, as we have said, unscrupulous.

I have been doing this now for 26 years—helping people wherever possible, because of the type of rogue that we have in Wales, Scotland and England. Although England has been the worst, I would say that there are quite a number of such owners in Scotland. You have to understand that we do not know about all of them. We know about them only when people come to us with problems—that is how we find out. It travels through the system, as it were. I believe that there are quite a few more unscrupulous people out there whom we do not know about. We do not know about them until something serious happens. Over the years, we have found evidence of very serious cases in which people have basically been put out of their house.

10:15

Barry Plews: There is a natural tendency for elderly people to keep their heads down. One of the biggest problems that we have is getting people to come out and tell us what is going wrong. The only way that I can do that is by travelling round parks and meeting people.

I live on a park where none of these problems exists, but there are other parks where some of the things that happen are seriously criminal. I have recently tried to involve the police in a specific case but, sadly, the couple who are involved—who both suffer from cancer—have decided that they cannot take any more. They do not want any more hassle or problems and have now decamped to a nearby flat. The park owners have taken their home from them—they have made them sign away their home—although it is probably worth £100,000 or £120,000. That is the sort of criminality that exists in Scotland, and there are a number of people who practise that sort of thing. Unfortunately, the couple decided that they could not take any more and would not make a formal complaint, although the police were absolutely certain that they had a case.

I have met that sort of situation as I have wandered around.

Brian Doick: It comes back to scare tactics. These crooked people put fear into people and, as we have said, people are frightened. We can have as many laws as you like—we are pleased about what you are doing, which is a lot—but until the law is used it is worthless. Unfortunately, because of how these people deal with the elderly, such things happen.

Let me give the example of elderly persons who have had some bricks and mortar to live in but who have realised that their pension is not much good—they are not going to have anything. They think that, if they sell their home and buy a mobile home, they might have £50,000 in change to help them to get through life. Subsequently, an unscrupulous person puts pressure on them and they get frightened because they are threatened with eviction and all sorts of things. They are told by the park owner, “I'm the boss. This is my land. If I say you go, you go.” That frightens them to death. People in their late 70s and 80s who have that fear put into them then look to go somewhere else, but they cannot sell their home because Mr Park Owner stops them in some way or other and the poor souls end up selling their home back to him for about £5,000 or even less. In England, some people have sold their homes for £1, and once someone has taken that £1, it becomes a legal transaction. That is how the park owners work.

There is quite a bit of that going on all over the UK, and it is spreading.

David Tweddle: The fit-and-proper-person test may address some of those problems, one of which is the criminal element. If they were not behaving criminally on mobile home parks, they would be behaving criminally somewhere else. They are criminals and that is how they earn their living. They have decided that they do not need masks and guns because they can strip somebody of £100,000 just through a bit of bullying. It is very lucrative. That is the type of people that we have mostly in the south-east and, as I have said, one of them is already in Scotland.

Barry Plews: They are already emigrating here.

Brian Doick: That is right.

David Tweddle: They are criminals, but the fit-and-proper-person test may address that problem. They will get round it, probably, but there you are.

The Convener: We will come on to that in a minute.

You have addressed the problem of elderly people being placed in fear. What other problems are there that the current legislation does not address? You mentioned that some local authorities do not have a clue about what they should be doing in relation to mobile home parks. What other problems exist beside the one that you mentioned of elderly people being placed in fear?
Brian Doick: There is a particular problem with licensing. Over the years, local authorities put conditions on a site licence, and it becomes a legal requirement to meet those conditions. People should abide by the conditions once they have been put on a licence, but that is never policed because the legislation has never allowed it to be policed—councils have never had a duty to do that.

For example, the minimum spacing distance between homes, as laid down in legislation, is 6m. In local authorities all over the country—I am not just talking about Scotland—the officers who are younger and coming through the ranks work to the secretary of state’s model standards, which are guidelines for councils with regard to fulfilling licence requirements. The model standards have come from the secretary of state at various points. A set came out in England in 2008, and the one before that came out in 1989. The guidelines state that the 6m rule applies but in some of the parks that council officers visit the spacing distance between homes is not 6m but 5.5m, 5m or whatever because the rule was never policed in the first place.

The first model standards were brought into being in 1961 under the Caravan Sites and Control of Development Act 1960 and, in that legislation, the minimum spacing distance was 20 feet in the old language of measurement. The minimum spacing distance has become 6m, which is not much of a difference. If councils had policed the provision in the 1960s, the majority of the problems that we currently have would not exist—particularly those involving minimum spacing distance. However, because it has not been policed, rogue park owners have just put homes where they have wanted to, without worrying about the 6m rule.

Over the years—in fact, this is happening now—new council officials have found that the distance between homes is wrong and have told people who have lived in their home for 10 or 20 years, “Well, that’s got to be altered because it’s a fire risk under the new fire regulations. It should be 6m and it’s only 5.” However, if there is no room in the park to move the homes around, some of them will have to go. Mr Park Owner, who is the licence holder, has to abide by what the council says because the council issues him with the licence that he needs to run his business. If a home that is owned by, say, an old couple who live in it breaches the park owner’s licence because of the spacing distance, the park owner will tell them, “Your home’s in breach. You’ve got to move out.” That is despite the fact that it is the park owner’s problem. Home owners are not allowed to site their own homes and know nothing about the spacing distance. Mr Park Owner, however, does know about these things.

That is happening today in England and I know that it is happening up here because we have received phone calls about it. People are being threatened with the loss of their home. We have always said that the model standards, which are, as I have said, guidelines for councils, were meant to be flexible. In England, we have asked councils not to write licence conditions; instead, we need to look at the reality of a park and think about whether the approach that I have described will simply cause grief and end up with people losing their homes. We need to take a sensible look at the issue. The time to do something about the situation is when a home’s life is up, when the people who own it pass away or whatever. Such things are creating major problems for people and giving them something else to fear.

The Convener: In my experience, not all the homes on a site are owned; some are rented by the park owner. Mr Plews, do you have any idea of the split between those who own their homes and those who rent?

Barry Plews: In most residential parks, all the homes are owned by residents. There are many places and parks where you can rent properties, but in all the parks that I have visited, the homes have been owned. The thing about residential parks is that they are open 12 months a year. Certainly all the homes on my park are resident-owned.

David Tweddle: You have touched on what is a serious problem in England. When people decide to choose that way of life, they go and look at the park and say, “Yes, this’ll be nice for us. Everybody is about the same age, and they are like-minded people.” People choose a lifestyle. However, many park owners in England—once again, the rogues, mostly—own homes that they have bought from residents for practically nothing. Properties have not sold, so the park owner perhaps could not sell it and therefore rents it out. He will put in people whom the council has probably just thrown out of a council house somewhere. People invest their life savings in a lifestyle and suddenly have a family living next door to them that has been thrown out of four or five other properties. That type of situation exists and is an absolute disgrace; it is destroying people’s lives and what they bought into when they bought the mobile home.

We do not believe that people should be renting out. The residents cannot rent out the homes under the Mobile Homes Act 1983, so why should the park owner be able to? He can, and that is it. That is a serious problem at the moment. About 18 months ago, I wrote a paper on it for my colleagues and predicted that it would be the next serious problem in the industry. I get phone calls from people who say, “We moved on to this park
and suddenly there was a family next door with four kids who are up all night shouting.’ That is not what they bought into; they bought into living among like-minded people. That is the attraction of moving on to the parks. Renting will be a serious problem.

**Brian Doick:** A particular issue is that many unscrupulous people will rent out because there will be a bigger income. They charge people £100 to £150 a week to live in a mobile home, whereas landowners or park people get £150 a month for rent from people who own their own homes.

The difference is that the park owners think that the rules and regulations for the renters do not apply—that they do not come under the Mobile Homes Act 1983, because they are in rented accommodation, and the legal system for them is different from that for the mobile home residents and owners. There is a difference. That is why families move in with children, dogs and everything else. The park rules might say that no one can live there unless they are over the age of 50, 55 or whatever the park owner has laid down, that no children are to live on the site, and that people cannot have any pets. Families with young children and dogs—you name it—are moved in, and the rules and regulations go out the window. As David Tweddle said, poor souls who have bought into the lifestyle find that it is ruined. That issue needs to be seriously addressed.

**David Tweddle:** I recently went to a tribunal for a case. The park owner rented to somebody who had a dog, and the park had a strict no dogs policy. When I got through to him, he said, “Aye, but this man doesn’t have an agreement under the Mobile Homes Act. I’ve only given him a rental agreement, so none of that applies.” I went to the tribunal and argued, obviously, that the rules had to apply to everybody. I overegged it, of course. I said, “Are you telling me that I have to obey the speed limit in the park and the guy who is renting doesn’t?” and “Are you telling me that I can’t play loud music after such a time, but he can?” I went through all the things, and they said at the end, “Yeah, we take your point.”

It is ridiculous. We have a High Court ruling that the park rules are for everybody, but park owners just ignore them.

**The Convener:** How prevalent is that in Scotland, Mr Plews? Are some local authorities exemplars in managing mobile homes in their areas?

**Barry Plews:** To answer your second question first, it is often very difficult for me to get a real feeling of how local authorities are handling things. I have a number of contacts whom I can usually get some help from, but it is fair to say that most of them deal with the parks when they have done everything else. They get to them when they have sorted out all their other problems.

Fortunately, the park that I live on is extremely good. We very seldom see visits from the local authority. It has probably decided that it does not have to visit any more, because nothing goes wrong. I always feel that we should see somebody wandering around, having a look, talking to people, and ensuring that things are still going well, but that does not happen. To be honest, I think that it is thought, “It’s over there. Let’s leave it over there until it causes a problem.”

10:30

**Brian Doick:** The licensing is different as well. Residential sites are licensed differently and council sites appear to work differently. We believe that there should not be a mix on a park; there should be either renters or owners. That would be fair to everyone. We are not against people living in rented accommodation, but if we are going to have rules and regulations to protect everyone, they should be for everyone and not split down the middle.

**Mary Fee (West Scotland) (Lab):** We have touched on the fit-and-proper-person test. The test that the bill will introduce will apply to people who own sites and to people who run sites on behalf of someone else. What benefits will the introduction of the test bring to residents of parks?

**Barry Plews:** It will take away quite a lot of the criminal element because they will not be allowed to run parks. People who have criminal records are running parks in Scotland at the moment. Their whole attitude is governed by the sort of people they are, and that is half the reason why the people who live on parks have the problems and issues that they tend to have. They are being cheated in many ways, or are being frightened off the parks so that they leave their homes behind. Someone can then buy it cheaply and sell it for twice the price a week later. The threats that are made generally come from people who have criminal records, so we hope that the test will clear them out to start with.

**David Tweddle:** At the moment, under the Caravan Sites and Control of Development Act 1960, anyone can apply for a licence and it will be granted. Those who apply for licences to run taxis or off-licences undergo background checks, but a person can run a park without any background checks whatever. Under the 1960 act, even if the local authority knows that the licensee is a criminal, it cannot do anything about it because it is not one of the reasons that can be used to refuse a licence. At the moment, an applicant can be refused a licence only if he has lost a licence or if a prosecution has been brought against him.
twice in the past X years in that locality, so it is almost impossible to refuse a licence application.

We would welcome a fit-and-proper-person test.

**Brian Doick**: The National Association of Park Home residents welcomes the test.

**David Tweddle**: We are not getting a fit-and-proper-person test in England. The Government has decided to wait; it has suggested that if the situation does not work out there could be other things such as heavier fines, and then the secretary of state will revisit the issue and consider the fit-and-proper-person test. We are for such tests. We believe that Scotland should have one, and we believe England should have one, although we are not getting one—not yet, anyway.

**Brian Doick**: The fit and proper test is excellent; it covers everything. The only thing that I would say is that there appear to be some areas where the “fit and proper person” might not be the right person, so someone else can be brought in from the same family. The bill does not state that the park owner must be the main man. The bill talks about a person or an occupier, and the word “occupier” comes into play with other legislation.

The park owner should be the man who is generally responsible for that park; he is the owner of the land. When the legislation comes in, we have to be careful that he does not turn up with someone else because the bill also mentions a fit and proper person who does not have to be the owner; it could be his grandson or his grandmother. Some people work that way; they would put someone else in the position because they fit the requirements of the words in the bill. The provision has to be clarified in order to make the park owner the responsible person. T

The Convener: Are you saying that the owner and the person who manages the site should both be fit and proper persons?

**Brian Doick**: Exactly—that is what we have been saying. If that was not the case, your Government would have agreed to cover the fit-and-proper-person system, but there would still be people who could move over and let someone else take a position as a manager without being a fit and proper person.

**David Tweddle**: One of the reasons why that was not pursued in England was that the Government argued that it would be too easy to put somebody else up and to get round the provisions.

**The Convener**: My understanding is that the bill proposes that both people should be fit and proper persons.

**David Tweddle**: Yes, and we welcome that.

**Brian Doick**: That is what we welcome in the bill.

**David Tweddle**: We did not get that in England.

**Brian Doick**: We have to ensure that local authorities know that that is what must happen. Elsewhere in the bill, reference is simply made to a person, and we need to ensure that we have got the management bit right, so that the top man is the man who is responsible all round.

**Mary Fee**: Is the detail around the fit-and-proper-person test comprehensive enough to ensure that the person undergoing the test will meet the residents’ needs, or should there be something else in there?

**Brian Doick**: Well, we went through—

**David Tweddle**: On the criteria, we went through—

**The Convener**: One at a time, folks.

**David Tweddle**: We think that the criteria are okay.

**Brian Doick**: There is one thing that needs to be looked at. If somebody is not a fit and proper person, that information needs to be kept in a register. The person who is not a fit and proper person in Aberdeenshire might be deemed to be a fit and proper person if he bought a park in Stirlingshire, or another local authority area. He could go to an interview and say that he is okay, and that he has done this, that and the other, and he could get in. The situation could become as it is in England. I know that you have had this up here, too: a park owner might own 10 parks in different local authority areas and based on the information that it receives about the man, one local authority
might say that he is fine while another might say that he is not.

If the man in question has a criminal record, that information needs to be kept on file by somebody who is responsible to local authorities, or in some place where the information can be made available. If a criminal came to a local authority, the local authority could telephone, email or whatever to ask that central body whether he had a criminal record. Otherwise, the council would only have his word to go on. That needs clarifying, and such measures to provide that extra bit of control would make the bill work perfectly.

Believe me, these rogues will do anything to achieve what they want, and lying is one of the greatest assets that they have; they are very good at it. We believe that such measures would improve the bill. That said, and as I said earlier, what you have in the bill is good.

Mary Fee: Mr Plews, do you have any further comments?

Barry Plews: No—the issues have been more than well covered. There should be relationships between local authorities so that they can do additional checks. These people are all over the country—there is no doubt about it, so such relationships would be worth while.

Mary Fee: You are saying that the sharing of information across local authorities would be worth while.

Barry Plews: Yes.

David Tweddle: The introduction of a licence fee should make the local authority more responsible in checking and policing the parks. The fee will have been paid, and that might help with the behaviour of the local authorities.

Mary Fee: The British Holiday and Home Parks Association has suggested that the bill should contain provisions that would allow ministers to make regulations on the fit-and-proper-person provisions at a later date, should unscrupulous owners not reform their practices. To have a fit-and-proper-person test, there has to be some kind of regulation and then remedy. What are your views on that?

David Tweddle: I am not quite sure what you mean. Are you asking what happens if somebody applies for a licence, is subjected to the fit-and-proper-person test but fails?

Mary Fee: If a person applies and passes the fit-and-proper-person test, but at a later date is not complying in respect of how they are managing the site or dealing with residents, what happens?

David Tweddle: A raft of enforcement procedures is open to the local authority.

Brian Doick: The options allow further investigation—that is the important factor.

Mary Fee: Ultimately, I suppose that that would give residents on sites more security and mean that there is a uniform approach for sites across the country.

David Tweddle: Yes.

Brian Doick: As I said, we do not have the fit-and-proper-person test in England, but we have two or three of the nastiest people around running parks, one of whom has been chased and challenged by the local authority. He has been to court three or four times with the local authority, and at present he is hiding from it. He failed to turn up in court last week. He is up for a breach of the site licence conditions. He is claiming all sorts of things and handing things on to his son. That brings me back to what I said earlier about getting the right fit and proper person. The son is as bad as him, but of course he is not the licence holder. They hide and do those sorts of things. He is one of the most crooked men in the world and will do anything to get away with it. He owes £232,000 in unpaid fines. If it was me, I would have been locked up by now, but such people play games— they hide and run away and whatever. Those concerns apply, but I am sure that you have the structure in the bill to deal with that.

Mary Fee: Thank you.

Jim Eadie (Edinburgh Southern) (SNP): Good morning, gentlemen. You have certainly brought to life the issues surrounding mobile homes—in particular the unscrupulous practices that exist, which may have become more prevalent. I think that Mr Tweddle made the point that you know about issues only if they are brought to you, so there could be a lot of activity under the radar.

I have some questions on site licensing and how it might help to address some of the issues. There are divergent views in the variety of written evidence that we have received, but both the National Association of Park Home Residents and the Independent Park Home Advisory Service appear to be against the suggestion that there should be a licence that is renewed every three
years, on the basis that that might strengthen the hand of unscrupulous site owners. Will you expand on that?

David Tweddle: You should remember that we deal with complaints day in, day out. We do not have a problem with fixed-term licences as such, but they give the park owner another weapon with which to threaten vulnerable people. It might seem strange to well-educated younger people that people can be threatened in this way, but owners will go around saying, “I’m not going to apply for my licence when it comes up. I’m having too many problems with you people.” People think that, at the end of three years, they will be out of their homes because the owner tells them that. It is all a lie, and we and you know that that cannot happen, but they do not know it. We are against handing such owners another threat that they can use against residents.

Jim Eadie: I understand that point, but surely a system of licences that are renewed every three to five years would provide a statutory weapon against the unscrupulous site owner.

David Tweddle: I appreciate that, but we feel that the enforcement procedures that you have are adequate. Should a park owner misbehave and the local authority act appropriately, it has enough enforcement powers to get rid of him without having to have a fixed licence.

10:45

Jim Eadie: I will get the alternative view in a second—I know that there is a range of views—but are you not concerned that you are handing a licence in perpetuity to someone who is, as you have eloquently outlined, unscrupulous and criminal in their behaviour?

David Tweddle: We are not handing him a licence in perpetuity if the council enforces it properly. We are saying that he has his licence for an indefinite period but, should he misbehave, a range of enforcement measures can be used against him. If the local authority behaves properly, it will police the licence. That is our view.

Brian Doick: There is another aspect to that. On the front cover of the majority of agreements between people who live on parks and the park owners it says, “The licence holder’s interest in the land will cease on” and the unscrupulous put a date in there when they have done something that is not right. The proposal to have a three-yearly or five-yearly licence would increase that problem, because the licence holder would write on the front of such agreements that their interest in the land would cease on a date when the licence runs out and would use that against the people.

We have a similar situation in England at the moment, where a park owner has leased off three parts of his site to other persons—the park owner has the licence, but he has leased it to other people—who have formed a little business in which they make charges to the people for various things outside of the pitch-fee review because they are the new managers of that section. The park owner has altered people’s agreements with the date that his interest will cease. There are people living on that park who feel that their agreement will run out in six years’ time. What do they do then? They were told—we have had this before—that, because the interest in the land has ceased, they will have to go. Where can they take their homes? Where will they go?

That is another problem that would arise under the system that you are talking about. That is why we believe that, as David Tweddle said, the licence should run in perpetuity and, if the park owner fails to comply with the conditions of the licence, he should be prosecuted by the local authority. The fit-and-proper-person test would prevent the unscrupulous from going into park ownership in the first place. If we get all that into play, the residents will be more protected and the law will work in their favour because, under the new licensing scheme, the local authority will visit and inspect the park anyway, so it will—we hope—find out if there are problems on the park and deal with them. That is far better than anything that we have ever had.

That is the reason that we are not so keen on splitting up the licence. It opens up another loophole for unscrupulous owners. You have the facility in the bill to go for the park owner whenever you wish; you do not have to wait for a fixed-term licence to end.

David Tweddle: If the owner is not behaving correctly, the local authority should use the range of enforcement orders that it has.

Jim Eadie: So enforcement orders implemented by the local authority and the fit-and-proper-person test are the routes to go down rather than site licensing.

Brian Doick: I would say so.

David Tweddle: That is what we feel.

Jim Eadie: That is clear enough.

Mr Plews, your organisation has a different view.

Barry Plews: I certainly agree with the statements that have been made.

Jim Eadie: I understood that the park home legislation action group Scotland took a different view on site licensing.

Barry Plews: Can you say that again?
Jim Eadie: I understood that your organisation—park home legislation action group Scotland—was in favour of site licensing.

Barry Plews: I am in favour of site licensing. I am in favour of what is proposed in the bill.

Jim Eadie: So your organisation takes a different view from the one that Mr Doick and Mr Tweddle have just expressed.

Barry Plews: No, I do not take a different view. You are confusing me a little.

Jim Eadie: I am sorry; perhaps I am confusing myself. The two organisations that Mr Tweddle and Mr Doick represent are not in favour of site licensing. Is that correct?

Brian Doick: We are not.

David Tweddle: Fixed term.

Brian Doick: We want licensing in perpetuity.

David Tweddle: Our two organisations are not in favour of the suggestion—

Jim Eadie: Sorry—I am not being clear. What I am saying is that you are not in favour of the site-licensing proposals in the bill, which are for a three-year renewal period.

Barry Plews: My understanding has always been that the licence applies to the land—so it is in perpetuity, in a sense—and then there is a licence to actually use it. We are talking about two slightly different things, I think.

Jim Eadie: Mr Plews, am I correct that your organisation is in favour of the proposal in the bill to require a renewal of the licence every three years?

Barry Plews: Yes. I believe that it should be checked every three years.

Jim Eadie: So there is a difference of view between your organisations.

Barry Plews: Yes, there is.

Jim Eadie: Can you explain why you are in favour of the proposal?

Barry Plews: It will keep the owners on their toes, if you like. Owners will have to ensure that they achieve certain things every three years. If they are given any longer, they will wait. Anything that puts pressure on people to do the job properly is worth while, so I am in favour of the renewal being required every three years.

Brian Doick: We do not disagree that there should be inspections on a regular basis. It would be fine if the parks were to be inspected lawfully every three years, but we should not let the licence run out—it should continue. If a council visits a park for an inspection every two, three or four years, that is when it will find the problems. If the licence has to be renewed, the process will have to be similar, but if the licence is there in perpetuity, the council will still be able to inspect a park and serve notices when it wishes to do so, and the park will be controlled. There is no need for the licence to be renewed—it can be the same licence. The only time that it will need to be renewed is if things are so bad on a park that the licence is revoked. When the issues are sorted out, the licence will need renewing, but that is a different bird.

Barry Plews: If we go on the principle that the licence is for the ground rather than for the right to use it, all that we would be doing is checking every three years that the person who currently occupies the land is fulfilling his obligations.

Jim Eadie: The British Holiday and Home Parks Association suggests a change from the proposed three-year period to a system whereby rolling licences are subject to a five-yearly review but with a legal presumption in favour of the renewal of the licence unless there have been problems in the five-year period. Is what you suggest close to that?

Barry Plews: Yes, I think that it is. Our point is that we should have regular inspections by the local authority. However we achieve that—whether it is by having a three-year licence or a three-year renewal period or whatever—we want somebody from the council to have to come at specific times to carry out an examination of whether everything is okay. That does not happen at the moment, which is why we favour the three-year period.

Brian Doick: I will add one final point on that. To have this—

Jim Eadie: Is the specific proposal that the British Holiday and Home Parks Association has made acceptable to your organisation, Mr Doick?

Brian Doick: It appears from what you say that the BH&HPA is asking for a regular relicensing system, which is what we are not in favour of. Another reason why we are not in favour of that is that it cannot be good for the industry itself. We publish advice for people who are considering moving on to a park, which says that they should look into things and check that the licence is in order. We say that people should ensure that the council has licensed the park and think about requirements such as how many homes should be on it and whether the licence is displayed on a noticeboard. If someone who wants to buy a home on a park sees that the licence runs out in 12 months, they will not buy the home, because there will be nobody there to explain to them how the system works. If the licence was there all the time, there would be no such effect on that part of the industry.
I am dealing with a park in Straiton in Edinburgh at the moment. The owner is absolutely atrocious. He is absolutely useless, and he is a criminal. I have had him in the sheriff court twice. However, he still has his licence and nothing seems to happen. He trundles along even though the roads in the park are a disgrace and he gets his electricity turned off because he does not pay his bills. The residents pay him for their electricity, but he does not pay the utility company. When the utility company comes to the park and says that it is going to switch off the electric, I get a phone call and I say, “Well, you are domestic customers. They cannot turn off your electric.” Of course, however, the owner has a business agreement with the utility company and it says that it can turn off the electric, regardless of who else is involved, until the process is stopped.

The local authority is not pursuing that owner. I do not know why, because, obviously, it has the powers that have been outlined. I can only think that there is a lack of interest or a lack of resources.

Barry Plews: We are back at the same situation. Local authorities do not regularly visit parks to ensure that everything is all right. The parks are not some sort of multimechanised system; they are really quite simple. I have never been able to understand why a local authority cannot just take half a day to visit the park, which is all that is required to understand everything that is going on there. People from the council would only have to speak to people in the park, find out what is happening, tick boxes and wander away. However, that does not happen.

I understand that the suggestion is that there should be some way of enforcing the councils’ responsibility to ensure that they visit the parks at certain times. They should be doing that regularly, but they do not do it. If everything is quiet, they stay away. However, the problem is that everything is quiet because we are dealing with a community of elderly people who do not want to rock the boat. That is why these things are happening in the first place. There are people like me and others who rock the boat, and rock it quite firmly, but the majority of people at our age do not. I am 73, and there are people in our parks who are 80, 85 and 90. If you wanted to talk to them about problems, they would say that they would rather not; they would go away, or they would come down and knock on my door if we have any silly little thing going on.

11:00

In other parks it is the same, all the time. There are not enough residents of that age, with experience of what happens out in life before they went into parks, to do things about it. I would
welcome anything that makes the local authority follow its obligations. Local authorities tend to forget that we are all council tax payers. We are not living in their local authority for free; we pay for it.

That service should be carried out regularly. I can see and understand what is happening in the case that Mr Tweddle mentioned. The council should come in. It would not take more than a day—I could do it in half a day. If the council came and talked to me, it could do it in a quarter of a day. The problem is that the council is just not doing it. There has to be enforcement. If that involves saying that local authorities have to come in and check the licence every two or three years, so be it. Something has to be there to force local authorities to meet their obligations. We are all council tax payers.

Mark Griffin: Mr Tweddle, you raised a couple of points on the impact that lack of enforcement has on residents, around disruptions to power supply and quality of roads. Can you pinpoint any other problems that impact directly on residents because of lack of enforcement?

David Tweddle: Yes. The site owner has a set of conditions, which relate to health and safety, roads and fire safety. Those conditions come from, and are dealt with by, the department of environmental health. Those things are very important for parks, but some park owners breach the conditions. I get many calls, constantly.

I will condense what I am saying, to try to get the message home. In all the years that I have been doing this, two things have caused most of our complaints: unscrupulous park owners and local authorities not doing their job. Local authorities not doing their job is equally as bad as unscrupulous park owners. By not enforcing or inspecting, local authorities cause as many other problems that impact directly on residents because of lack of enforcement.

It is important that local authorities get on board. If they are going to charge a fee from now on, they had better get themselves in gear. In England the situation is a disgrace, because they do not bother.

Brian Doick: The local authorities might well need educating on the matter. We would do anything to help if it was required; we would do the best we could for anybody.

Under the Caravan Sites Act 1968, the council is responsible for harassment, security of tenure and so on. That is in the act, but councils do not do anything. We say to people, “Go to the council. You’re being harassed by the park owner in a bad way. The council has offices to deal with it.” Nine times out of 10, councils turn people away and say that it is not really their problem and that they do not have the resources to deal with it. However, the 1968 act says that they should.

The Convener: We will take evidence from the Convention of Scottish Local Authorities and the Association of Local Authority Chief Housing Officers, so we will certainly quiz them on that.

Brian Doick: That is great. Thank you.

Mark Griffin: Is the Scottish Government’s proposed range of enforcement tools in the bill wide enough to act as a deterrent to rogue operators and are the tools proportionate? Would you suggest any additional enforcement tools for local authorities?

Brian Doick: We are happy with what is in the bill.

David Tweddle: We agree with the proposals, as long as the enforcement tools are used.

Brian Doick: Yes, that is right—as long as local authorities use the proposed tools, including the heavier fines. No fines have been imposed for three years or, where there has been a fine, it has been only £500 or whatever. However, the bill strengthens all those things, so it will be fine. The bill refers to criminal activity as a jailable offence, so the criminal aspect is covered and the bill refers to the other acts of Parliament that could be used against such people. What is in the bill will cover what is needed.

Barry Plews: I agree. The bill gives local authorities all the ammunition that they need—they will just have to use it.

Mark Griffin: Are you content with the bill’s provisions under which residents are protected from charges that are levied against the operator being passed on to them?

Brian Doick: We do not agree that the charges should be passed on. We do not see why a resident who is paying a pitch fee or a rent to live on a park should pay for the park owner’s licence to run his business. Without the licence, there would be no business.

Mark Griffin: I agree, but are you content that the bill would protect residents from those charges?

Brian Doick: I am sorry—I misunderstood you.

Barry Plews: So did I, for a moment.

Brian Doick: The bill is fine in that regard. The residents must be protected and the bill does that.

Mark Griffin: To wrap up, I ask whether you have any further comments on the proposed enforcement powers and how those would benefit parks across Scotland.
David Tweddle: To return to your earlier question, did you say that the residents are protected from the cost of the fee being passed on to them?

Mark Griffin: Yes. The Scottish Government’s position is that the polluter pays. If the owner or operator is acting unscrupulously and they are fined, they will pay that fine and the residents will be protected from any additional charges being passed on.

David Tweddle: You are talking about the enforcement of fines. We are also against the initial licence fee being passed down to residents. The mobile homes legislation lists what the park owner and the resident can have regard to when reviewing the pitch fee. That includes any change or enactment since the previous review date. Park owners will obviously claim that the introduction of licence fees should be taken into account in the pitch fee review and will pass that cost down to the residents. They have done that in England and got away with it. At the end of the day, the residents in England have ended up somehow paying for the site licence.

At one meeting, a minister said that that fee would be paid only once, but once the licence fee is in the pitch fee it is there forever. Furthermore, the licence fee attracts yearly retail prices index increases. 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.

Our consultation response said:

“The agreement allows the owner to have regard to any increased costs which are the result of legislation or enactment at the pitch fee review. Park owners will claim that the introduction of a site licence fee is a new cost to the park and something they are entitled to have regard to at the pitch fee review which will have the effect of residents paying the licence fee. A safeguard would have to be introduced in the pitch fee review procedure similar to the safeguard regarding commission on the sale of the home where the owner cannot have regard to the licence fee at the review.”

You would need to insert something in the bill to ensure that the licence fee cannot be passed down, but I do not know how you would do that. That is what we asked for in England, but we did not get it.

Barry Plews: I had that same misunderstanding when we were talking earlier. The licence fee should be the last thing that we should have to pay. We should not be charged money to support the owner’s licence. There is something not quite kosher about that.

David Tweddle: The UK Government made the argument that, because the residents will have increased input with the local authority, we should be in some way responsible for the licence fee. We do not accept that, but we did not get what we asked for.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Let us assume that site licensing is introduced and the legislation gives local authorities the ability to charge a fee. It has been suggested that that fee could be around £600 for the three-year licence. What are your views on the possibility of local authorities charging a fee? Should there be a standard licence fee, or should the fee vary according to the size of the park?

David Tweddle: A standard fee would be unfair on very small parks. As Brian Doick said, some parks have only four or five homes, and £600 would be a hefty fee for someone who was running such a small park, whereas it would be nothing for a park with 200 homes on it. We think that the fee should be based on the number of pitches—I think that that is the approach that is being adopted in England.

Gordon MacDonald: Do you know the average fee south of the border?

David Tweddle: No. People are still talking about it. If we talk to individual local authorities, some say that they will not charge and some will charge different amounts.

Brian Doick: The fee is under discussion; a working party is working on what it should be. A lot of suggestions are flying about and various council officers have made recommendations, but no decision has been made on what the fee will be.

Gordon MacDonald: In general, if licensing comes in, do you support a fee being charged, especially if it means increased inspection of sites as a result of the extra funding?

Brian Doick: We do not disagree with that at all.

Barry Plews: As long as the cost is not passed on to residents.

David Tweddle: We think that a licence fee should be a business expense for the owner, rather than being passed down at the pitch fee review.

Gordon MacDonald: I got that point earlier.

The British Holiday and Home Parks Association said that, in general, the bill could create ‘unworkable red tape’, which could result in park owners being forced to "sell their parks to the highest bidder."

Are you concerned that the bill might force owners to sell? If so, what impact might that have on residents?
Mr Plews: I think that it is scare tactics.

Mr Doick: It is a scare tactic that owners are trying to use. They say that a lot—that they are going to sell their parks or do this or that. It will not happen, even if there is a major charge. When owners sell, we are talking about buyers paying not £50,000 any more but hundreds of thousands. There are parks selling down our way for £2 million or £3 million. No one is going to buy a park if the proposition is that bad.

It is just not going to happen that way. I think that that is just something that owners say. It is a nonsense. To some park owners, a £600 fee is peanuts. It is probably three or four months' rent from one house.

Mr Tweddle: The costs of the reform that we are talking about and the reform of the implied terms are not going to impact much on park owners. In our opinion, it is just scare tactics.

Mr Doick: Park owners have had no extra charges against them for years. They all say that this goes up and that goes up, but that is the same for everyone else. Pensioners in England have just had an increase on their pension of 2.5 per cent, which gives them about £1.50 extra a week—or something silly like that.

Mr Tweddle: And let us not forget that there is a built-in RPI rise every year in the agreements.

Mr Doick: That is automatic. As I said, things do not get done on the park, and the council does not enforce things. This business of the cost of a licence to the park owner is minor.

Mr Plews: I agree entirely. The idea of passing on the cost to home owners is a nonsense.

The Convener: We have talked a lot about rogue park owners, and Mr Plews said that he lived on a site that has a good park owner. In between, there are a lot of park owners. On balance, are they good, like Mr Plews's park owner, or are they trying to get away with as much as they can?

Mr Tweddle: There is obviously a percentage—let us say 10 per cent—who are criminals and will do everything that they can do to extort money. They cause a lot of the problems.

Then there is a big percentage in the middle who do things just through ignorance. The park owner does not know the rules, and he goes round saying, "I'm going to do this, and I'm going to do that. Yes, I can do that." Then he gets through to us and I say, "No, you can't do that." However, that is just ignorance; those owners are not criminals or bad people. There is a group of people like that.

If you are looking for percentages and I am put in a corner, I would say that 10 per cent are rogues and that the rest are in the other group. At the other end of the scale, as Barry Plews said, a good 10 per cent of park owners are excellent and run good, happy parks.
That was a sad story. That lady had the life frightened out of her when the former park owner sold the land from under her. She thought that she had had it but, fortunately, we saved her.

I have a very nice park owner and I have met a lot of very nice park owners. I could take members to parks that are absolutely magic and where people are treated in a first-class way, and we cannot knock that. However, I have a list at home of 30 to 35 very bad park owners. Some have moved on, but they are very bad. As I said, however, there are a lot of good park owners, and we praise them.

The Convener: Apart from what is in the bill, does the Scottish Government need to take further action or to make additions to strengthen the protections that people on mobile home sites should enjoy?

Brian Doick: We have covered everything.

David Tweddle: We are happy with the bill.

The Convener: You are happy with what is proposed.

Brian Doick: We are more or less happy with what has been done, although we can always find something. We suggest that the Parliament might want to put in the bill a section to establish a review in two years’ time or something, to see whether the provisions work after they have bedded in. If they are not working, they could be reviewed and looked at in a further two or three years’ time, instead of keeping going with an unworkable thing.

The Convener: Members have no further questions, so I thank the gentlemen for their helpful evidence. If, when you get out of here, you think of something that you should have said, please put it in writing. I suspend the meeting to allow a switchover of panel members.

Brian Doick: Thank you very much for inviting us.

11:19
Meeting suspended.

11:25
On resuming—

The Convener: Okay folks, we continue our first item of business. I welcome the second panel on mobile home issues in the Housing (Scotland) Bill. The panel members are from owners representative groups. I welcome Colin Fraser, who is the chair of the British Holiday and Home Parks Association, and Jeanette Wilson, who is the policy director, Scotland, of the BH&HPA.

Would Adam Ingram like to start the questioning again?

Adam Ingram: Thank you, convener.

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

Can panel members comment on the bill’s provisions as they relate to that vision?

Colin Fraser (British Holiday and Home Parks Association): We agree with that statement exactly. Park homes nowadays are very nice and very comfortable—they are the sort of homes that people want to live in. My views differ from what was said during the previous evidence session, in that it is not actually a growing industry. It grew in the past few years because people managed to find site licences and were able to change holiday parks into residential parks, but the current position in the local plans is that most councils are totally against the establishment or extension of mobile home parks.

Adam Ingram: Why do you think that that is the case?

Colin Fraser: It is because councils do not believe that mobile homes—as good as they are—are the sort of housing that they want.

Adam Ingram: Does Jeannette Wilson have any comment?

Jeanette Wilson (British Holiday and Home Parks Association): Councils essentially do not recognise that mobile homes meet a gap in provision. There are people who want to live in a gated community—I hesitate to say that, because it sounds very American, but they want the comfort of living with people who are of a similar age. A stipulation for residency in the majority of parks is that residents have to be over 50 or 55—no children live there although grandchildren and so on can visit. A lot of people pursue such a lifestyle. They feel comfortable and do not have big responsibilities for maintenance or gardens, or anything like that.

To be honest, it is probably just the result of a pretty historical view that councils have held. Many of them do not realise how well appointed the homes are nowadays. They have greatly improved on what they were 20 or 30 years ago. It is unfortunate that councils do not recognise that mobile homes meet a housing need for certain people.

Adam Ingram: How would you characterise the bill’s provisions as they affect park homes?

Jeanette Wilson: I think that the majority of the bill’s provisions are very welcome, with the
obvious caveats in relation to the concerns that we commented on in our submission.

There needs to be a two-pronged public relations exercise. Local authorities throughout Scotland need to take a common approach to mobile home parks and to understand exactly what they are and what they provide. On the other side of the coin, it is obvious from a lot that was said during the previous evidence session that a big education exercise needs to be carried out for consumers, too. It is very worrying that so many of them do not appear to know their rights and exactly where they stand when they buy a mobile home. Our members give out information to people when they make a purchase, but I am aware that many parks are not in our membership and probably do not do that.

When the changes came in on 1 September in relation to implied terms and so on, we encouraged the civil servants who were to deal with the changes here to put something together to alert consumers to exactly what the changes were, what protections they had and so on. Although a little leaflet was produced, a whole lot more could and perhaps should have been said. A big education exercise needs to be done so that consumers do not find themselves in the unfortunate situations that some seem to have found themselves in.

**Adam Ingram:** Does Mr Fraser want to add anything?

**Colin Fraser:** No—that is fine, thank you.

**The Convener:**

11:30

**Adam Ingram:** Were you happy with the Scottish Government’s consultation process for the bill? You obviously engaged in it. Do you have any comments on it?

**Colin Fraser:** Yes. The consultation process has been very good. The only thing that I would say is that the economic effects were not outlined very well. For example, the effect on a park owner of not being able to get finance for a mobile home was not looked at. There were a lot of things that the consultation did not look into. That could be why only certain circumstances are covered in the bill.

**The Convener:** You were in the public gallery for the first evidence session. The witnesses in that session said that there are about 450 parks, with about 4,000 to 5,000 residents. However, the policy memorandum states:

“Research by Consumer Focus identified 92 mobile home sites in Scotland, with around 3,314 mobile homes.”

What is your assessment of how many home parks there are and how many residents they might have?

**Colin Fraser:** I recognise those figures, but we are not very sure how many there are. If someone lives in a mobile home or a caravan all year round to look after the park, the local authority issues a licence for a residential caravan or a residential mobile home, which is classed as being in a park. As a result of that, if Barry Plews asked the local authorities how many licences they issued, he could get a totally wrong number. I have a wee park in Buckie and I have a warden, and I have to apply for a residential site licence for that one home. That happens all over the country—most reasonably sized parks have somebody living in the park. That may be where the previous witnesses got the figure of 400 or so from.

**The Convener:** How many members do you have in Scotland?

**Jeanette Wilson:** We have 52 members who have residential parks, covering just under 2,000 residential pitches. I think that when the Scottish Government first got involved in the park home reform process, which was quite a few years ago, somebody—it might have been Mark Bevan from the University of Stirling—did some research for the civil servants to identify the number of residential homes. I am not sure whether that research based its figure on applications to local authorities—as Colin Fraser said, holiday parks with one residential caravan or mobile home may have been listed. I think that that research was carried out in 2007 or thereabouts. I am not aware of a complete study having been done since then.

**Colin Fraser:** We have 52 mobile home parks—or licensed parks—within the BH&HPA, but of those only 17 are exclusively mobile home parks. The rest are mixed parks, with mobile homes in a holiday park.

**The Convener:** Yes. I got that impression because what the gentlemen from England said does not really represent the situation up here. We have mixed parks—parks where there are rented homes as well as owned homes. What is the mix here?

**Colin Fraser:** Between rented homes and owned homes?

**The Convener:** Yes.

**Colin Fraser:** I have rented homes in my parks—they are nearly all rented—but the majority of parks do not really go in for renting. In the past few years, homes have not been selling very well. Park owners buy back a home and rent it out until such time as things pick up, when they can sell new homes. They will still rent homes, but they can slip on a new home and sell it because that is far more profitable than renting. That is why parks have quite a number of rented homes dotted around, but there are very few totally rented parks.
The Convener: To what extent would you agree with the Scottish Government that there is evidence that there are—as we heard from the previous witnesses—unscrupulous site owners who exploit vulnerable residents and fail to comply with their statutory obligations?

Colin Fraser: There are very few unscrupulous owners in Scotland. I have been director of the BH&HPA Scotland for 25 years and I have been on the park homes committee for as many years, and I know who most of the rogue park operators in England are. I think that the previous witnesses said that there are 35 very bad park owners. I would say that there is only one in Scotland—the park owner whom they were speaking about is not the best person in the world. The rest are doing okay, although some of them need a wee bit of educating. We have been working with one of them in particular, and he is getting a lot better. There is nothing like the number of rogue park operators in Scotland that there is south of the border.

The previous witnesses also said that rogue operators will come up to Scotland to buy parks, but they will not, because the vast majority of parks are far too small for them. All the bigger ones have been in the hands of the same families for 20 or 30 years. There are 13 parks in Scotland that have more than 50 pitches—I am talking about our membership. Only two of the owners of those parks have been in the business for less than 20 years.

I do not believe that the rogue element comes into it to nearly the same extent in Scotland as it does in England. Most of the rogue operators in England have multiple parks—they have 20 or 30 parks, and the parks that they own are larger than the ones here, so I do not think that we will get them up here. I do not think that it will be a problem.

The Convener: However, you would have to agree that not all site owners are as brilliant as the one whose site Mr Plews lived on. Improvements could definitely be made to many parks.

Colin Fraser: There is no doubt that, as the previous witnesses said, many park owners need to be educated on what they should be doing. People who have been in the business for 20 or 30 years are settled in the way that they do things. In addition, there might be a lot of older homes in their parks. When people have the right to sell on for ever, homes that are really past their sell-by date still sell. That means that it is not possible to have a beautiful-looking park like some of the newly developed parks, which look great. The older parks will never look great, because the old homes pass on from person to person.

The Convener: In your submission, you said: “Decent park owners with businesses where there are no ‘wrongs’ to be ‘righted’ are finding the burden of legislation ... difficult to manage.”

What current legislation is a burden?

Colin Fraser: The latest implied terms came out recently, but they did not come out in the best of ways. For example, they do not say who pays the commission.

The Convener: What are you talking about when you say that “they” do not say who pays the commission?

Colin Fraser: The implied terms. You asked what the problems are at the moment. The park owner does not know from whom he is supposed to get the commission. He has to decide that for himself.

The Convener: Do you mean that a park owner does not know whether he is supposed to get the commission from the seller or the buyer when a home changes hands?

Colin Fraser: Yes. He can get the money from the seller or the buyer. One of the good things is that the commission has to be paid before the deal is completed, so one of the parties has to pay, but there is nothing in the legislation that says which one.

Jeanette Wilson: The lack of clarity has caused confusion. The implied terms changes that were made in September removed the role of the park owner from the sale process—previously, they knew who was coming to live in the park. That has caused a lot of concern.

As we mentioned, people move to a park because they are looking to live in a particular style of community. Now people will not know who is coming to live in the park because the park owner has not met them and cannot say whether they fit the criteria as to how the community lives. The park owners have been getting a lot of hassle from people who currently live in the parks because they are unhappy that they do not have the security of knowing that the person who has bought a home has been not exactly vetted but met and that assurances have been given that they are the sort of person that people were expecting to live with in that community.

The Convener: We heard from the first panel of witnesses that residents have no control because the park owner can sell the homes to whoever he wants.

Jeanette Wilson: The park owner would sell only to people who were going to fit in. Park owners are not looking for hassle—in the main, they want a nice, cohesive community. Nobody sets out to make their business life difficult. They are not going to encourage somebody to come...
along just to take their money for the home with no thought given to the potential ramifications.

The Convener: You are saying that the park owner should have the last say in who a person sells their home to, but that could affect the price that they might get.

Jeanette Wilson: Yes, I can see that, but you asked what the concerns are. I am not saying that it is a massive thing, but it is something that has made park owners and residents uncomfortable. That is an unintended consequence; I know exactly what the legislation was intended to do—it was intended to prevent bad people from stopping people selling their homes and sneaking in to buy them. I appreciate that. The difficulty has arisen because of the potential for upset in what was previously a very happy community, which may not be so happy if somebody sells their home second hand to someone who does not really fit in. I was just using that as an example of what park owners are finding difficult, as that has become a bit of a difficulty.

The Convener: We also heard from the first panel that local authorities are failing to understand their roles, responsibilities and duties in terms of park standards. Is that true? Is your organisation finding differences in attitude between local authorities in different areas?

Jeanette Wilson: Local authorities have not been near quite a lot of parks for a very long time. In most cases, that is for the good reason that there has been no problem for them to get involved with. However, there is not a level playing field in Scotland regarding the attitudes to parks. It comes back to the need for an overall education exercise.

Colin Fraser: Local authorities always react if something goes wrong. If a local authority gets a letter of complaint about something, the park will get a visit from the local authority. The fact that local authorities are not attending parks indicates that they are not getting complaints—it is as simple as that.

The Convener: I have to disagree with that. Often, the people on the sites do not know who to complain to and do not know their rights in relation to the park owners. As a constituency member, I find that, rather than there being no complaints at all, the residents do not know their rights or who to complain to.

Jeanette Wilson: That highlights the need that I mentioned for a big public relations exercise to ensure that consumers know that information. They ought to be in possession of the facts, particularly given the amount of money that they hand over for a home. You would not dream of not knowing the details if you were buying a car—you would not hand over lots of money without all the necessary bits and pieces. There is a big gap to be filled.

Colin Fraser: The problem could be that there are so few mobile home parks in Scotland that a lot of councils have only two or three and they do not want to have somebody geared up to look after those two or three parks. I do not know whether there are people in councils to whom park residents can go to discuss their park.

The Convener: Jim Eadie will continue with questions on the theme of licensing.

Jim Eadie: I want to ask about the duration of site licences. You say in your written evidence that a three-yearly renewal system

"would create uncertainty and destroy confidence in the sector."

Given that a three-year period is common to the licensing system for homes in multiple occupancy and there does not appear to be any evidence to suggest that it has destroyed confidence in that sector, what underpins your assertion?

Colin Fraser: On what?

Jim Eadie: You state in your written evidence, which I have just quoted, that the move to a three-yearly renewal system

"would create uncertainty and destroy confidence in the sector."

That has not happened with homes in multiple occupancy, for which a similar system has been introduced. Why do you think that that would happen in your sector?

Colin Fraser: Because it is a different thing altogether. A house in multiple occupation is just one house that is sitting there, and one person owns it. The folk can move on tomorrow—they do not have a problem. Nobody has a problem with that.

11:45

However, the average caravan park in Scotland has 35 pitches, and the people on those pitches would not know what was going to happen. Just as the three fellows who were here earlier said that they did not feel secure, we feel that about a three-year licence. Wales has decided on five-yearly renewals of licences. That does not come in until October, but the finance companies, the banks and all the people who finance mobile homes and parks have withdrawn funding. They are not going to fund things that have a finite time. A rolling licence or a licence in perpetuity, which is the same thing, is what we need. As was said earlier, the licence is not for the person but for the land that the mobile homes sit on. There could be a review of the licence every three or five years,
although we would prefer five years. It would be a review rather than a renewal.

Jim Eadie: You are concerned that a three-year licence would put consumers off purchasing a mobile home.

Colin Fraser: Yes. Those who want funds to purchase cannot get them. The banks, lawyers, estate agents and such are putting people off buying. They say “Oh. You’ve only got five years. We don’t know what’s happening then.”

Jim Eadie: Okay. I understand that. You suggested in your written evidence the alternative of a rolling licence.

Colin Fraser: A rolling licence is the same as a licence in perpetuity, as it goes on for ever. Both the British Holiday and Home Parks Association and the people who represent the residents do not want temporary licences.

Jim Eadie: So you would agree with the evidence that we heard earlier this morning from the Independent Park Home Advisory Service and the National Association of Park Home Residents that having a fixed licence period could be used as a weapon against mobile home residents.

Colin Fraser: Of course it can.

Jim Eadie: Can you tell us a bit more about that?

Colin Fraser: If you get rogue operators, they say “Right. The licence finishes on such and such a date, and I don’t know what will happen then.” That is all they say, but it is enough—it is too much.

Jim Eadie: You have said that you are concerned that having the three-year licence period would put consumers off purchasing the homes—or, rather, that banks and other financial institutions would be unwilling to lend to people if they only had a three-year licence period. Do you have any other specific concerns?

Colin Fraser: We do not need any more concerns, because that is really bad enough. There is nothing worse than not being able to buy park homes because you cannot get funding.

The Convener: But that is happening now. Are you saying that even the threat of the legislation is stopping the buying? Banks are not lending to housing associations, for example. They are not lending to a lot of organisations and a lot of people. It is not just because of the proposed legislation.

Colin Fraser: Banks are not lending. They are being far more difficult about lending to people who want to buy a park. If you have a park already and you can put it up for collateral, you will get lending, but if you are buying for the first time, the banks will not be interested. However, people seldom get a bank loan to buy park homes. Banks do not usually finance park homes; it is finance companies that do it. There are only two main finance companies that finance park homes.

In Wales, the Welsh Government has already seen what is happening, and it is making the licensing for holiday homes into licences in perpetuity. It is not going to do three-yearly licences or whatever for holiday homes. It has decided that, because of what has happened on the residential side, that is not a good idea.

Jim Eadie: I would still like to understand the justification for your proposal for rolling licences instead of what is proposed in the legislation.

Jeanette Wilson: It would give more security to consumers—in other words, the people who are purchasing homes. It is quite obvious that people would feel less secure putting their savings or whatever into buying a home if they could not be sure that that was it for however long it is at the moment.

Jim Eadie: What advantage does your proposal have over the status quo, in which site licences run in perpetuity? Are you saying that they would continue to run in perpetuity?

Jeanette Wilson: It would be fine if they continued to run in perpetuity, because that would give everyone the security that they need. At the end of the day, the Scottish Government’s avowed intention is to protect consumers and give them more security. Introducing a three-yearly renewal system would have the opposite effect. In addition, the park owner is constantly investing in and improving the park’s infrastructure.

Jim Eadie: I am sorry, but I am not an expert in this area. It is helpful for the committee to have your expertise because it allows us to better understand the system and how it might operate. At the moment, I am trying to understand the difference between what we have at the moment and your proposal for rolling licences subject to a five-yearly review.

Jeanette Wilson: My proposal was in response to what you were saying. It is obvious from the consultation document that that was the way you were thinking and going, and we presumed from that that you did not want the status quo. We thought, “If that is the direction of travel, how about this suggestion? It might be a bit more workable.”

Colin Fraser: As we understand it, a rolling licence is the same as a licence in perpetuity. It is just another term for it.

Jeanette Wilson: We accept, of course, that people will want to visit parks and check what is happening there, and a review would allow that to happen.
Jim Eadie: And it would not have the kind of disadvantages that you think would arise from the three-yearly renewal system.

Jeanette Wilson: No. A five-yearly review with a legal presumption that all is well unless there has been some incident in the intervening period gives everyone—the park owner and the park home owner—security.

Jim Eadie: And it could not be used as a weapon as has been suggested in respect of the three-yearly renewal.

Jeanette Wilson: No, not if there is a five-yearly review with a legal presumption that all is well unless there has been an incident of some sort.

The Convener: But if you have a licence in perpetuity or a rolling licence, there is no reason why there should not be a three-yearly review.

Jeanette Wilson: That is fine as long as we are talking about a review rather than a renewal process and as long as there is a legal presumption that all is well unless there has been some sort of infringement.

Colin Fraser: I am sure that some of you will recall that many years ago—actually, not that many years ago—pub licences lasted three years. However, people forgot to renew their licence, lost it for a while until the next licensing meeting and so on and the Scottish Parliament in its wisdom then gave personal licences to the owner and those in charge of the bar and a pub licence in perpetuity.

The Convener: Mary Fee has some questions about the fit-and-proper-person test.

Mary Fee: In introducing a fit-and-proper-person test, the bill sets out the factors that local authorities should take into account when determining whether someone is a fit and proper person. Your submission makes a slightly different recommendation, suggesting 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”.

What are the differences between “a standard procedure” and the factors that local authorities already use to make this determination? What would be the benefit?

Colin Fraser: The benefit would be that every park would be working under the same conditions and the same criteria. Having different areas with different fit-and-proper-person criteria is not going to work because a person might be a fit and proper person in one area but not in another. We would like one application form with questions that had to be filled in, and it would be given out by the Scottish Parliament or whoever and apply to everyone in every area in Scotland. Such an approach would keep things simple. After all, a council will perhaps have only two or three parks in its area. No council has a lot of parks and instead of setting up a system to deal with two or three parks, review them every three years and so on it will be a lot simpler to take a national approach.

Mary Fee: So you do not think that a system in which local authorities get information about the factors that they should take into account in determining fit-and-proper-person status is strong enough. You would like something more formalised.

Jeanette Wilson: If there was a prescribed procedure across the whole of Scotland, it would be beneficial for people who have more than one park, with the parks being in different local authority areas. Such people would have to go through the process only once and then they would be on some sort of central register, however that might be set up. It would be much more beneficial if there was one overall register for all areas in Scotland. We were talking about rogue operators earlier. If somebody is not a fit and proper person in one council area, at the moment there is nothing to stop such a rogue operator from popping up in another area where perhaps they will not be identified as not being fit and proper.

Mary Fee: So if an owner has sites in more than one local authority area, are you suggesting that they go through only one application?

Jeanette Wilson: It seems to make sense—

Mary Fee: Who would deal with the application? At the moment, a local authority would determine the application. Under your proposal, who would determine that application?

Jeanette Wilson: I would have thought that the place where an owner put in their first application would deal with it—the owner would have to detail other parks that they have an interest in at that point.

Mary Fee: Would it then be the responsibility of the initial local authority to inform another local authority? How would that be enforced?

Jeanette Wilson: I would have thought that there could be a central register that they could input the information into. That would seem to be the sensible approach.

Mary Fee: Okay. I am just not sure how that would work in practice.

Jeanette Wilson: There is that tell-us-once system for when members of the public need to register certain information with local authorities—the information shoots off in all sorts of different directions. I imagine that something along those lines could be set up.
Mary Fee: Okay.

Colin Fraser: We would not be averse to the idea that wherever a park is, if the owner puts a warden on it, they apply to the area that the park is in. The owner would just have one application for all his parks, but if there were wardens on the parks, they would apply to each separate local authority area that those parks were in. If that was the case, all the more reason that local authorities should all have the same questionnaire so that everybody is on the same footing.

Mary Fee: I am just not convinced that such a system would not overcomplicate things, but I accept your point.

Colin Fraser: It would be far simpler than every council having a different questionnaire—and they would have.

Jeanette Wilson: It would also be beneficial for each council to have access to information from other areas. If there was a central register and somebody popped up who was going to buy a particular park, it would be quite useful to be able to tap in and say, “Oh, okay, he passed the test in this area in this month.”

Mary Fee: Okay. To move on to another point about the fit-and-proper-person criteria, the BH&HPA submission indicates:

“The likely success in achieving the goal of ridding the industry of rogue operators ... through the application of fit and proper person criteria ... is unknown.”

The submission also suggests that the Scottish Government should adopt measures similar to those in England to allow ministers to make regulations regarding the fit-and-proper-person test in due course. The licensing regime is similar to other licensing regimes so why is it so difficult in your industry to get rid of rogue operators?

Jeanette Wilson: The most delicate way to put it is to say that rogue operators have very complex business arrangements. [Laughter.] Sorry—I could not think of a better way to put it than that.

The Convener: We get the message.

Jeanette Wilson: We have heard about this kind of smoke-and-mirrors situation before. It is one person who owns it; no, it is their cousin; it is their nephew; or it is their son. It is very difficult. Those people do not abide by regulations now so we have concerns, given that that is their mode of operation. What will make them suddenly do everything in an up-front, appropriate manner?

I am not saying that we should not try—of course we should. I have discussed the issue with civil servants, and their view was that if the process caught out a few rogue operators—if a few of them were rumpled—that was good enough. I am not saying that we ought not to be trying to catch them; it is just that we have concerns about the complexity of those business arrangements that would undoubtedly come to the fore.

Colin Fraser: We also have a concern about when people first apply to be made a fit and proper person. There is usually only one person in a mobile home park because of the average size of the parks. What if a long-serving person at a park is found not to be fit and proper? What do you do with them? You cannot sack them; you cannot make them redundant. What do you do?

12:00

Mary Fee: What do you suggest we do?

Colin Fraser: I do not know.

Mary Fee: If someone was assessed and found not to be a fit and proper person, should there then be some steps that they can go through that would allow them to become a fit and proper person?

Jeanette Wilson: I guess that it would depend on why they were deemed not to be fit and proper. If it was because they had a criminal record that was not known about, you could not really scrub the record.

Colin Fraser: They could have a criminal record from the past that the world does not know about.

Mary Fee: Okay, so what is the solution?

Colin Fraser: That is what I am asking you.

Mary Fee: I am keen to hear your thoughts on how we would resolve the situation.

Colin Fraser: We have to have a solution. Employment law is very difficult. We certainly cannot pay someone off or sack them because they have been found not to be fit and proper. You cannot make them redundant because they are not fit and proper, because you would be up for unfair dismissal.

Jeanette Wilson: We found that this is a complex area when we thought about how it would work.

Colin Fraser: We have tried to get advice, but we are always told that nothing can be done.

Mary Fee: But do you support the fit-and-proper-person test?

Colin Fraser: If the criteria are right and we get answers to all the questions.

Jeanette Wilson: We also feel that a consistent approach throughout Scotland is very important.

Mary Fee: So if the test criteria were right and were applied consistently, you would be able to deal with someone not being a fit a proper person.
Colin Fraser: No you would not.

Jeanette Wilson: We do not know how we would be able to overcome the problems with employment law.

Colin Fraser: If there is something in the bill that would allow such a person to be sacked or made redundant, that would be fine, but I cannot see how that would come about.

Mary Fee: You have raised a point that we have not previously pondered.

The Convener: If you knew the criteria, presumably you could make sure that the person could be trained to meet them. Also, under employment law, you can deal with a person who has a criminal record.

Mary Fee: If the person does need some sort of training or to go through some sort of programme, and if clear criteria are laid down within employment law and regulations, if the person does not meet those standards and is in breach of what is expected of them, and if they knew what the expected standards were, you would be able to dismiss them.

Jeanette Wilson: It is just the complexity that we had not considered until we got to the stage of putting our ideas together.

The Convener: Mark Griffin wants to ask some questions about enforcement.

Mark Griffin: Can you describe how the existing powers on enforcement and how they have been applied have impacted on residents and site owners?

Colin Fraser: Under the 1960 act, local authorities have the power to take action if a park owner is not complying with the site licence. They have always had the power to move into the park and do the repairs. They have always had the power to take the park owner to court, and to withdraw someone’s licence. They have all those powers at present and they always have had.

Mark Griffin: The Scottish Government feels that giving local authorities a range of robust enforcement tools is crucial to making sure that sites are managed well. What are your views on the new range of tools that are being proposed? Are they wide enough to tackle rogue site operators and act as a deterrent? Do you think that they have a proportionate impact on site owners at present?

Colin Fraser: What has been proposed is all to do with the park owner and the people who work for him. It has nothing to do with a site licence. At the moment, the site licence is all about the structure of the park. It covers site boundaries, spacing, hard standing for caravans, carriageways and footpaths, drainage, water supplies, sanitation, litter and refuse disposal, fire precautions although they have now been taken over by the fire authority, lighting, storage space, and recreational and open space. The site licence is entirely different. We are looking at the person who holds the site licence, not really at the site licence. Most people comply with their site licence—everything that I mentioned—because they have to do that to keep somebody provided with electricity, drainage and water.

Mark Griffin: Is the new range of powers proportionate? Will it have a negative impact on the operators who are exemplars—who are doing a good job?

Jeanette Wilson: Well, they will not end up in court or infringing their licences. The vast majority of park owners are astute, sensible businesspeople and will not end up in that situation.

Mark Griffin: Do you have any issues with the new enforcement powers that are being introduced?

Jeanette Wilson: The power to appoint an interim manager is of concern because it is not clear at the minute exactly what powers interim managers will have. For example, will they be able to undertake sales?

Also, what will happen about utility bills? The bill says that the individuals on the park will not have to pay their pitch fees or electricity bills if various things have happened. We detailed our concerns about that in our submission. If the park owner does not receive any income because people do not have to pay, how will he pay for utilities? We do not want utilities to be cut off because the money has not been paid.

A lot of detail and clarity is needed on how the appointment of an interim manager would work. No revenue would come in if the interim manager was unable to undertake sales on the park—although it is questionable who would want to come along and buy a home if an interim manager from the council was in place—so what would happen about the day-to-day maintenance on the park, for example?

At the moment, it is not clear how that power would work, so that is a concern.

Colin Fraser: Also, if a park owner does not comply with an improvement notice within 28 days, or however many days the set-up says, the local authority has to let the people in the park know and they are supposed to withdraw their pitch fees, their electric money and their gas money—all the payments that they make to the park owner. He gets no profit from sales, commission or anything. If the local authority and the people in the park know as soon as the
improvement notice has been breached, that is before any appeal has been made. How can the local authority take someone’s income away from them before there is an appeal or a court case? How can a park owner run the park—it will not be under management at the time—without any funding?

Mark Griffin: I noted the points that you made in your submission. You make further points about the polluter pays principle. How do you feel about the proposals to prevent rogue operators passing on to residents any charges that they incur? How does that balance with the example that you give in your submission of a situation in which a resident might have caused the problem in the first place? Do you have any comments on that?

Colin Fraser: If a park owner does things wrong and the local authority writes to him and charges him fines, the residents should not pay. It is as simple as that. It is the park owner who owes the money.

Mark Griffin: Do you have any other general comments to make about the detail of the proposed enforcement powers? Could there be any further adverse impacts on site owners that we have not touched on so far?

Colin Fraser: One of the main things is that the bill says that, if a person does not carry out the steps on an improvement notice, they can be fined up to £50,000. In Wales, the figure is £500. We worry about £50,000, but we are told that the Scottish Government has set that as the figure for all sorts of things.

We do not believe that, just because that is the figure for all sorts of things, it should be the figure in the bill, because in court, the judge will say, “Oh—£50,000. If I give 25 per cent of that, that’ll be £12,500.” Really big fines will be imposed because the top fine is so high. I do not think that anyone will be fined the top fine. We do not believe that, just because the Scottish Parliament has set a figure of £50,000 for certain things, the figure in the bill should be £50,000.

Gordon MacDonald: What is your view about the proposal that local authorities can introduce a fee of a suggested £600 for a three-year site licence? Should the licence fee be standard for all parks or should it vary according to park size?

Colin Fraser: The figure should definitely vary according to the park size. I did a wee bit of research last night into our smallest parks. There is one park with five pitches, one with six, one with seven, two with 10, one with 12, one with 19, three with 20, one with 21, one with 22, two with 25, one with 28 and three with 30. Of the parks that are members of BH&HPA, 33 per cent have fewer than 30 pitches, and £600 would be a lot of money for wee businesses such as that, so the fee must be set per pitch.

Gordon MacDonald: Do you have a suggestion for the level of fee per pitch?

Colin Fraser: Yes—it should be nothing. [Laughter.]

Gordon MacDonald: We all live in a world in which we wish that our bills were nothing.

The first panel suggested that fees should be considered a business expense. What is your opinion? Should park owners be able to recoup the cost through pitch fees?

Colin Fraser: Park owners have very few ways of increasing pitch fees, which go up only by inflation every year, whatever the inflation rate is. If extraordinary things come in—that could be licensing now but something else that is far more expensive afterwards—the costs should be passed on to residents. A park of 30 pitches should not incur a cost of £600. If the cost was not a lot of money and was set by the number of pitches, I would not expect smaller parks to pass it on, because it would be minimal.

Gordon MacDonald: Most of the other questions that I was going to ask have been covered. You mentioned the possibility that banks and finance companies are unwilling to finance the purchase of parks and park homes in Wales as a result of the requirement to renew licences after five years. Can you point us to where we can obtain more formal evidence on that?

Colin Fraser: We got the information from parks—from BH&HPA. I do not know the name of the relevant person to write to about finance companies.

Jeanette Wilson: Shall I try to get information from BH&HPA head office? It might have something more substantial.

Gordon MacDonald: If you could send us a briefing, that would be helpful.

Colin Fraser: We might be able to get something from the finance companies. All companies that loan money are very much looking into everything at the moment. If the least little thing arises, they say no. That is what has happened.

Jeanette Wilson: It is perhaps pertinent to add that one BH&HPA member who has a residential park in Fife approached a big firm of estate agents and lawyers there to see how knowledgeable it is about park homes and how well placed it would be to advise someone who came in off the street and wanted to buy a park home. It is worrying that that company, which has branches all over Scotland, said that it would show such a person the door...
and say, “Don’t do it.” We did not feel that that was particularly positive.

12:15

Colin Fraser: On the renewal of a site licence, when a park owner is selling a site, there is always something to state that the purchaser must get agreement on the transfer of the site licence. The bill states that the local authority can have up to 12 months to decide whether to give a site licence, which is absolutely ridiculous. On a sale, the transfer of the licence should be more or less automatic because, if local authorities are doing their job properly, all sites out there should be ready for transfer—it is as simple as that. If the local authorities are looking at sites and keeping them up to date and up to scratch, the transfer should be more or less automatic. Planning departments in Scotland get eight weeks to pass massive plans for office blocks and other such things, so surely a local authority can do a wee thing like a site licence in eight weeks.

A licence is also transferred when someone dies. Under the bill, as soon as a person who has a park in his name dies, the park will not have a licence. The last thing that someone who has just lost her husband, say, will think is, “Oh, I need to renew my licence.” It will be months down the line before they think about transferring the licence. The 1960 act, in its wisdom—there are a lot of good things in it—says that they immediately become the owner of the licence and then have to apply to have that endorsed by the local authority. I cannot see any other way of dealing with the situation when somebody dies and the licence has to be transferred. People cannot go through the whole procedure because, during that time, they will not have a licence. So there has to be something in the legislation that says that they still have the licence during that period or that it transfers automatically. In our submission, we set out the wording from the 1960 act, which allows the transfer to happen automatically, after which the licence has to be endorsed.

Gordon MacDonald: If the proposed timescale was reduced to eight weeks, as in planning, would that give enough time for a fit-and-proper-person check to be carried out? Obviously, we want to ensure that the park is sold to somebody who is a fit and proper person. We heard about rogue owners down south. If we reduced the period to eight weeks, would that timescale give the authorities the opportunity to check people’s background fully?

Colin Fraser: If there is a proper form that goes to all the councils, it will ask questions and that will give the answer. Somebody will need to be looked into only if the form shows that there is something that needs to be looked into. If all the answers on the form are yes or whatever, there should not be a problem.

We have spoken about houses in multiple occupation and landlord registration, and some councils are months behind on that. We cannot have that with the fit-and-proper-person check for somebody who is coming to work on a park. We have the same problem there. In one park, I went through four managers—I call them wardens—in one year because, unfortunately, three of them were no good. They might all have been fit and proper persons, although I do not know. However, when somebody leaves—people often fall out with the park owner and go—you need someone quickly. You cannot wait for weeks and weeks to get someone who is a fit and proper person. However, owners will not be able to employ someone until they get the permission back from the council. Something should be laid down in the legislation about how long the council will have to do the fit-and-proper-person procedure under normal circumstances where there are no inquiries.

The Convener: Your written submission states:

“Close attention should be given to the transitional and commencement arrangements”

for the bill. I take it that you were consulted on the bill’s provisions at the outset, so will you expand on what you mean by that?

Colin Fraser: On site licensing, there are a lot of things to be filled in and we do not know what they are. That is what we are speaking about. Until we know what they are, we cannot really answer your question.

The Convener: You will be consulted on what goes into what we call subordinate legislation under the bill.

Jeanette Wilson: One point that we make is that we are concerned as to why existing licence holders will have to reapply for new licences within 24 months of the legislation coming into force. If there has been no problem whatsoever on a park for as long as local authority records go back, why is it necessary to go through the administrative burden of reapplying for the licence? I can understand that entirely if there has been an infringement along the way, but otherwise that seems to be an admin burden for no real reason. If there has been no problem, why would a park have to reapply for its licence within 24 months?

The Convener: To go back to Adam Ingram’s initial question, the bill is trying to improve the standard of homes that people live in. The initial licence might impose fewer burdens than we would want to ensure that the park is of a better standard now. Surely we want to ensure that standards are improving all the time.
Jeanette Wilson: Would that not follow automatically if there was a review every five years of a licence and regular local authority visits? Apart from anything else, if all the parks have to apply for a new licence within 24 months, the workload for councils will probably be substantial if they have not visited the parks for many years. It would probably be better for local authorities to visit or whatever to discuss and negotiate the site licence changes, rather than say that everybody in Scotland has to do it en masse within 24 months. Obviously, the priority would need to be the parks that have had problems.

Colin Fraser: I am aware that Highland Council is reviewing its site licences, and many other councils are looking at them, because it suddenly dawned on councils that they have nothing to do with fire precautions and all that stuff, so it has to come out of the licences. Highland Council is to introduce its new licences imminently. It does not seem very good for the council to put out new licences now and then to have to redo them in two years.

The Convener: As we have no further questions, I thank our witnesses for their evidence, which has been most helpful. If there is anything that you think that you should have said but have not, please put it in writing.

I suspend the meeting briefly to allow the witnesses to leave.

Colin Fraser: Thank you very much for the invitation—the meeting has been useful.
1.0 Introduction

1.1 The Tenants Information Service (TIS) is the national training, support and advice organisation working with tenants and landlord organisations. TIS is a member led organisation, with over 250 tenant and landlord members representing local authorities and Registered Social Landlords throughout Scotland.

1.2 TIS welcomes the opportunity to provide a written statement to the Infrastructure and Capital Investment Committee. We support the aims of the Bill and consider that many of the provisions will work towards achieving these.

1.3 We recommend that further consultation is required regarding the exception of the Scottish Housing Regulator to consult with tenants, as set out in Part 7 (section 79) of the Bill.

1.4 During January and February 2014, TIS organised a series of Housing Bill conference and briefing events throughout Scotland to seek tenants’ views on these proposals. TIS have also provided evidence to the Infrastructure and Capital Investment Committee at a meeting held on February 24th 2014.

1.5 This submission sets out our views on the Housing (Scotland) Bill based on tenant feedback collated from our recent Bill consultation events.

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

1. There is a great deal of consensus from tenants’ organisations that the Right to Buy should be abolished to protect the future supply of much needed housing in the social rented sector. We support the rationale provided for the legislative changes as set out in the Housing Bill Policy Memorandum.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

2. Tenant representatives have highlighted that a three year notice period is excessive. Concerns were raised that this timeframe might lead to tenants being pressured by companies to purchase homes, even when they are not in a position to maintain the property in the longer term. A
period of between 18 months to 2 years was recommended by tenant representatives. Tenant opinion supports the abolition of the Right to Buy for all tenants and that the pressured area status would remain in the period up to the abolition.

3. It is essential that tenants have clear and accessible information about the changes to the Right to Buy. We would therefore recommend that the Scottish Government provides guidance to landlords and an information leaflet to tenants to clarify the Right to Buy position as soon as the Bill is given royal assent.

**Part 2: Social Housing**

_In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?_

4. We welcome the principles of greater flexibility that underpins the Bill. Landlords will continue to be able to prioritise other groups to reflect local housing needs and circumstances, as long as the “reasonable preference” is given to the three statutory groups.

5. Tenants support the provision to be able to take age into consideration when allocating housing. Tenant representatives have often advocated the value of more sensitive lettings, for example; designating housing for the over 50’s and for families with children to ensure sustainable communities.

6. The definition of what is meant by “unmet housing need” in Section 3 of the Bill is not clear and requires further clarification.

7. We support the new requirement for social landlords to consult tenants on priorities within the allocations policies and to publish a report on the findings. Allocations is a key priority for many tenants. It is important that landlords and tenants meet to agree the type and level of consultation that tenants wish on this issue. This links to good practice being developed through tenant and service user scrutiny of landlord’s performance in relation to the Scottish Social Housing Charter. To participate fully tenants require access to adequate support, training and information.
Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

8. Antisocial behaviour is identified by most tenants groups as a key priority to tackle. Any consideration of antisocial behaviour measures should take into account the impact on the alleged perpetrator’s rights, but also the impact on the rights of people to live in peace and in safety. There is tenant support for the provisions in the Bill which adjust the operation of short Secure tenancies and Scottish Secure tenancies as a tool to support landlords to address antisocial behaviour problems.

9. There is tenant support for landlords to have the power to convert Scottish Secure Tenancies to short tenancies, where there is clear evidence of antisocial behaviour. There is support for the provision to extend short SSTs to 12 to 18 months as long as there is adequate support in place for the tenant(s) to address the issues.

10. Clarity is required from Scottish Ministers to detail the maximum period that a suspension can stay in place.

11. Tenant representatives support the extension of the qualifying period to 12 months for succession, assignation and subletting as long as landlords have the ability to use discretion in individual cases, for example; in cases such as the death of a tenant.

12. The provisions will provide landlords with some flexibility to tackle antisocial behaviour but the Bill alone will not resolve the antisocial problems throughout Scotland. A commitment to funding and a multi-agency approach are pre-requisites to tackle this major problem.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

13. Yes there is support for a Right to Appeal.
Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

14. There is tenant support for the introduction of a housing tribunal for the private rented sector as a means to have a less adversarial and more user friendly system in place. Tenants would also like to have an opportunity to discuss the feasibility of having a housing tribunal for the social rented sector.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

15. We support the provisions that give local authorities more tools to use in tackling poor standards in the private rented and owner occupied sectors. But we consider the Bill should go further to introduce and enforce higher standards and repair standards in the private rented sector and a framework to enforce these standards. The Scottish Housing Regulator (SHR) has expensive statutory powers to enforce standards in the social rented sector, but local authority powers in the private rented sector are more limited and operate under serious financial constraints.

16. In many communities, there are growing problems when improvement and regeneration work is hindered because owners are unable or sometimes unwilling to pay their share of this work. TIS have been involved in a number of initiatives to support the development of Owners Associations to seek to address these issues and to regenerate local communities. This is a model of working that we would encourage tenants, owners, social and private rented landlords to develop throughout Scotland.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

17. We support this in principle, but require further information about how this would operate and how it would be funded before we could give an informed view on this matter. Further consultation is required on this proposal.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

18. We support the principle of a statutory registration scheme and a code of conduct with statutory force.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

19. No further comments.

Part 5: Mobile Home Sites with Permanent Residents

Q12. Do you have any views on the proposed new licensing scheme?

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

20. The new licensing scheme is welcomed by tenants as a means to improve living conditions to over 3,000 people living in mobile sites.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

21. These provisions are relatively minor adjustments to existing legislation. They should help those local authorities who take a proactive approach to supporting owners carry out repair works. Concerns were raised during our consultation that this might not be a high priority across all local authority areas.

Part 7: Miscellaneous

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

22. The Bill introduces an amendment to the Scottish Housing Regulator’s powers under Section 67 of the Housing (Scotland) Act 2010. It proposes an exception to the requirement on the SHR to consult with tenants before it directs a transfer of an RSL asset to another RSL, when the RSL is in financial jeopardy. During our consultation, tenants raised serious concerns that this right to be consulted should not be removed. Tenants of an RSL who is facing insolvency should have the
right to be informed about the situation and to be consulted on the options that are available. While it is clear that the SHR must be in a position to respond effectively to exceptional circumstances, it is not clear why an RSL would be on the brink of insolvency without the SHR being aware of and intervening to address these issues. This provision has not been previously consulted on. We strongly recommend that tenants right to be consulted as set out in section 67 (4) of the Housing (Scotland) Act 2010 should remain.

23. The Housing (Scotland) Act 2010 requires tenant consultation and ballots to take place where an RSL decides to merge with another landlord. The 2010 Act does not make the same provision for tenants whose landlord joins a group structure. There are many RSLs looking to join group structures and tenants in the social rented sector should have the same right to consultation and ballots as tenants in a merger situation. To ensure parity and consistency tenants should be entitled to be consulted and to participate in a ballot for all proposals involving a merger of an RSL with another RSL or joining a group structure.

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

24. No further comments.

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

25. During our tenant consultation consensus was not reached on the subject of Probationary Tenancies. Tenant’s views were very polarised in terms of some supporting this as a means of addressing potential antisocial behaviour issues, while others see this as a direct erosion of tenants’ rights.

Tenants Information Service
28 February 2014
TPAS SCOTLAND  
WRITTEN SUBMISSION

Introduction

TPAS Scotland and TIS were funded by the Scottish Government to undertake consultation events with tenants etc on the principles of the Bill. Using the Government funding and in agreement with the Tenant Priorities Team, TPAS facilitated sessions in Glasgow, Dumfries and Inverness, all were very well attended. We took every opportunity we could to consult and inform on the Bill, for example while in Orkney, Falkirk, Fort William etc we facilitated sessions. All were well attended, we encouraged participants to respond to the call of evidence in their groups or organisations and as individuals. The majority of participants were tenants. TPAS Scotland actively promotes the rights of rural tenants to participate and get involved and would have welcomed additional funding from the Scottish Government to enable us to take the consultation events further afield, in the past we have held well attended consultation events, in Shetland, Western Isles, Skye, Borders etc.

Right to Buy

Q1 – Overall the proposals to abolish the Right to buy were broadly welcomed, a few tenants were concerned around a spike in sales and suggested just letting RTB just die off, but the majority view was supportive of the proposals. There was discussion around lifting pressurised status to enable tenants to buy, but the majority view was that pressurised statues was there for a purpose and should not be lifted.

Q2 – Three years was felt to be too long, popular view was one year. Concerns over longer lead in time would lead to companies offering to buy for tenants and a spike in sales.

Social Housing

Q4 – In the main flexiblity welcomed, in particular for older people, but serious concerns around young people being perceived as less deserving than older people, should be monitored to ensure equalites maintained and upheld.

Agreement around 12 month rule and refusal of assingnations – less queue jumping was a common comment, allowing more houses to be allocated on need basis.

Agreement around owning a property being taken into account and what is being suggested in terms of offering a Short SST in some circumstances.

Adapted homes – agreement but with common sense and sensitivity a key concern.

General agreement over new prefernce categories sensible approach. TPAS disappointed that it has to be restated that any new allocations policy to be consulted on, this should be automatic as part of the obligations of the 2001 Bill on tenant participation, perhaps it’s a timely reminder to landlords of their obligations and will remind tenants of their rights.
Q5 - Generally welcomed, but a few comments around extension to 18 months – “can see the reasons for this, but housing officers don’t have to live next door to anti social behaviour.”
Some concerns expressed over support for tenants on Short SST and system only working with good support – hope landlords can afford the extra costs.
Need definition and clarification of what is anti social behaviour and what convictions would count as evidence to eviction.
Mixed view over probationary tenancies not being in Bill but consulted on in early stages, no consensus. Strong views on both sides of the argument.

Q6 – General agreement on strengthening tenants rights, and the obligation to enable tenants to be given the opportunity to discuss and appeal any decision.

Private Rented housing

Q7 – Strong agreement for First Tier tribunal, deep disappointment not introduced for social housing sector, 100% support for introducing similar system for social housing sector.

Q8/9 – Support for new powers for local authorities but in current financial climate and tight local authority budgets as powers are discretionary, doubts that they will be used to due cost.

Letting agents

Q10/11 – Majority support for a register and a system with “teeth” to deal with bad practice,

Miscellaneous

Q16 – Absolutely no support for the proposals to enhance SHR powers.

TPAS Scotland
28 February 2014
1. Highland and Argyll & Bute

Highland and Argyll & Bute is one of the 9 Regional Networks of Registered Tenants Organisations (RTOs) formed in 2008 and cover the local authority areas of Highland and Argyll & Bute. We are a committee of 10, elected annually, and generally represent the views of our tenant and resident members of 33 RTOs across our area.

2. General comments on the Bill

We welcomed being involved in the extensive consultations held on many of the proposals included in the Bill and we particularly welcome the proposals to abolish the Right to Buy and the provisions on social sector allocations and tenancies.

3. Issues not included in the Bill

We are disappointed that the proposal to create a Housing Tribunal for the social rented sector and the introduction of Probationary/Initial Tenancies are not included in the Bill.

4. The Bill

4.1 Right to Buy (RTB), Part 1

We are pleased that the Scottish Government has announced the ending of the Right to Buy and welcome this decision.

However, we believe the proposed transitional period of 3 years is too long and feel that this should be reduced to a period of one year from the date of Royal Assent.

4.2 Social Housing (Part 2)

Allocations

We agree with this measure as it removes an unhelpful barrier to landlords wanting to allocate to particular groups in specific situations and believe the Bill makes it explicit that removing this age bar does not mean that landlords can discriminate against particular age groups or that it contravenes the Equality Act 2010.

Probationary Tenancies (Initial tenancies)

The outcome of the Government’s consultation concluded that the majority of the sector, including tenant responses, were in favour of introducing Probationary
tenancies (or Initial Tenancies) and we are disappointed that it was dropped for this Housing Bill.

We strongly support the introduction of initial tenancies and support the introduction of probationary tenancies for all social housing tenants and believe that the benefits of introducing this outweigh any negativity especially when it has the real potential to help deal with tenancy problems, such as anti-social behaviour the cause of which may be identified, sooner.

**Short Scottish Secure Tenancies (SSST)**

We generally welcome the introduction of this SSST extended power.

**4.3 SHR Amendments.**

These changes were not the subject of previous consultation.

We strongly disagree with this provision and would like to see this removed from the Bill and that the consultation with tenants clause is retained.

We feel that tenants should always be consulted on issues as important as this and that consultation could be carried out quickly without jeopardising any actions that the SHR takes or requires the RSL to take to protect the interests of tenants and their homes.

**4.4 Private Rented Sector, Parts 3 & 6**

We are pleased to see the focus on the Private Rented sector and making it fairer and safer for the growing number of tenants relying on the sector. The difficult financial situation and the growing waiting list have made renting in the Private Sector the only housing option for many families and individuals, yet despite this growth there continues to be a lack of protection for tenants in this sector.

The Regional Networks feel that the regulation of the private sector still does not give adequate protection for tenants in this sector.

**Letting Agents**

We are disappointed that the proposed regulatory framework for letting agents falls far short of proper and full regulation similar to the way the social rented sector is regulated. We would like to see a mandatory set of professional standards for letting agents introduced and monitored. This will ensure proper checks and balances where there are disputes between Agents and Landlords/Tenants.
Tackling poor housing standards in the Private Rented Sector

We believes that the Bill does not go far enough and want effective and transparent mechanisms in place to ensure that Private Landlords adhere to the new legislation and that they will be monitored for compliance with the legislation.

4.5 Housing Tribunal

The decision not to introduce a Housing Panel for the Social Rented Sector in the Housing (Scotland) Bill is disappointing and we believe this has been a missed opportunity.

A Housing Panel for the Social Rented Sector would be more efficient in dealing with complex housing needs and vulnerable people and it would take less time than going through the court system.

Highland and Argyll & Bute
21 February 2014.
The Convener (Maureen Watt): Good morning—I mean good evening, everybody. I am so used to saying good morning.

Good evening and welcome to the sixth meeting in 2014 of the Infrastructure and Capital Investment Committee. The committee welcomes the opportunity to meet in Dumbarton as part of Parliament day, and we appreciate the hospitality of everyone who has supported us in meeting here in the burgh hall. We have had a positive day and discussed housing issues informally with local tenants and housing associations. We look forward to hearing the issues that will be raised during this formal session tonight, when we will hear from groups that represent tenants from across Scotland.

I thank all the members of the public here for taking the time to come along tonight. We have set aside some time after the meeting for a question-and-answer session, to allow you the opportunity to ask questions. I notice in the audience some people whom we met this morning, but I am sure that there will be more questions this evening. If you think of a question that you would like us to address, please use the paper and pens to jot it down and pass it to the security staff. We will also be able to take some questions from the floor.

Before we start the meeting proper, I remind everyone to switch off their mobile phones, as they affect the broadcasting system. Sometimes some people consult their minutes and committee papers on tablets, but nobody has their tablets today.

Agenda item 1 is the Housing (Scotland) Bill and we will hear evidence from tenants' representatives on the provisions of the bill. I welcome Ilene Campbell, director of the Tenants Information Service; Lesley Baird, the chief executive of the Tenant Participation Advisory Service Scotland; Hugh McClung, chair of the central region tenants network; Jennifer MacLeod, chair of the Highland and Argyll and Bute tenants network; and, last but not least, Kevin Paterson, chair of the Glasgow and Eilean Siar tenants network.

Gil Paterson is going to start off the questioning.

Gil Paterson (Clydebank and Milngavie) (SNP): I am really pleased to start this session, since I am doon the watter from Clydebank, which is in my own constituency. It is good to be down here with my close neighbours and colleagues: people who work closely together, being involved with West Dunbartonshire Council. As I said, being the member for Clydebank and Milngavie means that it is especially good to be here.

I will start off by asking about the Government’s vision for housing in Scotland. The Government’s aim is:

“that all people in Scotland live in high quality, sustainable homes that they can afford and that meet their needs”.

To what extent could the bill’s provisions support that vision?

Hugh McClung (Central Region Tenants Network): Thank you for inviting me to the committee to give evidence. It is something that has been on the cards for quite a while in terms of the work that the regional networks have been doing.

There is much to welcome in what is a wide-ranging bill, including its aspects on sustainability and protection for tenants as well as landlords. There are also provisions on social sector allocation and the private rented sector, which is an aspect that is much needed. We can discuss that later.

The networks have been pleased with the extensive consultations that have been on-going since 2012. My colleague, Jennifer MacLeod, and I were delighted to be part and parcel of one of the working groups that were involved in the bill’s development. We particularly welcome the proposals to abolish the right to buy. That will have a great effect on protecting council stocks and also help tenancies.

The Convener: Do any of the other panellists have any comments on the general provisions or whether the bill meets the Government’s vision?

Ilene Campbell (Tenants Information Service): I, too, thank the committee for the opportunity to give evidence.

The Tenants Information Service is a national training and support organisation. Over the past few months, we have, working with TPASS, organised a number of seminars and events throughout the country to find out tenants’ views. This evening we are hoping to provide feedback on their views, as well as those of our members.

The bill is wide ranging. I agree that its separate aspects have been subject to a lot of consultation. We are pleased to see that there is a lot of support for the abolition of the right to buy. The tenants
very much welcome the steps to ensure the supply of the much-needed social rented housing and that houses will not be lost. I think than an estimated 14 houses—

The Convener: I suggest that we keep the detail until later and just cover the general aspects of the bill.

Ilene Campbell: On the whole, we welcome the provisions on the right to buy and the private rented sector and the proposals on how tenancies will be managed with regard to the social rented sector.

Lesley Baird (Tenant Participation Advisory Service Scotland): I also thank the committee for the invite. It is always good to come along to give evidence.

As Ilene Campbell said, TPASS and TIS have been across Scotland gathering tenants’ views. The bill gathers together not only many of the hanging threads but good practice, of which there is a lot in Scotland. There was a lot of misunderstanding about the housing practice. Some parts of the practice were misinterpreted, although better interpretations of that practice were also offered. The bill has done well to pull the strands together to clarify the practice. That will help many tenants to have a better idea of their status and of housing practices.

Jennifer MacLeod (Highland and Argyll and Bute Tenants Network): First, thank you for having me.

When I first read the vision for housing a number of years ago, I thought how wonderful that would be. We are moving towards that vision, and it is indeed a wonderful vision for the people of Scotland to have satisfactory housing and that they should be happy where they are.

The Convener: Gil Paterson has a question. [Interruption.] I am sorry—I see that Kevin Paterson wishes to speak.

Gil Paterson: I am sorry to cut across you Kevin—I thought that you were going to let that question go by.

Kevin Paterson (Glasgow and Eilean Siar Tenants Network): Before we go any further, you should realise that I never let anything go by.

I thank the committee for inviting me to give evidence. I agree that the bill is wide ranging and ties up a lot of loose ends, although a lot of those loose ends should have been tied up a long time ago. The bill falls short in a number of categories and places, which I will come on to later when we discuss the detail. The bill is by no means a fait accompli and a lot of work needs to be done, especially as the aim is to head for that overall housing vision.

Gil Paterson: An issue that the witnesses were quick to raise in their contributions was about the process. I wonder whether the process that was put in place for the organisations was the right way to go about it. Was the process set out in a way that allowed you to engage fully? At this stage, I am interested in hearing about the process; we will question you on the issues that you raised later on.

The Convener: You are asking about the consultation process.

Gil Paterson: That is correct.

Ilene Campbell: There has been a lot of consultation on aspects of the bill. In the past few years, tenants have had the opportunity to be consulted. However, lots of other issues have arisen at the same time, such as welfare reform and the Scottish social housing charter. Our experience is therefore that there has been a lot for tenants and residents organisations to respond to, but consultation has taken place.

A couple of areas in the bill have not been consulted on, including the powers of the Scottish Housing Regulator. All our consultation events have highlighted that this issue requires further consultation.

Hugh McClung: Much consultation has taken place. A number of network representatives have been involved in sounding boards and working groups with the Scottish Government, and they have highlighted issues that should be considered in relation to the bill. Notwithstanding that, the public consultation process—on the right to buy, for example—was a great step forward. It gave local people the opportunity to choose whether they supported the proposals. The Government did well on that, and I commend it for that.

Lesley Baird: There has been extensive consultation. One of the most important things was to try to excite people about the issues, to entice them to come to events, and not to make the bill sound as if it was a done deal about a dry and dusty subject. We have worked hard to let people know that the Parliament is a listening and doing organisation and to give people evidence of how the Parliament has changed its mind after listening to people who receive services such as housing services. By stressing that the bill was not a done deal and that tenants’ views would count, we encouraged a lot of people to come forward who might not have done so in the past.

Kevin Paterson: I agree that the consultation has been good, but the Government consulted only tenants on a bill that will also affect potential tenants. Quite a number of people who are on housing lists and homeless lists have not been consulted, although the bill will affect them. The consultation fell short by not encouraging people
who are on those lists to give evidence and get involved in the consultation process. That was a weakness. The bill will affect people who are on housing lists, so they should have been consulted a lot more.

Gil Paterson: I asked about the process. The question that follows is whether you think that you have influenced the bill. Did the Government take account of and react to what you said?

Jennifer MacLeod: I feel that we have been listened to and that changes have been made as a result of what we said, but some issues and suggestions from tenants, which they felt were important, have been missed out completely. There are two ways of looking at the outcome, but we welcomed the consultation.

Hugh McClung: I concur with my colleagues. The process was structured, but the thoughts from the tenant perspective about probationary tenancies and a public sector housing panel, for example, were disregarded and those measures were not included in the bill. A significant number of responses to the consultation exercise on probationary tenancies said that the bill should provide for those tenancies, but that was not taken up.

I commend the processes to initiate thoughts; we were listened to and what we said and suggested was heeded. Some comments fell by the wayside, but the majority were heard.

Kevin Paterson: The involvement goes deeper than that. I was involved in the housing policy advisory group when the issues were discussed with Alex Neil back in 2009 and 2010, so we have been involved from the start. The issues that Hugh McClung raised were discussed by that group and included in the consultation, but there was a great deal of debate—shall we say—about whether putting them in the bill would be appropriate.

The involvement started early. The Government has been very good at involving the tenants movement in its decision making and, most of all, in its planning for future housing projects. As long as that continues, things will go from strength to strength.

Gil Paterson: Thank you for that.

Kevin Paterson: The tenants movement has been against the right to buy since the moment it was first envisioned. It has ripped the heart out of social housing in Scotland right from the Highlands to the Borders, and it has meant a tenfold increase in waiting lists. We are pleased to see it ending—it is about time—but we do not see why we will have to wait for three years. We do not know why that is.

At the moment, the level of right-to-buy purchases is falling off, but as the economic situation gets better it will creep up again. We think 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: I agree with Kevin Paterson. We feel that three years is too long, although I know that we have to make sure that people who have that right have the time to make up their minds.

At some of our sessions, some people expressed concerns about there being a spike in right-to-buy purchases if the right is going to be taken away, while some thought that it might just die out naturally. However, the majority of people said that they thought that action should be taken now, not in three years. There were also some people who had issues with the idea of unscrupulous companies offering to buy houses for people.

Therefore, one or two people thought that the right to buy could just be left to die out, but the majority of tenants at the sessions we held were absolutely behind stopping it now and not in three years. Someone suggested giving tenants a week to exercise their right to buy, but we thought that that was too short a time. There are certainly very strong feelings about the issue.

Pressured area status is there for a reason, and the majority of tenants felt that, if someone does not have the right to buy now, they should not be given the right to buy. There was some suggestion that that restriction could be lifted, but it was not a popular suggestion.

Hugh McClung: I answer Mark Griffin’s point by reiterating that we welcome the positive measure of ceasing the right to buy. As Kevin Paterson has said, 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.

I cannot answer the point about the difficulty with pressured area status. That is something for your legal representatives to work out. I do not know whether someone will launch a legal challenge once the period has elapsed. I cannot
see it, but that is my personal view. The network does not believe that there will be a challenge to pressured area status, but that is not to say that there will not be.

By and large, landlords will see an advantage to the protection of their stock, and tenants will have a better choice of home. I also agree with my colleagues that the three-year grace period is too long. Within the European convention on human rights, there is leeway about lengths of time, although it does not stipulate a length of time. I accept that people who have the right to buy have certain rights, but I cannot agree that it should remain for three years; one year is sufficient.

Jennifer MacLeod: I agree with one year. I was in two minds about the right to buy at the outset. I chose not to buy, but my family members took up the opportunity. In fact, one of them did a swap with somebody and moved to another house because it was more like the type that she wanted to buy.

Although I was happy for them and for many others, in a short time I could see the reduction in the number of houses that were available for rent. We have a right to rent as well as a right to buy. Over the years, the right to buy has done great damage to the amount of housing stock that is available, and I am glad that it is finishing. As Hugh McClung said, one year is enough notice.

Ilene Campbell: There is a great deal of consensus on the issue, and I agree with almost everything that has been said.

The two key points are supply and the impact on people who chose to buy but were not able to afford the maintenance and improvement. We see the massive issues that have resulted from the right. There is therefore real support for the abolition based on the considerations of supply and protection for people who do not want to be in that position, but it should be abolition for everyone at the same time. The critical point about the right to buy is that it is so complex that it must be clear when any change will happen and the right will end.

Most other witnesses are saying that the notice period should be a year, but the feedback that we got in the consultation that we carried out was that it should be 18 months to two years—certainly, shorter than three years. The main concerns are about forward planning for landlords at a time of recession and that people might feel under pressure to seek funding to purchase a property that they cannot actually afford. There is real support among tenants for abolition as long as it is clear for tenants who still have the right to buy what the bill means.

Mark Griffin: You touched on some of the difficulties with removing the right to buy in areas that have been designated as pressured areas. When the bill comes into force, it will not prevent any local authority from applying for pressured area status for any area. It is not inconceivable that the whole of Scotland could be designated as having pressured area status in the three-year period over which people will lose their right to buy. Do you have any thoughts on that measure being available to local authorities while the three-year period runs its course?

Hugh McClung: I would welcome pressured area status across Scotland for 100 years. I do not want one more house to go to the open market. It is a headache for landlords as well as tenants that tenants cannot get a home, to which they have a right, as is the Scottish Government’s stated aim.

Similarly, people who have a preserved right still have the right to buy. They have the right to a court challenge if they so wish. However, I do not think that there will be a big rush to buy in the three years after the bill receives royal assent—it does not matter whether the period is one year or three.

I welcome pressured area status. If every local authority in the land continues it for 100 years, I will be more than happy.

Kevin Paterson: That says it all, really.

Mark Griffin: If the bill goes ahead and the right to buy is ended, what responsibility will the Scottish Government, registered social landlords, local councils and organisations such as yours have to provide tenants with information about that and to advise them on how to exercise their right to buy if they choose to do so in the three-year notice period? What is the best route to make them aware of that?

Jennifer MacLeod: I feel that the houses were built for renting and not built to be sold. If somebody wants to buy a house, they can look for one and buy it. That might be more difficult for them but, as far as I am concerned, there should not be a right to buy—full stop.

Ilene Campbell: We recommend that guidance should be given on the right to buy—on key issues such as when the process will start and end and where people can get information locally. Tenants will have to contact their landlords to ensure that they know what rights they have. As an information organisation, we would like to have guidance, so that we can be clear about the information that we are sharing with tenants and landlords throughout Scotland. I recommend that the Government should issue guidance.

Lesley Baird: There is a responsibility to get information out quickly, before the mythology begins to take on a life of its own and before the insurance companies start knocking on people’s
doors to say, “We’ll buy your house from you and we’ll give you a fortnight in Spain. Just send it back to us again.” We really need to have the facts and guidance laid out clearly. At one of our sessions, we were asked how long an application that was lodged within the three-year or one-year period would stay live. For example, if I applied to buy the day before the period stopped, would I still have the right to buy in 10 years’ time?

We need to be absolutely clear with people—with no mythology, but just the straight facts—and that guidance needs to come out quickly. Whoever takes on that responsibility—I imagine that the Scottish Government would do that in the first instance and that it would go down to landlords—we would be happy to give people factual information to stem and scotch some of the rumours.

Kevin Paterson: I agree with Lesley Baird that getting the correct information out quickly is the way forward.

I will expand on Mark Griffin’s question. Many registered social landlords rely on right-to-buy receipts for their business plans. That is another thing that will come back to members when the right to buy is ended, because many RSLs will come screaming for compensation to the Scottish Government and will ask why the Parliament has taken away something that was written into their business plans and agreed when they took over the stock. That is another aspect of the right to buy that members will probably become aware of. Many RSLs will want to get the information out there because they will want to get right-to-buy receipts as part of their business plans. That is a warning shot across the bows.

Information to tenants must be correct and timely and in a form that they can understand. That is imperative. As for timescales, if somebody applies for the right to buy, it surely cannot be the case that they can hold it for longer than three months.

The Convener: On Kevin Paterson’s first point, it is interesting that we have heard RSLs welcome the proposal because it means that, when they go to the banks for finance, they will be more likely to get it, because their housing stock will be stable. Perhaps there are two sides to the argument, but you make an interesting point.

There are no further questions on the right to buy, so we shall move on. Paragraph 42 of the policy memorandum to the bill indicates that the Scottish Government is “committed to supporting home ownership in other ways, including ... the Low-cost Initiative for First-time Buyers”.

Do you have any comments about the range of schemes that the Scottish Government offers to support home ownership? Are they appropriate for tenants who might no longer have the right to buy and might now use those other schemes?

Kevin Paterson: A range of properties must be available to tenants, and there must still be a home ownership aspiration among tenants if we want to free up tenancies further down the line. Shared equity fills a gap in the market for people, but factoring legislation has caught a lot of people out when buying shared-equity flats. We have had a number of tenants who have bought LIFT properties with a 20 per cent share held by the Government and who have suddenly been hit by factoring charges that they do not understand. Sometimes, those factoring charges are as much as their mortgage payments.

There has to be a range of products, which must be the right products to allow people to fulfil their aspirations. We in the tenants movement see nothing wrong with people aspiring to buy houses; we just do not want them to buy social housing. If the Government wants to make proposals that will help them, as long as it does not use money from the housing revenue account or housing receipts that RSLs have brought in, that is fine by us.

18:30

The Convener: The point about people not being made aware of factoring costs was brought up in a recent inquiry by the Justice Committee.

Hugh McClung: Funding for assistance with mortgages is broadly to be welcomed, as those who wish to buy in the private sector can get an initial leg-up—forgive the terminology. The trouble is that the private sector housing market is volatile. We have seen boom-and-bust regimes in recent years with regard to house prices and so on, and the much-maligned mortgage-to-rent schemes came into play because people could no longer afford their mortgages. I would welcome any scheme that is brought in to help people to purchase their own homes if they wish to do so.

Ilene Campbell: I agree with the points that have been made. The key thing is that people understand what they are purchasing and buying into. The key lesson of the right to buy was that people must understand fully the responsibilities that go with the option. No one would deny people the right to choose to purchase, but information has to be available about what exactly is meant by terms such as “shared equity” and what the implications are of getting involved in such schemes.

The Convener: Part 2 is about social housing, on which Alex Johnstone has questions.

Alex Johnstone (North East Scotland) (Con): I will ask about the allocations policy. My first
questions will give people an opportunity to express their views. What do you think about how social landlords allocate their housing? Do they need greater flexibility? If so, why?

**Kevin Paterson:** We in the tenants movement believe that allocations should always be needs driven. Taking into account other aspects of people’s lives is fair enough, but the tenant’s need should always be a paramount concern when it comes to allocations.

**Hugh McClung:** We have to think about tenants’ aspirations for their lifestyle and their family commitments. A young couple starting out, who might aspire to have a family and who might not be able to afford private ownership or renting, can always look to a social landlord for rented accommodation. The bill goes some way towards ensuring that that can happen and that the social aspect—whether someone is homeless or is living in underoccupied accommodation, for example—is taken into account. If we can take that approach, while ensuring that it operates alongside the support packages that are in place for first-time tenancies, we will go a long way towards doing things right.

**Lesley Baird:** I agree with flexibility in allocations, as do many of the tenants to whom we speak across Scotland. I do not know whether the committee wants to get into detailed consideration of the issue, but there are concerns about considering age in relation to allocations. The proposal is wonderful. However, people still think that sheltered housing is for old people only, whereas it is for people who have a specific need. 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 welcome the opportunity to take age into consideration. We used to be able to put together people of a particular age or ability and people who had lifestyles that did not clash. We must be aware of sensitivities around lettings. The more flexibility, without excluding people, the better.

**Ilene Campbell:** When we ask tenants about the allocations policy, they often tell us that they do not understand the legislation and how it applies in practice. Some of that might be based on people’s experience, if the allocations policy has not resulted in them getting the house that they want. However, we often work with groups that tell us that they find the system to be inflexible. Tenants say that they would welcome more flexibility.

Probably every witness has a different view on the age issue. The tenants whom we spoke to welcomed the ability to take age into consideration, for a number of reasons. People talk about the past, when decisions were taken to avoid lifestyle differences and to put people of certain ages in appropriate and suitable houses. The key thing about flexibility is that it must be clear that it is being used to meet housing need and not to discriminate. Most tenants and residents say that they want an allocations policy that is common sense and flexible and which results in sustainable communities. Creating sustainable communities is at the heart of the issue.

We welcome the new requirement for consultation on any changes to an allocations policy. As a result of the bill, allocations policies will change, so we welcome that as a positive step.

**Hugh McClung:** We do not see younger people as the ogre. As Lesley Baird said, we need a measure of sensitive letting. We need to work with younger people, particularly on sustainability. The starting point when we work with younger people is how we best integrate them into society or local housing. As often as not, young people have short-lived tenancies, and they tend to move from pillar to post fairly quickly. To help them to sustain tenancies, it is better to have a properly integrated policy, which needs a bit of flexibility. We need to look at that.

**Kevin Paterson:** I can speak only for Glasgow, where the tenancy sustainability rate for 16 to 25-year-olds is 68 per cent—after a year, 68 per cent are still in their tenancy. That figure is not particularly low, and it is certainly not the case that most young people move on in that period. After the Heriot-Watt University survey in 2006 on how young people should be supported to go into tenancies and how tenancies can be sustained, along with the work of organisations such as Aspire and Ypeople, many young people in Glasgow have been brought into test tenancies and given the chance to have their own tenancy.

In the north of Glasgow, Aspire has test tenancies that allow young people to have their own home but to be supported in it and then to look into getting their own tenancy. Aspire and Ypeople have brought such tenancies on a long way. Ypeople shows young people not only how to keep their tenancy but how to join a community and get involved in decision making. It empowers them to get engaged in the community. 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.
The support that those organisations provide can last for between six months and two years, but the young people are not forgotten as they move into tenancies. If we want 16-year-olds to behave like adults, it is vital that we treat them like adults. I hope that the committee has received evidence on the bill from Aspire and Ypeople.

Alex Johnstone: Just to complete that, I have picked up a degree of positive reaction to the increased flexibility. Mr Paterson, are you saying that you are opposed to it?

Kevin Paterson: No, I am not opposed to flexibility in allocations; I am opposed to not meeting the needs of the people who need housing. If someone needs a house and the house is available, they should get it, regardless of their age or anything else. If someone needs support to keep a house, they should get that support.

If we give local authorities and RSLs flexibility and they do not have to give homes to young people, they will take the cheapest option. If they put a young person in a home, they will have to provide a support package, which will cost a lot of money, so they will see if they can use the flexibility in allocations to put in somebody else. I would hate to think that, in the end, the decision will come down to money—it should always be about housing need.

Alex Johnstone: We have talked about the idea of grouping people by age, but could the flexibility be used in any other way? Should we consider putting anything else in the bill to allow greater flexibility when needed?

Kevin Paterson: Grouping people together in sheltered housing is fair enough when people have needs and those needs are met in a sheltered housing unit. However, if we are talking about a mixed community, the flexibility in allocations can be used to keep that mix, but the need for housing should always drive the decision. A single person will not be given a three-bedroom family house and a family with three kids will not be given a single-bedroom tenement flat. There is always that flexibility in housing allocations. Houses are not allocated according to people’s wants; they are allocated according to the needs of families.

Alex Johnstone: Yes, but there has been a certain lack of flexibility in the system over recent years. The bill proposes to bring back a degree of flexibility. Is there anything else that we should consider during the passage of the bill that would give the desired flexibility to allocations policy?

Kevin Paterson: Build more houses.

Alex Johnstone: There is not a section in the bill about that, but we will deal with that in other ways.

Jennifer MacLeod: We need to consider the different needs that people have for housing—we need to consider their family situation as well as their age. We must also consider the fact that it takes a long time for an estate to gel when a number of people move in. It takes a long time for cohesion to build up in how the residents or tenants work together. That does not happen right away.

It is important to be sensitive with letting, which is why I welcome the flexibility aspect. Someone could want a house fairly near an older person in the family. If they do not come right to the top of the list when a house is available near that family member, not just because they like the family member but because they need to help support them, that is a problem.

In other cases, people’s support systems are around them in a particular area. It is unfortunate that some of the larger houses were sold off, because I know of a case in which a couple with seven children waited and waited in their three-bedroom house. They were offered a house quite a distance away but their support system was around them in our area. They eventually moved with their seven children into a four-bedroom house, but they had to wait and wait when there was an urgent need. Okay—maybe they should not have had seven children, but that is not part of the bill.

Alex Johnstone: We know what is in and what is out.

Jennifer MacLeod: When the couple were expecting the fifth and sixth children—twins—they were waiting to get a larger house. They turned down houses that were further away and they had seven children before they got to move. There needs to be more sensitivity, thought and flexibility. I welcome the flexibility aspect because of examples such as that one, in which children were involved and the family needed local support. There are also ill people or older people who need a bit of extra support. Houses are needed for their family members so that they can be close to them.

Hugh McClung: The issue is not what else you could put into the bill; it is how you allocate what you already have. In that respect, the bill is specific about certain categories. It looks at expanding how those categories are channelled into the allocation system. It is true that the allocation system is complicated, but if you can make it a bit more flexible, as the bill proposes, you will go a long way to doing what you need to do to ensure that people are housed correctly and that the community that they are involved in is sustainable. If you get that right, you will be doing fine.
Alex Johnstone: The bill also makes changes to qualifying periods for joint tenancies, subletting, assignations and successions. What are your views on those provisions? Do you agree with the Scottish Government that they will help social landlords to make the best use of their existing housing stock?

Lesley Baird: Absolutely. There have been concerns across communities about perceptions of queue jumping, particularly when it comes to assignations. The guidance will be all, because people have to know that if they begin to cohabit with someone, they have to let the landlord know about their status so that the clock starts ticking, if you like. A lot of information will have to be given out, but we definitely support the proposals to change the qualifying periods for assignation and subletting.

As we have all said, housing is based on need and there have been some inappropriate assignations. It has been suggested that the option of assignation should be taken away from tenants and given to landlords. However, we still want tenants to have the ability to assign, but assignation has to be used a bit better.

Ilene Campbell: I totally agree with Lesley Baird’s comments. The feedback that we have received is that people think that the provisions are fair and clear. However, not everyone is aware that the property has to have been their main residence, so that needs to be made clearer. 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.

There is support for the provision that, if someone wants to assign a property, they would not be able to do so if it would result in underoccupation or they were not in housing need. However, on the whole there is support for the changes.

Kevin Paterson: I agree, too. This is probably one of the most important aspects of the bill as far as the tenants movement is concerned, because one of the complaints that we get as tenants’ representatives is based on the perception that there is queue jumping. There is a perception that people move in with their parents and get the house assigned to them. With the right to buy, in particular, we noticed that older people were having younger people move in with them who would buy the property and move it on. We support the provisions.

Hugh McClung: I sound a note of caution. Although I accept—as do network representatives—that there is broad support for the extension of timescales for assignations and so on, we have to be careful about how the determination is made.

For example, there might be a qualifying need for someone who is extremely ill. There might be mitigating circumstances in which the period of 12 months cannot be reached. Forgive me for suggesting this, but the person might be terminally ill. Do we have the flexibility to look at something else? The Scottish Government might need to give some kind of direction on that. I raise the issue only on the off-chance that such circumstances arise.

Alex Johnstone: We can probably raise that issue with the minister.

The Convener: As there are no more questions on lettings, we will move on to antisocial behaviour.

Mary Fee (West Scotland) (Lab): I will focus on antisocial behaviour and short Scottish secure tenancies. The bill contains provisions that are aimed at giving social landlords more tools to tackle antisocial behaviour, including allowing landlords to suspend an applicant from receiving an offer of housing, widening the circumstances in which landlords can use short SSTs and simplifying the procedure for evicting tenants. Can you give me a flavour of the impact of antisocial behaviour on the areas that you cover? What difference will the new proposals make compared with the current powers?

Hugh McClung: This has been a long time coming. Antisocial behaviour has been a bone of contention in excellent communities. When, a few years ago, the then Minister for Housing and Communities, Alex Neil, asked network representatives to look at the strategy on antisocial behaviour, a late colleague wrote a document called “Declining Communities” that was presented to Alex Neil and which expressed the view that what was wrong with the system was that it took so long to take up evidence. In respect of antisocial behaviour, there is a catalogue or diary of events, there are witness strategy proposals and there are applications to the courts. All those things take time and take their toll on communities.

I am not saying that everyone is a bad penny, however, or that every community is like that; that is not the issue. 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.

However, it is disappointing that, although tenants had proposed a probationary or initial tenancy to ensure that all new applicants would go
through a 12-month period under an SSST, that proposal was unfortunately not included in the bill. Network representatives felt strongly about it, given that, in a consultation exercise that was conducted by the Scottish Government in 2012, 67 per cent of the landlords and tenants who responded supported a probationary tenancy—or an initial tenancy, as the network likes to call it—which would have given landlords the time and wherewithal to identify problem areas. I reiterate that the conclusion was not that everybody would automatically be labelled an antisocial person, but the provision would have given landlords time to identify such people.

It is difficult for local landlords to identify people with antisocial tendencies. A 12-month initial tenancy would have given landlords time to find out whether a person was of that nature. If they turned out not to be of that tendency, they would revert straight to the Scottish secure tenancy, having gone through that 12-month probationary period.

Although I support and welcome the provisions in the bill under which landlords have the exclusive power to suspend a Scottish secure tenancy, I think that it would have been better to have a probationary tenancy.

The Convener: I suspect that we might not get agreement on that.

Kevin Paterson: That was an awful long time to spend on something that is not actually in the bill, but that is fine. However, I have to say that initial or probationary tenancies are unacceptable. They are an erosion of the Scottish secure tenancy and take away tenants’ rights. We will fight to our dying breath to keep the Scottish secure tenancy. From the rent strikes of 1915 in Glasgow right the way through to the centenary of Mary Barbour’s army in 2015, we will fight for the Scottish secure tenancy.

Why should everybody be tarred with the same brush? Why should people be accused of possibly indulging in antisocial behaviour? Would it be right to accuse somebody going into Marks and Spencer of being a possible shoplifter? If staff were to follow someone around all the time or not let them into parts of the shop, saying, “Sorry, you haven’t proved that you’re not a shoplifter, so you can’t come into this part of Marks and Spencer until you have,” that would be unacceptable. In my opinion, and in the opinion of the Glasgow and Western Isles tenants network, it would be totally unacceptable to bring in probationary tenancies, and we were pleased to see that they are not in the bill.

Jennifer MacLeod: There is closed-circuit television in Marks and Spencer, and there are a whole lot of security people watching the customers. With regard to an initial tenancy, if everybody is on a level playing field or in the same boat—whichever way we want to look at it—nobody can point the finger and say that somebody only has a short tenancy because he or she is being watched to see how they behave. If everybody is in that situation, there will be none of that.

I know that people on short-term tenancies face difficulties with getting houses furnished and carpeted or whatever, but I am sure that something could come out of that and that the majority of people would look after their home, be a good tenant and be able to continue to a secure tenancy. I should say that I am very much in favour of initial tenancies, but not probationary ones. There is a lot in the wording.

Ilene Campbell: There is probably no consensus on the issue, and I probably support the point that, by taking people’s rights away like that, you are almost saying that every new tenant could do something antisocial. However, if you asked tenants throughout Scotland, you would not find any consensus. When we checked, we found extreme and polarised views, depending on people’s experiences.

TIS would not advocate probationary tenancies, because we do not think that there is enough evidence at this stage to suggest that they would have a major impact on antisocial behaviour issues. Tenants will welcome anything that strengthens landlords’ powers to deal with antisocial behaviour. Whatever we as a group of people here think, that issue is at the top of the agenda in every single community in Scotland, and is based on people’s perceptions and the reality of what is happening.

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. It is not the Government’s role to resolve the antisocial behaviour issue.

Another critical issue is funding and ensuring that the resource and support services are funded on the ground and at the local level to do this work.

We welcome the provisions, which tighten up what already exists. Antisocial behaviour is a major issue for tenants, but the critical issue is funding to ensure that local initiatives and organisations work together.
Lesley Baird: I agree with just about everything that has been said, which leaves me on the fence. There was no consensus in any of our sessions; instead, there were strong views both for and against probationary tenancies. I think that it was agreed that the word “probationary” was unpleasant and that, if there were to be initial tenancies, that word should be taken out.

It was suggested that SSSTs could be extended. Others said that that was all well and good and although people could understand why the profession might want that, I heard the response, “You don’t have to live next door” a couple of times. We need to ensure that, whatever happens, the support and infrastructure exist and people work together.

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 an SSST would be offered and it is important that there is absolute clarity in those areas.

People were keen for tenants to receive a lot of support throughout their tenancies to help them to sustain them. It was really good that nobody played the youth card or said, “Oh, it’s all young people.” However, tenancies need to be sustained, which will cost a lot of money, and there was a fair bit of scepticism about the funds required to do that. People said that it would simply not happen.

In the main, although there was no consensus on probationary tenancies in any of our sessions, there was absolutely consensus on providing support and helping people stay in their homes.

The Convener: It is interesting that you said that about money, because earlier today we heard that an eviction could cost between £25,000 and £32,000. Preventing evictions and keeping people secure in their homes is a matter of spending to save.

Kevin Paterson: It is indeed about putting in place multi-agency support.

I go back to probationary tenancies, as I want members to understand who would be caught up in them. Anybody who changes or transfers property will get a new tenancy with their landlord, so they would have to go on to a probationary tenancy. They could be somebody who has been in their house for 30 years without a blemish on their character and who may have to move to downsize. If they took on a new tenancy with their landlord, they would have to go on to a probationary tenancy, which does not seem fair. We cannot envisage any point at which a probationary tenancy would work. When there has been antisocial behaviour, the tenant could revert to a short secure tenancy but we cannot see the merit of tarring everybody with the same brush.

19:00

Mary Fee: For a person whose application has been suspended, the bill will introduce a right of appeal to a sheriff. Is that the right way to go? Will it be beneficial?

Kevin Paterson: I go back to why we would have liked to see a housing panel for social housing as well as for private rented housing. We believe that there should be a more simplified way of going about things and that there should be a first-tier tribunal that people can go to instead of having to go to the sheriff court all the time. However, there has to be a right of appeal, and if that right of appeal is to the sheriff, so be it.

Mary Fee: We have heard evidence that RSLs should be able to go to the first-tier tribunal, which is something that we will look at.

Are there any other views on that before I move on?

Hugh McClung: I would support appeals going to a first-tier tribunal. The more important point in what Kevin Paterson has just said relates to the long-winded court process, if I may say so. The bill proposes a first-tier tribunal to look at disputes, antisocial behaviour appeals and suchlike. Lord Gill, an eminent member of the judiciary, has suggested that that should not be considered at all and that courts should deal with threats of eviction and suchlike. I would say to Lord Gill, “Sorry, that’s not on. It takes too long, it’s not high on your agenda and it costs local authorities thousands.” Therefore, we welcome that provision. However, if, at the end of the day, appeals have to go to before the sheriff, so be it.

Jennifer MacLeod: When we, along with many others, came up with the idea, our thinking was that it would be something like the tribunal for people who believe that they have been unfairly dismissed. Their peers—people who understood their situation—would deal with their case. As it is, not only money but hours and hours of staff time go into an eviction—time that staff could spend doing other work that would benefit tenants. If a case gets to a sheriff who happens to be very much against evictions, it just gets thrown out. It is one person’s decision.

I am not pro-eviction; I would rather that evictions were avoided. I would prefer something like a panel or tribunal, which would look at all the different aspects, with a multi-agency approach taken to solve the problem, rather than going for eviction. Of course, eviction is such a costly affair that it is usually an action of last resort.
Mary Fee: That certainly mirrors some of the evidence that we have heard today about the length of time that it takes to get to the point of eviction. Quite often, when a case gets to a sheriff, if the sheriff is not supportive of eviction it does not happen and the landlord and the tenant are back to square 1, as are the tenant’s neighbours.

Govan Law Centre told the committee that

“Tenants do not want to lose their homes.”—[Official Report, Infrastructure and Capital Investment Committee, 22 January 2014; c 2464.]

It also said that more support should be available for tenants and that agencies should work more closely with tenants who are involved in antisocial behaviour. Do you have any views on other protections that there should be for tenants who are on an SSST?

Jennifer MacLeod: There should be more support, which I realise would be costly. However, we must also consider the fact some people have mental illnesses that cause them to behave differently from the norm—whatever that is. Nothing is really going to fix the problem for a person who suffers from a mental illness. We need to do a lot more thinking about that, because evicting such people is not the answer. I think that support from different areas is needed.

Mary Fee: Especially given the cost of evictions.

Jennifer MacLeod: Aye, and the fact that the person has to be re-homed. Someone who is seriously mentally ill is not fit for eviction and cannot cope with homelessness. We need to think about that.

Lesley Baird: I agree that, to help people sustain their tenancy, a lot more support is required, and that support should be at the level that they need. Eviction is always a last resort, because landlords want to keep tenants, not throw them out. If there was such a panel, it should be a panel of peers—in that sense, it would be a panel of experts. We have heard of cases in particularly remote rural areas where a visiting sheriff comes from one of the cities, finds the case very trivial and says, “That would never happen in Glasgow,” or wherever, so the person is allowed to stay in the tenancy. A more cohesive approach—one that is understood—is required. It would certainly be very expensive, but we would like to see more support put in to help people sustain their tenancies.

Kevin Paterson: A multi-agency approach is vital, but RSLs must have strategies in place to deal with antisocial behaviour. A lot of the onus is on RSLs to have support agencies on their books so that they know where to go to when such things happen.

I am going to shout about Glasgow again—I can speak only about Glasgow as that is the area that I represent at the moment. Our tenant sustainability strategy has an antisocial behaviour section that shows the sort of support that will be given not only to victims of antisocial behaviour but to people who are behaving in an antisocial way and who sometimes do not even know it. It is about finding out the reasons for the antisocial behaviour. However, the fact is that there are times when, no matter what we do or what support we put in, people will continue their antisocial behaviour until we evict them.

With a housing panel, there would not be the fear factor that there is with the sheriff court. A panel would involve a lower tier of judiciary for both tenants and landlords. A lot of the people with whom I work find the sheriff court letter terrifying. There is nobody there for them when that letter comes through. There should be support available for people when they get a letter saying that they are being evicted or accused of antisocial behaviour. We should support those people, as well as the victims.

Ilene Campbell: There are lots of really good initiatives. You probably heard about them over the past few weeks when you heard from other organisations. Most local authorities and housing associations now have staff whose focus is on being the tenancy sustainment officer. Such officers try to ensure that people are able to stay in their home and are able to afford it. Obviously, given the welfare reform proposals, there are critical issues for the future of social rented housing in Scotland. A lot of work is already taking place. If a tenant is suffering from antisocial behaviour, that is the most critical situation that they can experience. However, the landlord must adhere to the legislation and good practice, so such situations are a real challenge.

However, as I said, a lot of good work is happening out there, and it really just has to be developed. An extended short Scottish secure tenancy of 18 months with support in place could be positive for a tenant who just needs a bit of support to be able to stay in their house. There is always going to be a balance between supporting the person who is the victim of antisocial behaviour and supporting the person who is causing the problem. That is why antisocial behaviour is always such a controversial issue.

Hugh McClung: It is fair to say that it is not really necessary to put something else into the process to reduce an SST to an SSST. Colleagues around the table have already stipulated the support measures that are required.

That said, there is a long process before we get to that stage, which we all know about. Within the support mechanism, we could avoid reaching the
stage at which an SST is reduced to an SSST. I know a lot of landlords who do that already. They tell the tenant that if they continue with their behaviour, they will lose their home or the right to a secure tenancy. If we stay with the approach of clearly explaining that and building up support measures, it will be fine.

Mary Fee: So it is about support and intervention.

Hugh McClung: Yes.

Mary Fee: That is fine. Thank you.

The Convener: Does anybody else have questions on antisocial behaviour?

Jim Eadie (Edinburgh Southern) (SNP): I want to return to the theme that Ms Campbell identified, which is the constant challenge of balancing the right of tenants to a secure tenancy—which, as Kevin Paterson said, was hard won over many years—with the need to tackle antisocial behaviour. I think that Hugh McClung made that point effectively when he said that the process often takes its time and takes its toll on the families that are affected. I would like to know from each of the panel members the extent to which the bill has got that balance right. I am referring specifically to section 15, which seeks to simplify the eviction process in very serious cases of antisocial behaviour.

The Convener: Who would like to go first on that?

Hugh McClung: We have already talked about simplifying the process. For example, we could look at having professional witnesses, and some landlords have identified members of staff for that purpose. There is often no corroborative evidence, or perhaps people are unwilling to give evidence. If we could simplify the process by reducing what is required to identify an issue and if we could have a support mechanism, I would agree that we could then go to court—but only as a last resort; nobody wants to support evictions.

Jim Eadie: So you support the bill’s proposals.

Hugh McClung: Yes.

Kevin Paterson: Are you talking about housing allocations?

Jim Eadie: No. I am talking about antisocial behaviour and the proposal to simplify the eviction process, as set out in section 15.

Kevin Paterson: Right.

We agree that antisocial behaviour is a problem for both the victim and the person who is being antisocial. However, we also want to be quite careful about the erosion of rights. In addition, although antisocial behaviour might be prevalent in a household, the whole household might not be involved in it.

Jim Eadie: What conclusion have you come to on the proposals, or have you still to reach one?

Kevin Paterson: I have still to reach one. When flesh is put on the bones at stage 2, it will be a lot easier to see what the direction is in that regard. That is my honest answer.

Ilene Campbell: Our consultation has shown that there is tenant support for simplifying the process. There is support for mandatory eviction and for the process of seeking repossession to be made easier when someone has gone to court and been given a sentence. I think that the right of appeal means that there is a balance. The conversion of a Scottish secure tenancy into a short secure tenancy can also be appealed. Rights of appeal are covered from a human rights perspective.

When I checked the committee’s previous evidence sessions, I saw that, because of people’s right to appeal, the legal profession is very wary of a knee-jerk reaction when it comes to changing the law to make the process easier. Our view is that tenants support making the process simpler and a right of appeal to support people. However, there is a dilemma when there is a mandatory eviction but no reasonableness test, which means that there is no detailed consideration of whether it is reasonable to evict. Although a person would still have a right of appeal, there is a bit of a contradiction there. How would that work out?

However, on the whole, I think that there is support for the bill’s proposals on simplifying the eviction process.

Lesley Baird: We support them, too. On the issue of reasonableness, as I said, we need to be clear about types of conviction. However, I think that that will become clear at stage 2.

Jim Eadie: So you support the proposals, subject to further clarification.

Lesley Baird: Yes.

19:15

Jim Eadie: Would Jennifer MacLeod like to say something?

Jennifer MacLeod: No, I just happened to be looking at you. [Laughter] Gazing in wonder.

Jim Eadie: I do not know whether to be flattered or concerned by that statement.

Do you happen to have a view on the bill?

Jennifer MacLeod: I agree with a lot of what has been said. That is about the best that I can do for you. I can think of instances that we could talk
about, but the people would be able to identify themselves, so I would be better not doing so.

**The Convener:** If there are no more questions on part 2, I will move on.

We have already mentioned private rented sector tribunals, but I think that Alex Johnstone might have a related question.

**Alex Johnstone:** A short question needs to be asked. There is a proposal for tribunals for the private rented sector. Earlier today, we spoke to someone who is very keen on tribunals being extended to the social rented sector. What do you think of that suggestion?

**Hugh McClung:** I fully support that suggestion. Tribunals should cover disputes in the social rented sector, impacts on social housing tenants, resolution of disputes, long waiting periods before disputes are heard and so on. Problems arise when people go through the judicial system: the sheriff does not want to know; it is his lunch time; or he is having a hard day with a murder case or something like that and the housing case is not a priority.

The proposal should have been included in the bill. I have it on the authority of the Minister for Housing and Welfare that it might be included in the bill at a later stage. However, regional network representatives would like it to be included now. Further, we would prefer it if there were a team of housing experts and lay people who could deal with the matter in the public sector.

**Alex Johnstone:** We have got that message loud and clear.

**Hugh McClung:** Good—thank you.

**Ileine Campbell:** We came across the same level of support for the proposal, but a lot of tenants do not know what it would cost and what the implications would be. It is essential that there is consultation on the matter in the social rented sector so that people are fully aware of the costs and the benefits.

**Jennifer MacLeod:** Although there has been no consultation specifically on the matter, I believe that, in the consultation that did take place, landlords and tenants suggested that such a tribunal would be a good idea.

**Lesley Baird:** We support the idea. There was great disappointment in our consultation responses that it was not in the bill.

**Kevin Paterson:** I agree. That was the biggest disappointment about the bill, for me. However, I agree that there should be consultation about how the housing panels will work. Tenants need to be clear about how the housing panels will be made up and how they will work.

**The Convener:** Some of that is in the bill, but I am sure that it will be much more detailed in secondary legislation.

Part 4 of the bill concerns letting agents. Gordon MacDonald has some questions on that.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** Are you aware of any problems in your area arising from rogue letting agents? Do you support the bill’s proposals? What benefits do you think that they will bring to tenants and the wider community if they are introduced?

**Hugh McClung:** I am aware of problems in my area. I live in Stirling, which is not far from here. I could relate a couple of stories about letting agents who are somewhat cagey in their operations, shall we say.

The bill proposes to legislate for a register of letting agents. It is a common, if misguided, belief that that will allow letting agents to police themselves. For example, in a situation in which there were three letting agents in a town, two of which were registered and were behaving impeccably and one of which was not, the other two would ensure that the one who was not behaving properly came into line. However, that will not happen. There must be clear, proper and full regulation, including compliance with all the legislative processes, and we need to monitor and observe how they are operating. Letting agents should have a set of professional standards or a code of conduct. The bill proposes that, but you must look at the checks and balances of how it will operate.

**Kevin Paterson:** In the consultation, we said that we were worried about where the resources for enforcement would come from and what shape the enforcement regime would take. We are worried that local government resources will be used to chase private landlords. The bill is a positive step forward, but perhaps it does not go quite far enough.

**Gordon MacDonald:** How would you strengthen it?

**Kevin Paterson:** First, I would not only make what is proposed mandatory but set it down in law so that people know exactly what they have to do and what the standard is. I would go as far as to say that we should control the rents in the private sector by making them a certain percentage above social rents within certain areas.

The quality of some of the private rented housing in Glasgow leaves a lot to be desired. We visited houses in Govanhill and in the Gorbals in Govan during our consultation, and the way in which some people are treated is absolutely ridiculous. It should not be happening in a modern Scotland. People wait weeks and weeks for
repairs to heating systems, they have water switched off because letting agents want them to move out, and things like that. We have to crack down on some of the letting agents. Whether the bill works will all be in the enforcement.

Ilene Campbell: I totally agree with all the previous points. We whole-heartedly support a statutory code as a minimum standard, which is still to be consulted on. Kevin Paterson raised people’s concern that it is great to have a code, but it has to be enforced, and there are questions about who would have that responsibility. We would welcome a code, but it would be helpful for the advisory groups to have more dialogue and debate with tenant representatives post the bill.

Gordon MacDonald: I have one last question about private letting. Are there any other problems with the existing legislation? Are you aware of any other issues with the private landlord scheme, the deposit scheme or whatever?

Kevin Paterson: The number of illegal evictions that are taking place and the lack of follow-up on them is worrying. Landlords in the private sector seem to think that they can just chuck people out when they want to, or when they want to put the rent up. A negative aspect is that people are left with nowhere to go when those things happen. They do not get their security deposit back and they are more or less forcibly evicted from the property. That is a problem in Glasgow, and we really have to look at bringing criminal charges against some landlords, taking them to court and putting them in prison for illegal evictions and the methods that they use against their tenants.

Hugh McClung: Another issue that I have come across in recent months and years is that, since the introduction of the scheme whereby deposits go to a third party, which we welcomed, there have been suggestions that letting agencies have been charging for the production of a lease or tenancy agreement. That is quite extraordinary. It is really outlandish behaviour.

There are good landlords out there. They may own only one property or they might own 100. They go through a letting agency to do the recruitment process, but the letting agency does not bother its backside other than to sign somebody up. It is not interested in the repairs mechanism or whether the tenant is satisfied with their home—all of that goes by the wayside. The process that is proposed in the bill will go along way towards reducing that problem, but it needs a little bit more.

Ilene Campbell: To reiterate what Hugh McClung said, we get a lot of calls from private rented tenants about things like not being able to get their deposits back. That is a challenge for students and younger people, in particular, who are vulnerable because of that. People also call about the poor quality of repairs. Anything that the Housing (Scotland) Bill can do to ensure a higher standard of repair in the private rented sector would be welcomed by everyone.

Lesley Baird: Most of the codes that are in place for the private rented sector are voluntary. The sector is a huge part of our society because a huge number of people live in private sector properties, so anything that will make those codes statutory and give them teeth is important and would be welcomed by tenants throughout Scotland.

Kevin Paterson: It is about teeth and support, but it is also about the quality of the product. The letting agent is the go-between between the landlord and tenant and it is as much in the landlord's best interests for the letting agent to behave properly as it is in the tenant's. If the enforcement can be given teeth, that will really make a difference.

The Convener: The Scottish Housing Regulator has powers to direct the transfer of RSL assets under the Housing (Scotland) Act 2010. However, before it does so, it must consult, and have regard to the views of, tenants and secured creditors that hold securities over the houses of RSLs. Section 79 of the bill would create a narrow exception to the regulator's duty to consult, and have regard to the views of, tenants and such creditors in cases in which RSLs find themselves in financial jeopardy. Are you content that those proposals are proportionate and in the interests of tenants?

Lesley Baird is champing at the bit to answer that.

Lesley Baird: 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. People were horrified by it.

The Convener: Where do you think that it has come from? Why has the Government come up with it?

I will let you think about that. Perhaps Kevin Paterson has an answer.

Kevin Paterson: If I go back over my housing policy advisory group papers, I see that a number of RSLs were in deep doo-doo, shall we say, with their funders and there was a panic reaction when people looked at the situation and realised that they might not be able to put measures in place with the new housing regulator that was no longer part of the Government.

It has always been a slippery slope to self-regulation. When the Scottish Housing Regulator was made independent, we had worries about
that. Section 79 of the bill simply seems to be another erosion of tenants’ powers over the regulator.

When the proposal came to the Western Isles forum of tenants and residents associations, there was absolute horror at it because, when we agreed to transfer, one of the parts of the transfer agreement was that, if anything ever happened that would create a problem with our RSL, the council would step in and take back the houses. That was also a thought for River Clyde Homes and other organisations that undertook a stock transfer. Then, suddenly, the Government has come along and trampled all over transfer agreements. There has been no support whatsoever for the Scottish Housing Regulator to have that power without consultation.

Hugh McClung: I concur totally with the two views given thus far. It would be abhorrent for the power to remove the assets and social aspects of an RSL without consultation with its tenants to be enacted.

Tenants are practically the stakeholders who have prime importance. Each one is encouraged to become a bona fide shareholder, albeit by a £1 membership fee or something like that, which gives them certain rights, such as a right to consultation on rent rises.

I realise that the bill mentions conditions relating to the removal of rights. However, the regulation inspection regime is clear, so it will be easily identifiable whether an RSL has viability problems. In addition, we have the Scottish social housing charter and the annual return on the charter, so it is easy to see at a glance whether there are problems that need further investigation. To say that an overnight removal of assets is warranted is absolutely abhorrent. We do not support that.

19:30

Ilene Campbell: Asking why it is proposed that a transfer of assets would take place without consultation is a good question. The issue has been raised not only by tenants but by the CIH. The proposal is completely out of sync with what currently happens.

TIS and TPASS provide independent tenant advice on mergers, stock transfers and constitutional partnerships all over Scotland. I have a scenario for you. At what point would the Scottish Housing Regulator make a decision that it was too late to consult? If the regulator is to make such decisions, we will be on a slippery slope.

Currently, if an organisation is looking to merge with another organisation, tenants have a right to a ballot. However, if the other organisation is subject to insolvency, or if there are other issues or an inquiry is being undertaken, tenants still have a right to be informed and consulted. At most, the bill should say that the consultation process would have to be slightly quicker. However, tenants are due the right to an explanation of the reason for the landlord’s situation and to look at the options, because it is tenants—not you or us—who will, through rents, pay for the decision and the valuation for years to come.

I cannot understand why such a change would be proposed, because it is completely out of sync and would muddy the waters. At what point would tenants not be consulted? With constitutional partnerships and mergers, the position in Scotland is confusing with regard to the point at which people have a right to be consulted and a ballot. The bill now makes proposals relating to insolvencies. 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 warning signs before the situation arose.

Our concern is that, if you erode tenants’ rights on consultation, what would that say about tenants’ rights in general? Given that the housing association sector across Scotland is looking at its long-term future, there must be consistency. Perhaps the regulator needs to answer the question why the provision is in the bill. I do not think that there are any circumstances in which that erosion of rights would be deemed appropriate.

Jennifer MacLeod: I agree. A housing association cannot just go downhill or down the drain overnight. The returns that are sent to the regulator, if they are put in honestly, are bound to indicate when something is wrong. There must be guidance somewhere along the line that allows people to pick up when something is going wrong, so that whatever help is available can be provided. 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 backward step and, to be honest, I am appalled and amazed by it.

Kevin Paterson: Perhaps we need to look at the matter from a different angle and see it as a failure of self-assessment. Perhaps the Scottish Housing Regulator has seen, through his inspection regime, a weakness in the system that could be exploited because it is all hands off and desk-top inspections.

The Convener: The Scottish Housing Regulator is a she.
Kevin Paterson: Yes, the regime is cheap. That is what you get when you make the Scottish Housing Regulator work to a budget——

The Convener: You misheard. I said that the Scottish Housing Regulator is a she, not cheap. [Laughter.]

Kevin Paterson: I do not think that Michael Cameron is a she. When I met him last week, I am sure that he was a he.

The Convener: Okay—maybe I have got that wrong. I was thinking of Kay Blair, who is the chair of the Scottish Housing Regulator; Michael Cameron is the chief executive.

As members have no more questions, I ask the panellists whether there is an issue that we have not covered in our questioning that you want to raise.

Kevin Paterson: I am surprised that the change to the reasonable preferences has not been brought up. Does no discussion on that issue need to take place?

The Convener: I am not sure that I follow your point.

Hugh McClung: I thought that we had covered that.

The Convener: Are you referring to the allocations?

Kevin Paterson: Yes. I am referring to the changes to the Housing (Scotland) Act 1987. The matter is covered in part 2 and more meat needs to be put on the bones. We are worried about some of the reasonable preferences that are suggested, because the issue is about not only current tenants but future ones and how the bill will affect them. I mentioned earlier that future tenants were left in the dark a little bit in the consultation process.

The Convener: Have you covered the issue in your written evidence?

Kevin Paterson: Yes.

The Convener: We will make sure that we look at that.

I thank all the witnesses for their evidence, which has been very helpful. We had only that one item on our agenda so, after I close the formal part of the meeting, we will move to the informal question-and-answer session with members of the audience.

For information, next week, the committee will hear evidence on the bill from the Convention of Scottish Local Authorities and the Association of Local Authority Chief Housing Officers. We will also have a progress update from the project team on the building of the Queensferry crossing and we will consider a draft report on the proposed national planning framework 3.

I thank West Dunbartonshire Council staff for looking after us and sustaining us with tea, coffee and food, and for making sure that we had a nice place to hold the meeting. As people will imagine, a huge amount of effort goes in to taking the Parliament out of its normal building, so I also thank the Parliament staff from the official report, broadcasting, security and media relations offices for their efforts. I also thank the clerks, who have undertaken a huge amount of effort in setting up the meeting.

Meeting closed at 19:37.
ALACHO

WRITTEN SUBMISSION

General Observations

As the representative body for Scotland’s senior local government housing professionals, ALACHO (Association of Local Authority Chief Housing Officers) is pleased to have this opportunity to respond to the Infrastructure and Capital Investment Committee’s call for evidence on the Housing (Scotland) Bill.

ALACHO has been fully involved in the various consultations which took place on key aspects of the Bill prior to publication, and would commend the Scottish Government on the inclusive and comprehensive way in which consultation has been undertaken.

In general terms ALACHO welcomes many of the Bill’s provisions. There is much with which we agree, including ending the Right to Buy, increasing flexibility in housing allocations, introducing measures to reduce anti social behaviour, and improving conditions for tenants in the private sector.

Due in large part to earlier consultations, there are no provisions in the Bill to which we are strongly opposed. However, there are some areas where we feel we might have gone further in trying to achieve the Bill’s stated objectives. These relate to a failure to allow consideration in the Bill of

- Initial (or Probationary) Tenancies,
- taking income into account in the allocation of housing, and
- extending the proposed Housing Tribunal system for the private rented sector to the social housing sector

We have highlighted these perceive omissions where relevant, and have grouped our responses under the questions posed by the Committee.

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

1.1 ALACHO is in favour of abolishing the Right to Buy for social housing tenants, and said so in our response to the consultation on this proposal. We accept the legitimate aspirations of many Scottish households to own their own home, but feel that these are outweighed by the pressures resulting from the unprecedented demand for affordable rented housing for those on low to average incomes unable to purchase under current market conditions.
Similarly, we acknowledge the trade-off between the capital receipts accruing from the sale of council housing and the ensuing benefits if this is used for investment, (notwithstanding the significant reduction in income to councils from this source in recent years) and the benefits if the housing stock continues to be available for renting in perpetuity. Given the significant costs of providing new build housing, we are firmly of the view that retaining rented stock in the social rented sector is the most social and economically beneficial option.

**Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?**

2.1 Given that the Right to Buy has been in existence for almost 35 years and availability is well known, ALACHO believes that a three year period before abolition of this provision is too long. We believe that most people wishing to buy will already have done so, and there is no particular merit in a three year time horizon. We would wish to see this replaced with a maximum 18 month time horizon.

**Part 2: Social Housing**

**Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?**

4.1 ALACHO has consistently argued for increased flexibility for local authorities in the allocation of council housing, believing that this would facilitate the optimum use of housing and make a significant contribution to stable and sustainable communities. Although they do not go quite as far as would have liked, the provisions will certainly be of some assistance in pursuing this aim. Consequently, we broadly welcome the proposed changes set out in Sections 3-7 of the Bill. This includes the requirement for councils to consult on allocations policy priorities and publish reports on the outcome, which we believe many would do at present.

4.2 We particularly welcome, with appropriate equalities safeguards, removal of the prohibition on taking age into account in allocating property. Many social landlords believe this will permit more effective use of their housing stock e.g. through investing in particular blocks to better facilitate their use for older people.

4.3 We think it helpful that ownership of property can be taken into account in the allocation of council housing. Although not a frequent occurrence, this should address situations where applicants may be allocated scarce council housing, whilst owning and perhaps profiting from the rent on property elsewhere. That said, the provision (under Section 9) to allow the granting in certain situations of a short SST for homeowners is also helpful.

4.4 Under Section 7 we are happy to see clarification proposed on the circumstances in which an applicant may be suspended from receiving an
offer, the setting of minimum suspension periods before an applicant in certain situations becomes eligible for the allocation of social housing, and the prescription by Scottish Ministers of maximum periods. We are content too with a new right of appeal for applicants affected by suspension periods.

4.5 We welcome (under Section 13) the change to a 12 month qualifying period before tenants are permitted to request a joint tenancy, assign or sublet tenancies, as some councils believe the existing rules are potentially open to abuse. The proposals to make it a requirement for (non spouse) partners, family members and carers to have live at a property for 12 months prior to succeeding to a tenancy are also welcome, as many types of council advise that this too may have been subject to manipulation.

**Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies (SSSTs) and Scottish secure tenancies (SSTs) provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?**

5.1 Yes, to some degree. The proposals in Sections 8-16 of the Bill propose changes to social housing tenancies and are intended at least in part to assist landlords in tackling anti-social behaviour. In common with local authorities, ALACHO welcomes any measures with the potential to reduce the significant adverse impact that anti-social behaviour has on our communities.

5.2 Under section 8, we welcome the increased flexibility to provide SSSTs (or convert existing SSTs to this form of tenancy) where applicants or existing tenants, or a member of their household, have a history of anti-social behaviour in the previous three years. This is likely to increase the resources needed to gather evidence in support of such action, but will still be broadly welcomed by tenants and landlords alike.

5.3 We welcome both the proposals at Section 10 and 11 of the Bill to extend the minimum period of a SSST granted for anti social behaviour from six to 12 months, and the proposal to allow for a further six months if more consideration is needed. With appropriate support for tenants, as required by the Bill, these proposals should provide landlords with some additional tools with which to tackle anti social behaviour, including additional time to ensure adequate support is given to tenants in the interests of sustaining tenancies.

5.4 We are also pleased to see under Section 15 of the Bill, a new requirement for a court to grant application for a possession order made within 12 months of a tenant’s conviction for using their home for illegal purposes, or for an offence in or near the property punishable by imprisonment. The latter will provide some reassurance to tenants and other residents that anti-social behaviour is being taken seriously by local and national government.
Initial Tenancies- A missed opportunity?

5.5 That said, ALACHO believes that a significant opportunity has been missed by not including in the Bill a provision to introduce initial (or “probationary”) tenancies, and we regret the fact that the Committee have not been given the opportunity to consider this provision. In stating that “opinion was divided around the proposal” the Policy Memorandum (PM) supporting the Bill may be somewhat misleading in its analysis of responses.

5.6 The PM correctly states that “tenants were very supportive” (64 tenants’ groups responded to the consultation, and leaving aside the 14 “don’t knows”, 92% of groups expressing a view were in favour, while only four groups were against the proposal at that stage). Undeniably social landlords have differing views on the proposal, with councils no exception. However, in concluding that there was “less support for such a move amongst landlords” the PM could have pointed out that of the 63 landlords expressing a firm view on the proposal (i.e. excluding 17 “don’t knows”) 76% (48) were in favour.

5.7 Together with the organised tenants’ movement, ALACHO believes that Initial Tenancies offer a good opportunity to help ensure that in the first year of a tenancy, tenants fully understand their rights and obligations under their tenancy agreement and are supported to comply with these. We believe that could help reduce anti-social behaviour, one of the original aims of the Bill. Evidence from elsewhere suggests that this can be achieved with a positive effect on tenancy sustainment and no increase in evictions, (the latter a particular concern voiced by those who successfully lobbied the Minister to remove this proposal from the Bill).

5.8 Tenants and landlords have some difficulty with the arguments presented by those opposed to this initiative, particularly the apparent conclusion that the rights of tenants affected by anti social behaviour are out weighed by those of the perpetrators, but also the assertion made by some that councils and RSLs would use the opportunity presented by ITs to evict tenants subject to Initial Tenancies without regard to due process.

5.9 In common with social housing tenants, we still believe that the proposal has merit, and would wish to see further consideration given to the potential benefits of initial tenancies. Tenants and landlords wish to see not only prevention of anti social behaviour, but speedy resolution when such behaviour does occur. Initial tenancies would enable both objectives to be satisfied, at least in relation to new tenancies.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

6.1 ALACHO is content that the provisions in the Bill aimed at protecting tenants’ rights in light of potential tenancy changes are reasonable. Aside from the good practice we would expect councils to demonstrate, the Bill’s provisions will in any event require landlords to take account of relevant
guidance and be explicit and transparent on the reasons for their actions in suspending applicants for a period of time, in granting an SSST rather than SST, or indeed seeking repossession of the former on the grounds of anti-social behaviour. Permitting the right of appeal or review for tenants is a fair corollary to these provisions.

6.2 Taken together the provisions should help encourage clear communication between landlords and tenants in such situations, and facilitate the use of appropriate support mechanisms to maximise the potential for tenancy sustainment.

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

7.1 ALACHO welcomes the proposal to transfer certain matters relating to the private rented sector to a new Tribunal. Indeed, together with CIH and SFHA, we argued strongly that the Tribunal system, and the principles on which it is to be based could usefully be extended to the social rented sector. In particular, the non-adversarial style of Tribunals is also likely to be helpful to the decision making process.

7.2 Having expert practitioners making speedy and effective decisions on occasionally complex issues, which hitherto may have taken considerable time to resolve to the frustration of those concerned, could also be of considerable benefit to the social sector. Nonetheless we welcome the introduction of a Tribunal system for the private sector, and shall watch with interest to see how effective it proves to be in operation, and whether lessons may be learned for importation into the social sector in due course.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

8.1 ALACHO supports the proposed amendments to private rented sector legislation intended to enhance local authority discretionary powers to improve housing conditions in that sector. However our experience is that such powers of enforcement work best when backed with adequate resources, without which any new powers are likely to be of marginal impact. For example, many councils who have indicated their intention to use the new power to take third party applications to the PRHP on behalf of tenants, have said they can only do so subject to sufficient resources being made available.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?
9.1 In broad terms we welcome the provision of discretionary powers to target areas of poor condition in the private sector. However we would also restate the absolute necessity of backing powers with sufficient resources for implementation and enforcement, without which the hopes of local residents seeking much needed improvements to their neighbourhood may be raised in vain. The experience of ALACHO members suggests that effective approached to improvement in the private sector contain a mixture of “carrot and stick” elements i.e. advice information and assistance ( including financial assistance ) on the one hand, backed with firm sanctions for non-compliance on the other. We know that several councils have been lobbying for this measure to be introduced, and look forward to engaging with further consultation on the detail of the proposal in due course.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

10.1 ALACHO wholly supports the proposal to create a mandatory Register of Letting Agents in Scotland, together with measures to regulate practice in this area. We acknowledge that, with the growth in private renting, letting agents have come to play a much bigger role in that sector. Some letting agents play an important role in representing landlords and tenants interests through the setting and maintenance of decent quality standards for tenants. Sadly not all do so, and there is a pressing need to ensure that poorly performing agents are compelled to achieve minimum legal standards in letting and property management.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

11.1 A prerequisite of any disputes resolution scheme is that it should be fair and equitable between both parties, but also have reference to the power distribution between the different parties concerned. It is essential therefore that tenants have access to the necessary information on their rights and responsibilities to hold letting agents (and landlords) accountable for the service they receive.

11.2 With these criteria in mind ALACHO notes that the proposed mechanism for resolving disputes will be based on a new Code of Practice, to be established by regulations following consultation with key industry stakeholders. The CoP will set out practice standards for letting agents, perceived breaches of which can be reported to the First Tier tribunal established - inter alia – to hear such cases, following which one outcome could be the serving of an enforcement notice on the letting agent . We are content that the proposed mechanism has the potential to improve the situation between letting agents and their customers through improving disputes resolution. The prior consultation which is proposed should help ensure fitness for purpose, and ALACHO will respond to this in due course.
Part 5: Mobile Home Sites with Permanent Residents

Q12. Do you have any views on the proposed new licensing scheme?

12.1 Within local authorities the main responsibility for dealing with mobile home sites and related matters lies with Environmental Health Officers and we are content to leave response to questions 12 & 13 to colleagues in this area with the relevant expertise. We are aware too that COSLA has responded to this issue in more detail.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

13.1 See response to Q12 above.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

14.1 As local authorities are well aware, achieving the necessary consents and consensus to facilitate essential repair and improvement to common properties can be notoriously difficult. The recalcitrance of individual owners, landlords or factors can be a cause of frustration for local residents and councils, particularly the former, who are often disadvantaged by the failure to act, despite themselves being committed to carrying out the necessary improvement work. In general terms therefore ALACHO welcomes any measures designed to improve the likelihood of successful outcomes.

14.2 Councils appear to be ambivalent regarding amendments to the tenement management scheme (TMS) to make it easier for local authorities to pay missing shares for necessary repairs and recover costs. Some believe the facility to do this already exists within section 50 of the Housing (Scotland) Act 2006. However others believe amending the TMS in the manner proposed could, subject to proper owner notification, increase the scope of work for which it is possible to pay shares and recover costs. As outlined in the preceding paragraph, this is likely be welcomed, not least by those residents of a block affected by the refusal of certain parties to participate in improvement works.

14.3 Councils have generally given a cautious welcome to the other proposals in this section of the Bill, including enforcing security and safety improvements through the issue of work notices, and extending the use of repayment charges to include commercial premises with living accommodation above, and are having on-going discussions with counterparts in Scottish Government over the technicalities of implementation.
Part 7: Miscellaneous

Q16. *Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?*

16.1 ALACHO has no specific comments to make on the miscellaneous housing provisions of the Bill. All would seem to be justified on the grounds of increasing the effective operation of those elements of the housing system to which the miscellaneous legislative provisions relate.

Other Issues

Q17. *Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?*

We have no observations to make further to those articulated above,

Q18. *Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?*

We have set out above three areas where we feel that Scottish Government should have given more consideration to proposals which were consulted upon but did not find their way into the Bill. These are the proposals for Initial Tenancies, the proposal to take income into account in the allocation of social housing, and the establishment of an independent Housing Tribunal for the social sector. Having covered these areas in some detail above we have nothing further to add at this point.

ALACHO

27 February 2014
Right to Buy

We welcome the Scottish Government’s proposal to end the right to buy. Our members are very clear that the Right to Buy should end in the shortest possible timeframe.

We believe that the proposed three-year timeframe should be questioned and that the shortest practicable timeframe should be achieved, as an equilibrium between human rights issues and avoiding a spike in sales.

A decision on the timeframe for ending the right to buy should take evidence from previous local government experience, such as from assigning pressurised area status.

Unacceptable practice in the private rented sector and mobile homes parks

We welcome increasing local government powers to intervene where there is unacceptable practice in the private rented sector and mobile homes parks. We have been an active part of the policy development process and are content with the proposals put forward so far.

We believe that a fit and proper person test for mobile homes park owners, similar to the current landlord registration regime, and an improvement of the site licensing regime, is a sensible and proportionate way forward, to protect mobile home owners from unacceptable practice. It is setting new national standards while allowing enough local flexibility to concentrate resources where they are most needed. As always, the success of enforcement is dependent on adequate resources available for enforcement action.

We are aware that the fact that mobile home site legislation does not cover holiday parks and that there is a risk that unscrupulous site owners resort to holiday parks. This needs to be addressed separately.

We welcome a new local government powers to intervene with unscrupulous landlords in the private rented sector, through third party reporting and special area status. We are looking forward to seeing more detailed proposals from the Scottish Government and understand that these will be forthcoming during Stage 2 of the bill process. We have been actively participating in the development of proposals and hope that they will not be watered down, so as to allow local authorities to effectively deal with unscrupulous landlords.

With regard to Third Party Reporting, we welcome this as a dedicated tool to be used by Local Authorities in special circumstances. A widespread expectation that local authorities take forward cases on behalf of tenants would have a considerable impact on resources.
Housing allocation and Initial Tenancies

COSLA is disappointed that provision for initial tenancies was not included in the Bill.

Initial tenancies are seen by many housing professionals as a missed opportunity, and they had considerable extent of tenant support. They are seen not as a means not to ease evictions, but as an effective means of early intervention and prevention, and as a tool for local authorities to establish early contact with problematic tenants. We are very keen that this proposal from the initial Scottish Government Consultation is being explored in the formal political process.

With regard to taking age into consideration when allocating tenancies, local authorities see this as a useful tool to make sensible use of public resources. It is not intended to be in any way discriminatory. Equally, we believe that local authorities should be able to take income into consideration.

It would have been prudent to change the right to assign from being a tenant's right to a landlord's power to allow assignation where this fitted with the best use of stock. The inclusion of stronger grounds for refusal based on the lack of housing need are however welcomed.

With regards to the wider issues of ASB and tenancy allocation, councils are still experiencing considerable problems where convicted persons are not the tenancy holder, where ABS is of a low level nature and in mid market rent.

Dispute resolution and Housing Tribunals

COSLA is disappointed that earlier proposals for more effective arrangements for dispute resolution through a Housing Tribunal for the social rented sector have been dropped by the Scottish Government. As with the initial tenancies, this proposal received support in the Scottish Government’s own consultation and should have been more fully explored. We understand that the Government has decided to ‘test’ this model for the private rented sector, but maintain that a more effective way of dealing with the social rented sector is still badly needed.

Financial considerations

COSLA is clear that any new local government activity needs to be cost neutral to local government, unless new resources are made available. We are aware that the bill is designed in such a way as to ensure cost-neutrality. This will mostly be achieved through a charging regime for licensing etc. It is important that this remains the case, and that we don’t find ourselves with sudden new proposals, which divert resources away from other vital functions, without full and proper consideration of the consequences.

COSLA
4 March 2014
Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 5 March 2014

[The Convener opened the meeting at 10:01]

Housing (Scotland) Bill: Stage 1

10:02

The Convener: Item 2 is evidence from representatives of the Convention of Scottish Local Authorities and the Association of Local Authority Chief Housing Officers on the Housing (Scotland) Bill. This is the last stakeholder evidence session before the committee hears oral evidence from the Minister for Housing and Welfare next week.

I welcome from COSLA Councillor Harry McGuigan, spokesperson for community wellbeing and safety; Silke Isbrand, policy manager from the community resourcing team, housing; and David Brewster, senior environmental health officer. I also welcome Jim Hayton from South Lanarkshire Council and Tony Cain from Stirling Council, who are representing ALACHO. Patrick Harvie, who has joined us for the session, is welcome, too.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): Good morning, lady and gentlemen. The Scottish Government’s declared vision for housing is

“that all people in Scotland live in high-quality, sustainable homes that they can afford and that meet their needs.”

To what extent does the bill support that vision?

Councillor Harry McGuigan (Convention of Scottish Local Authorities): The committee will excuse me if I say a wee introductory piece that might help to clarify where we are coming from. I will then deal with the detail of the question, if that is required.

We are pleased to have and appreciate the opportunity to, we hope, help the committee in its deliberations during stage 1 scrutiny of the bill. The COSLA, ALACHO and environmental health teams that are here this morning are anxious to ensure that local government analysis of the bill is presented with clarity and objectivity.

My executive group at COSLA has followed and engaged in the process of preparing for the bill since early last year. The process that was undertaken before the bill was introduced invited and secured wide consultation from a host of stakeholders on particular issues that are relevant to a broad spectrum of housing matters.

The issues that the bill covers were identified, examined and fleshed out during the consultation process, subsequent to which the bill was drafted. We think that an effective, collegiate and productive way of working has been used. COSLA and other stakeholders have engaged fully and have made formal submissions to the relevant Scottish Government consultation process.
There is much in the bill that we believe to be very positive, but there are some omissions, which we feel should be raised and highlighted rather than becoming missed opportunities to address pertinent issues that are faced with increasing and frustrating regularity by housing stakeholders. Those omissions need to be addressed.

I thank the committee for allowing us to come here today. I believe that this is your penultimate evidence-taking session on the bill, and it allows us to comment on some of the other submissions that have been made.

In response to your question, the provisions in the bill on the general housing issues are sound and are consistent with what we have been working for in local government and COSLA, along with stakeholders, for a long time. We want to continue to make that happen in a productive and useful way.

Do you wish to ask us about any specifics in relation to that?

Adam Ingram: My colleagues will certainly follow up on that. Does anyone else care to comment on how well the bill’s provisions promote the Scottish Government’s vision for housing?

Jim Hayton (Association of Local Authority Chief Housing Officers): Before answering that question, I say for the record that I no longer work for South Lanarkshire Council. I did until a few years ago; for the past couple of years, I have been fully employed as a policy adviser to the local authority chief housing officers.

I beg your indulgence and ask you to repeat the terms of the vision to which you referred.

Adam Ingram: Surely. It is “that all people in Scotland live in high-quality, sustainable homes that they can afford and that meet their needs.”

Jim Hayton: In common with COSLA, ALACHO, in its response to the consultation, gave a broad welcome to the terms of the bill. In essence, it is about existing houses, the way in which they are allocated and some of the issues that affect the people who live in them—with the possible exception of the proposed abolition of the right to buy. In common with many other organisations, ALACHO has welcomed that as a measure to increase the supply of affordable housing, which we view as the major pressing issue in Scottish housing today.

There is a fair bit in the bill that will help to achieve the vision, not just in the social sector but also in the private sector, particularly the private rented sector, which presents many pressing challenges. The bill helpfully sets out some measures and provisions that will help us to improve the situation in that sector. ALACHO gives the bill a broad welcome.

Tony Cain (Association of Local Authority Chief Housing Officers): I make a simple observation about the vision: in so far as it goes, nobody would argue with it. The major policy gap at the highest level—at United Kingdom level and Scottish level—seems to be a detailed articulation of what a stable and properly functioning housing system looks like and of what policy actions are required to ensure that it remains stable in the longer term. In particular, that means directly answering the questions of what we mean by the term “affordable” and what an appropriate balance in tenure mix ought to be across the system.

Adam Ingram: I am sure that some of my colleagues will get into more of the detail.

I note from your opening remarks, Councillor McGuigan, that you appear to be content with the consultation process that the Government adopted for the bill. Does anyone have any issues with that consultation, or are you quite happy with it?

Councillor McGuigan: We think that that is the correct way to work, rather than having a situation in which issues emerge in the bill; that could delay the process and cause considerable frustration.

Consultation is the best way to work. We have asked for that approach to be taken with regard to some of our work with the Scottish Government, and the dividends that we are seeing are good.

Jim Hayton: From ALACHO’s point of view, prior to the bill there were several strands of consultation on the right to buy and the options around that. There was a lot of detailed consultation on potential changes to housing allocation systems—a big group of about 15 interested parties looked at the options there. There was detailed consultation on the proposal to have a housing tribunal for dispute resolution. Last but not least, there was detailed consultation on measures for the private rented sector.

It was very helpful to have all that done in the past year and a bit. We did not get everything that we sought out of the consultation. I have set out in our submission areas in which we think that the bill could have gone further. The committee may wish to question us about that later. However, in broad terms, as we point out in our submission, we were pleased with the format of the consultation and its inclusive manner.

The Convener: We move on to specific sections. Alex Johnstone has some questions on the right to buy.

Alex Johnstone (North East Scotland) (Con): You have all made it clear that you are in favour of the abolition of the right to buy. What benefits do
you see that bringing to social landlords and their tenants?

Councillor McGuigan: We think 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. We feel that the timescale for that—the bill proposes three years—can and should be shortened to a more reasonable length. There is some nervousness that the timescale could result in a gallop towards homes being purchased before the deadline. However, there is no evidence that that happened when right to buy was abolished in relation to pressured area status.

We welcome the abolition of the right to buy. We have to find a balance between the European convention on human rights and the desperate need in our communities for affordable social housing.

Jim Hayton: As with almost all aspects of housing policy, the right to buy is a decision about competing priorities. There are some difficult decisions to be made. As we said in our submission, we fully acknowledge that there are trade-offs there. Many people in Scotland—perhaps the majority—still have legitimate aspirations to home ownership, but that has to be balanced against what we see as some fairly pressing needs on the affordable housing side. From memory, I think that Scottish Government statistics record that there are about 140,000 people on waiting lists.

We came to our view by weighing up the pros and cons of retention versus abolition of the right to buy and concluded that, in the current climate, having available in perpetuity a supply of affordable rented housing that would otherwise be lost to the sector outweighed the legitimate aspirations of some people—going by sales in the past few years, a significantly reduced number of people—to owner occupation. We think that that was a rational decision, based on an assessment of the competing priorities.

Tony Cain: In terms of the operation and strategic planning of the provision of housing services, one of the key issues with the right to buy is that it makes it almost impossible in the longer term to be clear about the asset base and the long-term income streams that are available in managing that stock and developing services. In particular, with regard to meeting housing needs in rural communities, if people cannot be certain that the provision that they have put in place today will still be there in 10 years’ time, they cannot be certain that they will be able to meet those needs in the longer term.

There are settlements in my area in which, 20 years ago, I would have argued very clearly that we had met the housing need and that there was a sufficient supply of affordable rented housing. That supply is now almost entirely eroded and it will be difficult to go back into those rural communities and find suitable sites for the provision of additional affordable housing. As long as the right to buy remains in place, there is a substantial issue with regard to long-term strategic planning for investment stock and meeting housing needs.

10:15

Alex Johnstone: Jim Hayton said that abolishing the right to buy would increase the supply of affordable housing, but in reality the people who tend to buy their council houses would tend to remain as long-term tenants anyway. For every 100 people who are denied the right to buy when they want to, a very small proportion—perhaps as few as 1 or 2 per cent—would be likely to vacate the property as an alternative to buying it. Abolishing the right to buy would not therefore free up much property in the first instance, would it?

Jim Hayton: Our analysis is a wee bit different: we contend that abolition would free up significantly more than 1 or 2 per cent of properties.

Alex Johnstone: Are you suggesting that people who would wish to buy their properties will, once they are denied that right, vacate the houses that they currently occupy?

Jim Hayton: They may do, depending on the state of the housing market and how strong their aspiration is. Several things are affecting the right to buy, not least the significant change in the past few years in the discount provisions, which has resulted in demand tailing off significantly. We took those factors into account and concluded that in a majority of authorities—although, as with most things, there would be some differences—the advantages would lie in abolishing the right to buy.

Alex Johnstone: You see the effects on the affordable housing supply as long term rather than short term.

Jim Hayton: Yes.

Alex Johnstone: Does anyone else have a view, or a different view, on that point?

Councillor McGuigan: There are many people in our country who opposed the right to buy at the outset because—as we stated clearly and categorically—only certain types of property would be bought. We now find ourselves in a situation in which people who bought their homes through the right to buy are indeed moving into other homes and using the ex-council house for collateral. In our view that creates a situation that is grossly unfair, because stock that would have been
available for ordinary people who cannot afford to buy their own home has been lost and is simply being taken over by people who can afford to buy it. That is a dangerous precedent to set in our country.

Alex Johnstone: There is plenty of statistical evidence that suggests that the right-to-buy policy was withering on the vine in Scotland and that the numbers in recent years are a tiny fraction of what they were at their peak. I believe that fewer than 1,000 houses a year are now being bought by their tenants.

The proposal to abolish that right is, ironically, likely to cause a spike in the number of tenants who take up the right to buy. We heard anecdotal evidence from a housing association representative at our meeting in Dumbarton last week that there had been a significant increase in the number of applications and expressions of interest that had been received. Statistical evidence has also appeared in the past week that shows that the number of expressions of interest is already 50 per cent up on what it was at the same stage in recent years.

By proposing the abolition of right to buy, are we making the problem worse rather than better? Will we lose a large section of our available affordable housing stock in the process of ending the right to buy?

Councillor McGuigan: It is interesting that you say that the information is current and has come out just this week. We would say that there is no strong evidence that there is a housing spike and that people are rushing to buy before a particular deadline.

In my opening statement, I mentioned the removal of the right to buy from areas with pressured area status. The spikes did not materialise in that situation as many people thought they would. I can say only that the information that we have does not concur with the information that you have.

Alex Johnstone: So you feel that there is no danger that we will see teams of young men going into council estates, knocking on doors and offering to lend people the money to buy their property while the opportunity is still there, which is what happened in the housing market in the past?

Councillor McGuigan: We would certainly hope that that does not happen.

Alex Johnstone: I, too, would hope that it does not happen. However, I have grave concerns that, by moving to abolish the right to buy, we are accelerating all that is negative about it in an attempt to prevent all that is positive about it.

Councillor McGuigan: No, I do not think that we are. We are sending out a clear message about the priorities that we are addressing in our communities, where there is a desperate need for affordable housing for people to rent. That is what we are aiming to do.

You will have people coming to your surgery who are in dreadful situations, and that misery has to be dealt with. We have to maximise the housing resources that will be available for use. We have to build more houses too, but abolishing the right to buy is an important step in the right direction. I do not think for a minute that we will see teams of people going round housing estates chapping on doors and asking people to buy their houses—that is a dramatisation of the reality.

Alex Johnstone: A dramatisation is potentially what I am talking about. I am looking into the future to see what would happen, and my concern is that, although by ending the right to buy in this way at this time we may be saving 20 or 30 houses throughout Scotland to be re-let in any one year, we may in doing so see 10,000 houses sold to their occupiers.

Councillor McGuigan: No, I do not think so.

Tony Cain: With regard to strategic planning in public sector housing, we manage our stock and investment over a 30-year period, and we are currently planning—or assuming—that we will sell something over 10 per cent of our total stock over that time under the right-to-buy policy at the current levels of sales. It may well be more than that, depending on how the mortgage market and other things change.

It is possible—although we cannot predict what will happen—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—whatever its relative merits were in 1980—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.

Alex Johnstone’s point about buyers not necessarily moving on immediately is fair. However, it is clear that something 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 the right to buy is, in the longer term, driving the growth of lower-quality private renting in many already pressured communities, which is problematic.

Silke Isbrand (Convention of Scottish Local Authorities): We are all aware that there has very recently been information in the press about an anticipated 50 per cent spike in sales. However, we have been following the issue for quite a
while—Councillor McGuigan has outlined our mechanisms, such as the executive and task groups. Only a couple of days ago I received evidence from Perth and Kinross Council that there is no expected spike or rise in sales, and we also have the evidence from the move to pressured area status. The evidence that we have certainly contradicts what has been in the press only a couple of days ago.

The Convener: Where do you think that the press might have got the idea that there is a spike?

Silke Isbrand: I do not know.

Councillor McGuigan: We do not think that that idea can be substantiated. Alex Johnstone says that it is profitable for gangs to go round chapping on doors and asking people to buy, saying, “We’ll provide the money,” and so on. Of course it is: that happens and will continue to happen right up until the moment that the legislation is approved. However, it is wrong that it should be happening and that there are situations in which a landlord can buy up to three, four or five ex-council houses in North Lanarkshire. There is something seriously flawed in accepting that as good, sensible housing policy. It is an abuse, in capital letters. Tenants are not only buying their own home, but arrangements are made whereby in certain circumstances an individual can buy their auntie’s or mother’s house. We should tackle those things directly, and with fierceness.

Alex Johnstone: One other issue that I need to ask about and which you have not covered is the three-year period, which was mentioned earlier. What is your view on that and on how we could do things differently without contravening the human rights of individuals?

Councillor McGuigan: That has to be looked at in the light of trying to find a balanced position between the rights of an individual and our need to retain and grow an affordable housing stock. As far as pressured area status is concerned, there were no ECHR referrals at all. If we handle the matter properly—and with sensitivity, because some people will face disappointment—and in a sensible timescale that tries to find that balance, we think that it will be manageable. That is the right way to go about it.

David Brewster (Convention of Scottish Local Authorities): Councillor McGuigan has highlighted the number of ex-local authority houses that become private rented houses. It would be fair to look at it the other way and say that a lot of the private sector homes are ex-local authority. That brings with it the variable standards of management that we know about in the private rented sector. Where benefits are involved, there is evidence to suggest that we are paying out more in benefits where the same homes are in the private rented sector than we would have been when they were local authority or housing association homes.

The other practical thing that local authorities have to deal with is situations in which parts of buildings have been sold as private homes. In such cases, maintenance becomes considerably more complicated, and that was never considered in the original right to buy.

The Convener: Mary Fee has some questions on social housing.

Mary Fee (West Scotland) (Lab): Provisions in part 2 of the bill are aimed at increasing social landlords’ flexibility in allocating housing. They also make changes to reasonable preferences. Do you think that the changes proposed are the right changes, and what impact do you think they will have?

Jim Hayton: Our response to the consultation states explicitly that we broadly welcome the proposed changes. We are not certain that most of them will make a huge amount of difference, but they are adjustments to the system that should be helpful. That includes amending the reasonable preference category, which is a relatively minor change that adds underoccupying tenants to the existing categories, but it is helpful nonetheless.

Some of the other proposals are also welcome, such as the new duty on local authorities and RSLs to consult applicants and tenants. Being able to take age into account when allocating social housing is something that councils particularly welcome, as they have thought for some time that that is a commonsense change to the current arrangements that will enable councils to make decisions that help to promote sustainable communities. For example, they could designate certain blocks as suitable for older people and invest in the infrastructure and support services required to adapt the block and make it suitable for that group.

We fully accept that change needs to come with some safeguards about people’s rights, and we think that that can be done. We argued strongly that the ownership of property should be taken into account. It is not a frequent occurrence, but it does sometimes happen that people are allocated social housing when they already own a house. In the past there was limited latitude for councils to do anything about that, and the bill helps with that. Equally, there is provision elsewhere that allows us to grant a short tenancy to owners, to tide them over in certain situations where they may be trying to sell a house.

The other provisions relate to suspensions, and we are not at all unhappy about the Government clarifying that. We would be happy to work with
Government on the guidance and regulations that may support that. Suspension can happen in situations where applicants may have committed some antisocial behaviour or criminal offence in the past, and councils will want to ensure that there is time for people to reflect on the consequences before they are allocated housing. In broad terms, however, we are content with that too.

I guess that the answer to the question is that, in broad terms, we welcome the provisions and are happy to think about the guidance and regulation that will be needed to bring them into effect.

10:30

Councillor McGuigan: Just to add to that, it is very important that local authorities and registered social landlords are able to manage their housing stock in a way that is best suited to and well understood by the local communities. If special types of circumstances arise, it is grossly unfair if they are not recognised and given credence because an allocation policy is riveted in a certain fashion. We believe that subject to special cases, including age and income—that is another matter that we feel should be considered—we should be able to have the flexibility to manage our housing stock in the best possible way for all of the community. It is not about discriminating on the basis of age or anything else.

Jim Hayton: Quite sensibly in our view, a lot of the provisions come with the right of review or appeal for anyone who might feel aggrieved by them. We are more than happy to have such a provision as a safeguard and are content to work with the Government on how it would be implemented in practice.

Tony Cain: I just want to make a simple observation. The provisions strike me as a sensible modernisation of the law as it stands on the issues. The one point that I would make is in relation to taking into account the existing ownership of a property. I have regular conversations with tenants and applicants who do not understand why we would allocate a house to a home owner. They generally assume that we have done so either by mistake or because we have been duped. That impacts on the credibility of our allocation processes.

In any event, 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.

Mary Fee: Mr Hayton raised the issue of age. The bill will allow social landlords to take that into account. We have heard varying views both supporting and opposing that change. For example, Shelter and the Govan Law Centre are not supportive of the change, but the Chartered Institute of Housing thinks that it would be a useful measure. Shelter said in evidence:

“The fundamental principle of social housing allocation should be that it is based on a framework of need and ... circumstances”.—[Official Report, Infrastructure and Capital Investment Committee, 22 January 2014; c 2436.]

I take it from your comments, Mr Hayton, that you do not agree with that and that you are quite happy with the proposals.

Jim Hayton: Yes, I do not agree with that. Shelter does not manage social housing and does not necessarily have to deal with the fall-out when people perceive that councils have made decisions that are not in the interests of the folk who live in a particular block, for example. 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. For that reason I would disagree with Shelter’s view.

Mary Fee: Does anyone else want to comment on that?

Tony Cain: 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, the risk of discrimination is minimised.

Mary Fee: And of course social landlords have to justify objectively how they are allocating. Is that quite easy to do? Are there enough safeguards in that for you?

Tony Cain: Yes.

Jim Hayton: Yes.

Councillor McGuigan: Yes.

Mary Fee: Okay. That is a straightforward answer.

Jim Hayton: We would always expect to be accountable. I absolutely accept the right of organisations such as Shelter to hold us accountable. If they thought in future that there were instances when local authorities had been discriminatory, we would expect to be asked about them and to have to justify our decisions on
commonsense, sustainable community grounds. We would be happy to do that when the time comes.

**Councillor McGuigan:** For example, if we allocated to a family with four children a house in, say, a block of flats that had only one stairwell and which already housed 12 children among the families who lived there, that would be problematic. We need to manage the stock in a way that is sensitive to the needs of all the people who live in the estate, and sometimes it makes sense to say, “Look—we can allocate this house in a different fashion.” It is not a matter of discriminating against anyone. Would you agree with that, Jim?

**Jim Hayton:** Yes.

**Mary Fee:** At our recent Parliament day event in Dumbarton, tenants and tenants groups told us that they would like to become more involved in the letting process and, indeed, the council’s decision-making processes. Do you think that that would be a good thing? Should they become more involved?

**Councillor McGuigan:** Yes. I think that people and communities should become more involved in the decision-making processes that affect their lives. We welcome such involvement and try to engage constructively with tenants, residents associations and so on to ensure that their voices and ideas are heard. After all, they are the experts in their own communities. I am therefore 100 per cent behind that suggestion.

However, we also have to be a wee bit careful that we do not simply assume that everyone or every organisation that presents itself as the spokesagency, if you like, for a locality represents that locality. As you will have seen— and as I certainly have seen—it is very often a small clutch of people who purport to represent a whole area. They are well intentioned, but sometimes they, too, miss the point.

That said, I certainly want greater integration between the communities and the decisions that affect their lives. I think that we can work towards that aim—indeed, we are doing so—and that provisions in the bill will assist us in that respect.

**Mary Fee:** Do you think that the more involved local communities and tenants are, the less likely you are to have problems with flexibility, allocations and the age stuff?

**Councillor McGuigan:** We run a better chance of making people feel comfortable if they know why things happen and if such information is shared fully with them. We will also create more confident localities and neighbourhoods. That is the kind of subsidiarity that I like and for which I have campaigned all my political career.

**Jim Hayton:** I broadly agree that tenants and residents should be involved in the formulation of the policy; indeed, as has been pointed out, there is a new duty to consult applicants and tenants when reviewing allocation policies. That is the best place for tenants to be involved. I do not think that anyone is suggesting that we allow panels of tenants to decide who should be allocated housing; there needs to be a balance, but tenants should certainly be involved in decisions on allocation policies and in looking at their area’s local needs and helping to decide priorities very much within the constraints of the existing legislation.

**Mary Fee:** Thank you.

**The Convener:** Mark Griffin has some questions on tenancy changes.

**Mark Griffin (Central Scotland) (Lab):** The bill makes some changes to the qualifying period for joint tenancies, subletting, assignations and successions. In its written submission, COSLA has said that it would prefer the power to assign to be given to the social landlord instead of its remaining a tenant’s right. Do you agree with the changes to the qualifying periods and have you any other comments about the section in question?

**Councillor McGuigan:** I will answer the question directly and then ask Jim Hayton and Tony Cain to provide some more detail.

We feel strongly that the subletting and assigning of tenancies should be the business of the landlord, not the tenant. In other words, the right of assignation should shift to the landlord. As a member of the same local authority as me, Mr Griffin, you will have seen some very clever abuses of that very situation, with assignations being carried out in a way that is anything but consistent with fairness in the allocation of property.

**Jim Hayton:** Yes, I broadly agree with that. ALACHO was one of the groups that argued that landlords should have the power to make such decisions rather than assignation being a right of the tenant, but we are happy with the halfway house of extending the qualifying periods—essentially, for the reason that Harry McGuigan outlined and indeed for the reason that Tony Cain mentioned earlier about the credibility of the process.

Every single housing manager could tell stories about perceptions of abuse of the system, where someone has moved into a house and has claimed to have been living there for some time in order to succeed to the tenancy or where tenants decide to assign the tenancy to someone who almost certainly would not have been allocated that house on the basis of housing need.
Although the changes have not perhaps gone entirely the way that ALACHO would have liked, we think that they are a good move in the right direction and we support them.

Mark Griffin: Are you able to talk about any of the problems that councils have had when tackling and trying to solve problems with tenants’ antisocial behaviour, including any problems that councils have had with the use of short Scottish secure tenancies and any court action where councils have sought to evict tenants?

Councillor McGuigan: One of the big disappointments for COSLA in the bill relates to initial tenancies—some people call them probationary tenancies, but they are initial tenancies. 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.

As far as initial tenancies are concerned, Jim Hayton may come in on the more general point about antisocial behaviour and what tools we have. I think that we have to look more deeply at the tools that we currently have and bring in more innovative means to deal with the issue.

A good approach is being adopted in North Lanarkshire at the moment in areas where the housing stock has unattractive features and there are stories about antisocial behaviour and so on that mean that people do not want to be housed there. Instead of allocating a house to an individual, who moves into such an area and immediately has the perception that they are vulnerable and on their own, there has been a move towards allocating collectively, with maybe four or five families going into a particular block or a particular area at a particular time.

Those four or five families have had the opportunity to meet and talk to one another and to get a feel for the aspirations that they each have for the new houses that they are moving into. That provides a degree of security and confidence as they move in. We find that people are moving into the houses and they are not retreating in the face of some of the bad practices that happen in the area. That is a particular example of what might be a good innovative practice. It is only being experimented with at the moment, but that is the kind of thing that we need to build on.

Jim Hayton: I have spent more than 30 years working in housing, and dealing with antisocial behaviour is probably the most intractable housing management problem that housing managers face. It is a huge issue for tenants. I have not read the Official Report of the committee’s meeting in Dumbarton last week, but I would be very surprised if antisocial behaviour did not figure largely on tenants’ agendas too. I guess that what is behind Mr Griffin’s question is the extent to which the bill will help landlords to deal with that problem.

There are some welcome measures that will help landlords to deal with substantive elements of the behaviour and that will go some way to convince tenants that landlords are not completely without power and therefore credibility in the area. A frequent criticism that councils and RSLs face is that we are unable to deal with such problems when they emerge and that the court system takes far too long to sort out problems for people. Some tenants say that they have lived with serious antisocial behaviour for three years or more.

10:45

Therefore, we welcome some of the provisions in the bill. However, on the surface, other provisions look as though they will make our lives a wee bit more difficult. An example is the increase in the minimum term of an SSST that is granted for antisocial behaviour from six to 12 months. 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.

We very much welcome the new requirement for courts to grant an application for a possession order that is made within 12 months of a tenant’s conviction. Unfortunately, some people have suggested that that is an open door for councils to evict people willy-nilly 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. Is anyone seriously suggesting that councils should reinstate that person or allow them to continue to live in the tenancy, and that they just need some support? When that happens, councils lose all credibility with tenants.

With the proper safeguards and the right guidance and regulation, that kind of measure will be helpful to landlords in dealing with antisocial behaviour. To the extent that the bill contains such measures, we welcome it.
Silke Isbrand: The topic of antisocial behaviour always features strongly at meetings of the cross-party elected member task group that, as Councillor McGuigan outlined, we set up specifically to consider the bill. The general feeling of the group is that the proposed changes are a useful addition to the local authority toolkit. However, local authorities are still struggling with a number of issues. There are mixed-tenure blocks where antisocial behaviour arises from private properties, which links to the discussion that we had earlier about the right to buy. 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. As Councillor McGuigan said, initial tenancies are a key issue. Another key issue is our disappointment, which we expressed in our written submission, about the fact that the bill does not introduce a housing tribunal for the social rented sector.

The Convener: We will come on to that.

Mark Griffin: When the committee has raised the concerns about the increase in the minimum period of short SSTs from six months to 12 months, we have been told that many 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. Alternatively, it could be only one individual in a household who is carrying out antisocial behaviour, rather than the whole household. Does the use of short SSTs sometimes exacerbate the situation and make things worse, which would mean that, actually, the move from six months to 12 months is welcome in those circumstances?

Councillor McGuigan: The short-term tenancy can be used effectively, but I do not know whether the evidence suggests that it would be more helpful to have a 12-month tenancy. We use the arrangements to ensure that people with mental health problems are supported; indeed, it is well understood that support is provided in that regard. However, a worrying issue relates to antisocial behaviour that is caused by other residents in the house as opposed to the tenant. We must make it absolutely clear to the tenant that they have and must accept some responsibility for the conduct of others in the home. I will let Jim Hayton speak to the detail.

Jim Hayton: As I said in response to a previous question, a short-term tenancy can be a mixed blessing. If there are issues that the council or agency can genuinely work with, a longer period could be helpful to make sure that a person gets the necessary support.

We have a particular issue with co-ordinating services for people who might be in need of support, so some of us have high hopes for the new health and social care partnerships that are coming in next year. In our profession, we sometimes feel that housing is left to deal with people’s problems that may have wider roots beyond those related to their housing problems. You mentioned some of those problems, which include substance abuse or health or mental health problems. 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.

Mark Griffin: What are your views on the proposals to simplify the eviction process in cases of antisocial behaviour? Is there potential for tenants to be continually moved around the housing stock in a local authority area, leading to cycles of antisocial behaviour in different places, rather than addressing the problem?

Councillor McGuigan: Simplification is not something that we would accept as far as antisocial behaviour is concerned. Antisocial behaviour is a problem that we try very hard to deal with. The idea that any of the proposals that we are arguing for, such as initial tenancies, are being put forward because we feel that we need to be able to evict people more easily is a nonsense. We must continue to work with people in the situation that they are in. If we cannot find solutions to that situation, there must be interventions. Silke Isbrand talked about that with regard to the toolkit. An examination must take place of what other ways there are to enable us to deal with the antisocial behaviour scourge because it destroys lives—you know that and I know that. Jim, do you have anything to say?

Jim Hayton: I have nothing to add to that. Tony, do you want to say anything?

Tony Cain: I will say something about the credibility of the management function. Communities have a reasonable expectation that people will be held accountable for their actions. 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. The ability to remove individuals whose behaviour is, in the end, beyond the pale, make them accountable for that behaviour and demonstrate that to their neighbours is a critical part of the process.

If we then need to engage with that individual in another context to assist them in improving and managing their behaviour—their drinking or their drug abuse—so that they can move on to a more stable environment, we need to do that, too. The answer is not to leave them where they are while you try to come up with solutions to the other problems. In some circumstances the answer must be that you have to remove people and then move on from there. A consequence must be demonstrated.

**Councillor McGuigan:** You might be going to ask about tribunals, which have been mentioned. We are disappointed that there will be housing tribunals only for the private sector. We think that the bill represents an opportunity to identify a problem early and to start the work that needs to be done to solve that problem at an earlier stage and thereby avoid the long, drawn-out court processes that we have to go through at the moment. We hope that lessons will be learned from the private sector that can be applied to the social sector.

**Mark Griffin:** I will come on to that but, before I do, is there anything else that could be included in the bill to address antisocial behaviour and its root causes?

**Jim Hayton:** The point has already been made: in the council sector, in particular, we strongly believe that the bill has missed an opportunity to bring in initial tenancies. I do not know whether the committee was going to come on to that.

The evidence from south of the border suggests that initial tenancies are successful, that they are 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; they say to tenants, “This is a valuable commodity, but it involves expectations of behaviour on both sides. The landlord has obligations, but you have obligations, too, both to the dwelling and to your neighbours.”

Although initial tenancies would not have been a panacea or a silver bullet, they would have been a valuable addition to our toolkit. We were very disappointed that the minister decided not to include provisions on initial tenancies in the bill, as that means that we will not have the chance to consider them. We still think that it would be worth having a look at the evidence. Initial tenancies will not solve antisocial behaviour, but they might go some way to helping to prevent it and to mitigating the consequences of it in future.

**Councillor McGuigan:** It is also worth saying that some of the evidence that was submitted was clearly along the lines that Jim Hayton highlighted, so it is difficult to understand why the Government decided not to proceed with initial tenancies. The evidence—certainly that from tenants organisations—was overwhelmingly in favour of proceeding with them. The issue might need to be looked at again. Questions should be asked about why it was decided not to proceed with initial tenancies on the basis of a minority view from some quarters.

**Mark Griffin:** The transferring of social rented sector cases to the tribunal, along similar lines to what has been proposed for the private sector, has been raised repeatedly by witnesses. The Scottish Government has said that, because of the court reforms that are going through, increased use will be made of mediation, which will create the potential for improved outcomes for cases that go through the courts. Do you think that that is enough, or do you still support a move to the use of tribunals, as has been proposed for the private sector?

**Councillor McGuigan:** We do not think that that is enough. We think that we should proceed with tribunals. The agony that some people have to suffer continues, and I do not think that we should delay. It may well be that there are lessons that we can learn from the housing tribunal approach in the private sector, but we would certainly have preferred it to have been extended to the social sector. We are disappointed that it has not been.

**Jim Hayton:** I agree. There are at least a couple of things that we thought that a tribunal might deliver that the current system does not. We were a wee bit surprised to hear that one of the reasons for not adopting the tribunal approach was that the court review was under way. The Government knew that the court review was under way when it consulted on the proposal, so it might have been an idea not to consult on it at all.

However, it is a good idea. It might have helped to sort out two significant problems. The first is the recurring theme of dealing with matters speedily and not having people suffer, particularly from antisocial behaviour, for undue periods of time. The second is the potential to bring together an expert body of people who could consider the issues and perhaps help to streamline the process, which would result in better-quality, speedier decisions not only on antisocial behaviour but on any other matters that would be under the tribunal's jurisdiction.
11:00

Having said all that, ALACHO was happy with the consultation and is happy that the transfer of jurisdiction for private rented sector cases is in the bill. We believe that we have some kind of tentative commitment from the Government to revisit the proposal for the social rented sector and examine it in light of how successful or otherwise the transfer of jurisdiction is for the private sector. As professionals, we would be keen to hold the Government to account on that and come back to it should the Government decide that it should remain outwith the scope of the bill.

The Convener: Jim Eadie will continue questions on the tribunal.

Jim Eadie (Edinburgh Southern) (SNP): Good morning. I am grateful to the witnesses for their evidence and the constructive way in which they have set it out.

Sticking with access to justice for landlords and tenants, I hear your views on the proposal that we transfer certain cases in the private rented sector from the jurisdiction of the court to that of the first-tier tribunal. If I hear you correctly, you are saying that there should be a level playing field for the private rented sector and the social rented sector but, clearly, that is not what the Government proposes at the moment.

I ask you to tease out briefly the benefits of, and the justification for, the change in relation to the private rented sector.

Councillor McGuigan: The benefits in relation to the private rented sector?

Jim Eadie: The benefits for tenants and landlords of the proposal to transfer jurisdiction.

Councillor McGuigan: It means speedy interventions and early intervention. It means that people’s expectations would be fulfilled in a reasonable timescale as opposed to cases dragging on and on through the court system. If we get in early enough, we can certainly change attitudes. It might also avoid more severe measures having to be taken, such as seeking eviction. Once it is known that things will happen more speedily, it will have a transformative effect on what happens in the private sector.

I am absolutely certain that a transfer of jurisdiction would make a very big difference in the public sector. It would have considerable benefits. The elected members who are sitting around the table all know perfectly well that there is no quick and easy remedy for the people who come to their surgeries and are going through the hell of antisocial behaviour. Local authorities follow the processes that are in place, which are too slow, too frustrating and too painful for those who are suffering.

The transfer of jurisdiction will mean that things will happen quickly, will enable us to deal with problems early and will make a big difference. We believe firmly that it should be in the bill.

Jim Eadie: Would it be fair to characterise the benefits as speed, efficiency and nipping some problems in the bud without any diminution in the rights of tenants?

Jim Hayton: 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—and that the panel should allow that imbalance of power to be redressed in large measure or, at least, in part, not least by allowing third-party application rights. That will not mean landlords taking every single case for every single tenant because the onus will still be on tenants, but one hopes that it will help significantly those tenants who lack confidence about holding their landlords to account or feel vulnerable about it. The tribunal would also hear alleged breaches of the proposed code of practice under the proposals for the regulation of letting agents. I agree with your succinct list, but I would add to it the benefit of redressing the balance of power between landlords and tenants to do no more than get tenants access to their rights to decent quality standards, tenancy conditions and so on.

David Brewster may want to add to that.

David Brewster: There is a recognition that the standard of the management of private rented properties varies enormously. There are some very good private landlords, some amateur private landlords and some people who probably should not be private landlords. At one end of the scale, the very good landlords have some difficulties in dealing with problematic tenants, which is a long and difficult process for them. At the other end of the scale there are tenants with difficult landlords, and the ability for them to go to the tribunal, which is a more informal approach, helps to redress the balance of power in favour of the tenant. The slightly more informal approach, which is more inquisitorial than adversarial, is probably to everyone’s benefit.

Jim Eadie: We have heard evidence from a number of witnesses that there is a lack of awareness among tenants and landlords of their rights and responsibilities. Mr Hayton, you suggest that we need to do more to empower tenants to hold landlords to account. From your perspective as someone who works for a local authority, what steps have you taken locally to empower tenants and to make them aware of their rights? Scottish Borders Council told us that it had been involved in radio campaigns and campaigns in the letting
Tony Cain: I think that I count as a practitioner. We are always conscious of the need to ensure that our tenants are properly informed of their rights, including their right to redress. When the council gets it wrong, we remind them of their right to independent advice on a regular basis, we remind them of our complaints procedure and we operate that complaints procedure as consistently as we can. We are also fairly diligent in ensuring that, if they do not like the outcome of the complaints procedure, they have the option of going to the ombudsman. To a greater or lesser extent, those are routine elements of the way in which we engage with tenants to ensure that they are aware of their options and the routes for challenging their landlord when we get it wrong.

I will make a couple of slightly wider points, going back to management in the private rented sector. In most of the management in the private rented sector, there is no culture that bears on issues of service quality—that is not what drives private landlords in managing their property. It is not foremost in their minds when they make decisions about their property and it is not a factor in their attitude and behaviour towards their tenants. Anything that pushes that sector more towards trading standards and a culture that is focused on service quality as opposed to property prices will benefit tenants. However, the power balance, which revolves around the nature of the tenancy regime, will always leave the landlord with the whip hand. The process of removal in the private rented sector is, in essence, arbitrary—tenants feel that acutely—so the third-party reference to tribunals is important in protecting tenants' rights.

You may be surprised to hear that the main beneficiaries of extending that to the public sector will be tenants, as it will provide them with a significant additional option for holding public sector landlords to account for our behaviour. We do not always get it right, and there are occasions when—I need to be careful with my words here—we do not get it right over an extended period. Access to a tribunal will give the tenants confidence that they have somewhere else to go to hold us to account. That will result in a significant improvement in the rights of public sector tenants.

Councillor McGuigan: I would be surprised if any local authority in Scotland was not working to ensure that there is good communication about what services and support tenants can receive when they have difficulties with a private landlord. However, in spite of the campaigns and regardless of what we do to put the information out in the public domain as clearly as possible, people still come to our surgeries and say, “I didn’t know that I could do that.” We must keep working on that.

The Convener: That leads us nicely on to questions that Gordon MacDonald has about letting agents, but Patrick Harvie will come in first.

Patrick Harvie (Glasgow) (Green): I will pick up on comments about issues such as third-party applications to the Private Rented Housing Panel. That is one of two powers that the bill gives local authorities—the other concerns enhanced enforcement areas—to exercise at their own discretion. COSLA’s submission says:

“With regard to Third Party Reporting, we welcome this as a dedicated tool to be used by Local Authorities in special circumstances. A widespread expectation that local authorities take forward cases on behalf of tenants would have a considerable impact on resources.”

At the moment, no additional resources are attached to the provision. Is it fair to say that it would be wrong to expect either of the new mechanisms to be widely used?

Councillor McGuigan: In everything that we have spoken about today and in our submission, we have repeatedly said that the powers must be backed by adequate resourcing. I hear what is said about the bill being cost neutral. There is no point in having powers if the full recipe of needs is not being met, because that will not make a difference or make the changes that we require. A local authority would use the powers sensibly but, if we were snowed under, the service would not be of any great quality as we would want it to be. Resources are at the heart of the issue.

Patrick Harvie: So local authorities might be more likely to use the powers in specific geographic areas. If somebody had a problem in an area that was not being given such attention, they would be unlikely to have the option of asking a local authority to raise something on their behalf.

Tony Cain: I expect the powers to be used as and when appropriate. Resources are always a difficult issue. Most authorities operate with a specific allocation of personnel to an activity, who will deal with all of it and do what they can.

Forgive me for wandering beyond the brief for a moment, but one issue is that landlord registration fees, for example, have not risen in six or seven years. Setting fees is one thing, but the Scottish Government also needs to accept responsibility for raising them, so that we are properly equipped. An increase in fees would increase our ability to deal with issues.

I would expect us to use the powers when they are required and with our capacity rather than to fuss initially about whether the resources are available.
Patrick Harvie: Under the heading of “Alternative approaches”, the policy memorandum says:

“Consideration was given to allow other relevant parties to make an application to the PRHP. This option was rejected”.

The bill gives the discretionary power of third-party application to a local authority or

“a person specified by order made by the Scottish Ministers.”

Would your organisations welcome ministers using that provision to extend the power to others, such as non-governmental organisations, student welfare rights advisers and perhaps even elected representatives, who could apply to the panel on their constituents’ behalf?

Councillor McGuigan: We would be keen to talk about and look at the detail of anything that would enable us to improve the situation and to understand better what might work and what certainly would not work.

David Brewster: I will respond to some elements of the issue that Patrick Harvie raises. COSLA’s submission reflects the situation that arises when the public have expectations because a power exists. Local authorities’ experience is that some owner-occupiers still expect local authorities to fix the roof of their home, for example. That suggests that the balance of responsibility must still be the tenants’.

In some circumstances, such as when tenants are particularly vulnerable, the third-party application power will be useful. Sometimes, tenants phone us in the week when they are leaving a property to say, “It’s awful—I’m getting out. Please make sure nobody else goes in there.” By that time, there is no ability to do anything, because only the tenant can report, and the tenant has already left or is leaving. So there are some circumstances in which the ability for a local authority to make an application would be a useful tool but, also from a local authority point of view, we would wish to ensure that the normal expectation remains that it is for the tenant to make such applications.

11:15

The Convener: We are rapidly running out of time. I ask Mr Hayton to be as brief as possible.

Jim Hayton: I wish to respond to Mr Harvie’s point about the powers perhaps not being used in a widespread fashion. Nonetheless, I welcome them. Over the past couple of days, I have been reading some other councils’ submissions. Scotland’s biggest city, Glasgow, which has some of the most intractable problems, has been asking for such measures for years. The powers might not be universally used, but they are nonetheless welcome as additional tools in the toolkit.

The Convener: Gordon MacDonald has some questions on letting agents but, if the point has already been answered, do not go over it again—and I ask the witnesses not to repeat themselves if they think that they have already answered the question.

Gordon MacDonald (Edinburgh Pentlands) (SNP): The bill provides for the regulation of letting agents. Is there a need for the statutory regulation of letting agents? What would the benefits be to the consumers of letting agents’ services?

Jim Hayton: The short answer is yes. Those provisions have been universally welcomed. That seems to be a gaping hole in the current legislation, in the sense that any of us in the room could set ourselves up as a letting agent on Monday morning and could start operating, with all that that entails with regard to health and safety, conditions and so on. A lot of people have been arguing for some time that letting agents should be brought within the ambit of regulation, and we welcome that proposal.

Councillor McGuigan: I would embrace that, too.

David Brewster: It is indeed a substantial gap. One particular factor is that the majority of private sector landlords are small, and own one or two properties. Therefore, the majority are reliant on having a good agent operating on their behalf. We receive inquiries and complaints where landlords are relying on advice provided by agents who simply do not seem to know what they are doing.

Gordon MacDonald: Registration will work and provide a benefit only if it can be enforced properly. In its evidence on 29 January, the Scottish Association of Landlords said:

“tenant registration is not being enforced properly by our local authorities.”—[Official Report, Infrastructure and Capital Investment Committee, 29 January 2014; c 2523.]

What are your views on that? Is there anything that we can do to make the legislation more effective with regard to landlord registration or, indeed, letting agent registration?

Tony Cain: The legislation around the private rented sector is shot through with criminal offences to be enforced by Police Scotland. For a variety of practical reasons, the police almost never do so, and they are largely unaware of many of the offences that are set out in the legislation. Transferring the responsibility for prosecution to local authorities is the one single step that you could make to improve the operation of the legislation and the effectiveness of enforcement.
David Brewster: It is worth noting that, in the proposals in the bill, a local authority enforcement power is not envisaged for dealing with unregistered letting agents.

Tony Cain: Forgive me—I know that there is a time pressure—but I wish to mention a practical example. We recently managed to get a prosecution against a landlord both for being unregistered and for unlawful eviction. The unlawful eviction was, if you will forgive the expression, an absolute stick-on—there was no avoiding the fact that it had happened. When the case eventually came to court, after some dispute with the police about whether there had been a criminal offence, the prosecution for unlawful eviction was dropped, and the fine for failing to register was about £200, which is well short of the maximum. The case concerned a professional landlord.

Jim Hayton: We identify a possible anomaly, which we need to address: the locus for enforcing landlord registration is local authorities and the responsibility for maintaining the letting agents register lies with central Government, as I understand it. We absolutely need to join those two things together, so that we get consistent, coherent action when it is needed. I am not quite sure that we have that sorted just yet, but we absolutely need to bear that in mind if the new powers are to be effective.

Gordon MacDonald: On enforcement of the repairing standard, in part 3 of the bill, the committee has heard evidence from stakeholders about the need for stronger legislative requirements around electrical and gas safety in private rented housing. What would be the benefits of expanding access to the Private Rented Housing Panel by enabling third-party applications by local authorities to enforce the repairing standard?

Silke Isbrand: We would look at it together with the other measures.

Jim Hayton: There is perhaps a prior question about the extent to which we extend to the private rented sector some of those provisions, such as installing carbon monoxide alarms and improving electrical safety checks. That has come up in quite a few of the responses and we would broadly support that.

The Convener: We will move on to mobile homes. I am conscious that the subject comes not under ALACHO’s remit but under health enforcement. Most of my remarks will therefore be directed to the COSLA representatives.

From a local authority perspective, what issues need to be addressed around mobile homes? In its evidence to the committee, the British Holiday and Home Parks Association said:

“there is often poor understanding among many local authorities who sometimes fail to understand site licensing and the role of Model Standards.”

Councillor McGuigan: The degree of understanding or lack of understanding will vary from local authority to local authority. We are in tune with the bill’s intentions on licensing, and that means that interventions and enforcement measures can be taken.

I ask David Brewster to come in on that one.

David Brewster: Local authorities are certainly keen to see an improvement in the enforcement and licensing arrangements for residential mobile home sites that are permanently occupied. The current legislation dates back to 1960 and is no longer fit for managing that sector. The residential mobile homes sector did not particularly exist in 1960 and the legislation has not kept pace with its development.

The degree to which local authorities have issues with residential mobile home sites tends to depend on how they are managed. Some sites are managed extremely well and provide useful housing capacity without causing difficulties. When there are difficulties with site management, it causes a disproportionate amount of difficulty for the local authority, and the current legislation simply does not provide sufficient teeth and practicality to allow those matters to be dealt with effectively.

Could you clarify the second part of your question?

The Convener: When we took evidence from the British Holiday and Home Parks Association, it said that there is often poor understanding among many local authorities and they fail to understand site licensing and model standards.

David Brewster: I will start with model standards. The Caravan Sites and Control of Development Act 1960 gives them status, but one of the difficulties is that the exact status of model standards is open to a degree of interpretation. When such matters come to court, the exact status of model standards is a subject of considerable debate, and local authorities have raised that with the Scottish Government.

As far as local authority understanding of the licensing process is concerned, unless a local authority has a lot of sites, it will not spend a lot of time on the licensing of caravan sites—and they are legally caravans. There is certainly a lack of training and good knowledge about how to deal with those matters.

Over time, local authority staff move on, which means that the one or two people who have a good working knowledge of the issues can end up
going to another authority or retiring. There is a need to keep those knowledge levels up.

The development of residential mobile home sites has changed things somewhat. It would be fair to say that most local authorities in Scotland did not necessarily understand the implications of those sites becoming full-time homes, with requirements for services and so on. Local authorities are much more aware of that now.

**Silke Isbrand:** The issuing of new, clear legislation around this matter is exactly aimed at addressing those issues and ensuring that there is clarity around the tools that everyone can use. Local authorities, which understand the problems, drove that process. They wanted to have new and clearer tools in their toolkits so that they could address those problems.

We are aware that some residents have voiced fears that the legislation could turn against them. We have clarified those issues. It is the clear policy intent of the legislation to benefit and protect residents, and we are absolutely sure that the legislation can be designed in such a way that residents do not suffer.

**The Convener:** That brings me to my next point, which is about the three-year licensing term. The representatives of some tenants organisations have told us that they think that that will give unscrupulous park owners a tool to threaten vulnerable people with, as they could say that they were going to close down the park. What is your view on that?

**Silke Isbrand:** We have heard those concerns and we followed them up immediately with the Scottish Government in terms of the design of the legislation. As I said before, it is no one’s intention to let residents suffer. The reason why we want the legislation is so that we can protect residents. We are clear that the legislation can be designed in such a way that residents will not suffer.

The bill already contains a provision that ensures that if a local authority refuses to issue or renew a licence, that does not affect the right of residents to stay on the site.

What we perhaps cannot legislate for is intentional or accidental mis-statement of what the law is and how it should be applied. However, the issue of the resident’s right to remain living on the site, under the Mobile Homes Act 1983, has been addressed in the draft text of the bill, and we have had further discussions with the Scottish Government about how we can ensure that those assurances are clearly stated.

**The Convener:** My experience is that some site owners do not like the idea of the three-year licensing period and are therefore putting a bit of fear into the residents on their parks.

There are a few local authorities that manage mobile home parks pretty well and it would be useful to spread that good practice among other local authorities that have mobile homes.

Adam Ingram, do you want to wash up?

**Adam Ingram:** The bill makes some provisions regarding local authority housing condition discretionary enforcement powers. Is the range of provisions in the bill wide enough to be effective?

**Jim Hayton:** Do you mean specifically in relation to the private sector?

**Adam Ingram:** I am asking about local authority housing condition discretionary enforcement powers.

**Councillor McGuigan:** Are you talking about a situation involving mixed tenure in a single block, and an owner-occupier not being prepared to pay their share of the cost of common repairs?

**Adam Ingram:** Yes.

**Jim Hayton:** 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. As with several other provisions in the bill, those are broadly welcomed by local authorities. The scope of works that we could do that for is extended a bit. We still have the thorny problem of paying the money up front and trying to recover it.

Managing and improving mixed tenure estates is one of the most challenging areas that we face and it will get even more so if and when we get to the stage of introducing energy efficiency regulations for the private sector. In that context, we are content with the provisions in the bill. Many authorities have said that they would plan to use them.

11:30

**David Brewster:** The existing tenant management scheme is very useful where title deeds are silent on repair issues. The current difficulty is that although residents can reclaim money from other residents, there is always the risk that they are left out of pocket. That means that sometimes repairs do not get done and we end up having to serve statutory notices, which creates further expectations and work for the local authority.

The amendment to the tenant management scheme is very useful. It means that the local
authority can say, “If you, as a majority of residents in a tenement or flats, have agreed that work needs done, you can go ahead and do it and we’ll guarantee to pay the missing share.” That allows them to sort out their issue and deal with matters early, before the disrepair gets worse. It makes a huge amount of sense in all respects.

There is also a provision for specialist or additional powers for specific geographical areas where there are particular problems. That is perhaps where Adam Ingram’s question was coming from. There is a general proposal for that but my understanding is that the detail will probably come through at stage 2 of the bill.

The Convener: Are there any final comments or questions?

Councillor McGuigan: Can I make one observation? It is in relation to Shelter’s proposition that we need to establish acceptable standards in temporary accommodation across local authorities. I am sure that no one in local authorities would accept a situation where we were dealing with indecent standards. However, we have to be clear about the work that is ongoing in order to ensure that we do not trip up before we have examined the matter fully.

In other words, what are the standards that we are talking about? We need to identify definitive standards and establish a benchmarking understanding across local authorities. We are working with the Scottish Government and Shelter on that.

We should be cautious about embracing that request from Shelter. That is why I said at the beginning that I was pleased that we were able to comment on the evidence that has been given. Shelter’s proposition is premature, but we will return to it after the discussions between Shelter, the Scottish Government and local authorities have reached a sensible conclusion as opposed to racing in too early.

The Convener: Are you talking about the private rented sector? Housing standards are set in the public sector, in public sector housing. Everyone sees the challenges and rises to the challenge of meeting the housing standards that are set. We would all agree that we want people who live in private sector houses to have the same standard of housing. That goes back to our first point about the vision for the bill.

Councillor McGuigan: Yes, absolutely.

Jim Eadie: Why would you have a lower standard in the private rented sector? Surely you are not suggesting that.

Councillor McGuigan: No, I did not say that. I was talking about temporary accommodation. The accommodation that we put people into should be of a decent standard. Shelter’s submission made a comment about people being able to challenge the accommodation that they are put into. I think that we should be careful when it comes to providing accommodation that meets what could be defined as an acceptable standard, because Harry McGuigan might have a different view of an acceptable standard than someone else might have.

We are simply saying that we should ensure that we get that right before we go down a road that causes more confusion and irritation for all concerned.

Tony Cain: I have one observation relating to an operational matter that is not covered in the bill. It concerns issues arising in the discharge of our duty to co-operate with Police Scotland in the management of high-risk offenders—principally sex offenders at the moment, but the service is soon to be rolled out to violent offenders—and in the operation of the Scottish secure tenancy regime. There are regularly occasions on which registered offenders need to be removed relatively quickly, and there is a tension between their rights, as Scottish secure tenants, to remain in their home and to be protected from unlawful eviction and harassment and the need to uphold the statutory regime and the operation of civil orders and sexual offences prevention orders. It strikes me that there is a piece of work to be done, probably around the short tenancy regime, to put in place an appropriate tenancy that is consistent with the obligations and objectives of the multi-agency public protection arrangements process.

The Convener: That is a good point.

David Brewster: A question was raised about why we have, or why we would want, separate standards for local authority housing and private sector housing. Private rented housing has to meet the repairing standard enforced by the Private Rented Housing Panel. That is different and has a different scope from the Scottish housing quality standard that applies to local authority and registered social landlord housing.

Jim Eadie: That is a helpful clarification, but I think that Councillor McGuigan was talking specifically about temporary accommodation.

Silke Isbrand: Which can be in the private rented sector.

Jim Eadie: Indeed.

Silke Isbrand: The point that was being made is that an important piece of work is on-going between local government, the Scottish Government and Shelter to find a way to get good, high-quality, acceptable standards in temporary accommodation. There are huge challenges with
regard to welfare reform, and all that has been looked at holistically.

Jim Eadie: That all sounds great, and I know that you are going to provide helpful supplementary written evidence, but are we to take it from your representations today that COSLA is not in favour of provisions relating to temporary accommodation being in the bill? Is that the point that you are making?

Councillor McGuigan: Yes, at this moment in time.

The Convener: We shall raise those points with the minister. In the meantime, thank you for your evidence, which has been helpful.
On resuming—

Housing (Scotland) Bill: Stage 1

The Convener: The next item of business is the committee’s final evidence-taking session on the Housing (Scotland) Bill. I welcome Margaret Burgess, the Minister for Housing and Welfare, and her supporting officials from the Scottish Government. William Fleming is head of the social housing and strategy unit, Barry Stalker is private rented sector policy team leader, Daniel Couldridge is a senior policy officer in the private housing services team and Colin Brown is a senior principal legal officer. I also welcome Patrick Harvie, who has stayed with us for this session.

I invite the minister to make some opening remarks.

The Minister for Housing and Welfare (Margaret Burgess): Thank you, convener. I am pleased to be here to answer questions about the Housing (Scotland) Bill. As you know, it is a wide-ranging bill, with provisions that affect all types of housing. Its policy objectives are to safeguard the interests of consumers, support improved quality and achieve better outcomes for communities.

I commend the committee for taking extensive evidence from such a wide range of stakeholders. I have been following the evidence-taking sessions closely and I welcome the broad support from stakeholders for the bill’s objectives and many of the policy principles within it. On the private rented sector, there is clear support for measures to improve quality and access to justice through the regulation of letting agents, the strengthening of local authority powers to tackle poor conditions and the introduction of a private rented sector tribunal.

There is consensus on ending the right to buy, although I am aware that there is less consensus on how long the notice period should be before the right is ended. It is clear, too, that views are mixed on the proposed changes to social housing allocations and the tools that are available to landlords to tackle antisocial behaviour.

I want to reflect on the range of the views on the bill and consider them along with the committee’s stage 1 report before I reach decisions about ways in which provisions in the bill could be strengthened. However, I want to make you aware of an issue that I am minded to explore further, which has been set out in written evidence from the Glasgow and West of Scotland Forum of Housing Associations. It argues that a housing
association that is considering joining another to form a group structure should have to ballot the tenants before it can do so. Officials will be writing to interested stakeholders today to invite them to give their views on that proposal, and I will consider them along with any views that the committee has on the issue.

Many of the stakeholders have acknowledged the extensive consultation that took place before the bill was introduced. I will continue that dialogue when I meet my housing policy advisory group later this month to discuss the bill, and I look forward to receiving the committee’s stage 1 report.

The Convener: Thank you. Adam Ingram will start the questioning.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): Good morning, minister. I will start with a couple of general questions. First, how will the provisions in the bill meet the national performance framework national outcomes that are listed in the policy memorandum? Those are well-designed, sustainable places; strong, resilient and supportive communities; and public services that are responsive to local people’s needs.

Margaret Burgess: As I said, the majority of stakeholders have acknowledged that the provisions in the bill will support the objectives that we set out in the policy memorandum. The ending of the right to buy, the measures to give social landlords flexibility in the allocation of their stock and the measures to tackle antisocial behaviour will ensure and support strong, resilient communities, so they will meet national outcome 11.

By introducing the private rented sector tribunal and giving local authorities more discretionary powers to tackle disrepair, we aim to improve quality, which will contribute to the outcome of well-designed, sustainable places. By regulating letting agents and modernising mobile home sites, we aim to improve quality and levels of service and professionalism, which also ties in with the national outcomes.

Adam Ingram: Thank you for that response. The committee heard from a lot of the witnesses who have given evidence to us that the consultation on the bill was well received, but we heard some comments that young people could perhaps have been more involved. Can you reassure us that the equality impact assessments for the bill are fully comprehensive?

Margaret Burgess: I think that they are fully comprehensive. We recognised early on that young people had to be consulted and that the provisions on social housing and, in the private rented sector, the regulation of letting agents will have an impact on young people. Officials also recognised that we could not consult young people in the normal ways and that we had to consider other ways of consulting them. We used youth groups and organisations to set up discussion forums, and we also used social media.

The response might not have been as great as we anticipated, but we recognised that we had to look at other ways of consulting young people and that their views are important. We made every effort to consult young people, and we got responses from those who attended the discussion forums.

Adam Ingram: Thank you.

The Convener: As no member appears to have anything else to ask about that, we move on to the right to buy.

Alex Johnstone: I am sure that it will be no surprise to the minister that the right to buy is one of the areas of interest for me. What was the Government’s motivation in moving to end the right to buy at this time?

Margaret Burgess: There are a number of reasons. One is to protect the social housing stock. We have lost more than 450,000 social rented houses since the right to buy was introduced. The right to buy has been amended over time and, in its current format, it is very complex. There are different aspects of the right to buy that depend on the length of tenancy, where someone lives, the type of house, and so on. It was becoming difficult for people to understand. Ending the right to buy will put everyone in the same position.

We now have a number of Government schemes to encourage people to get on to the housing market if they want to. Our LIFT—low-cost initiative for first time buyers—schemes and the MI new home mortgage indemnity guarantee scheme are in place to help and encourage people to go into the market, and we feel that this is the right time to take this step.

Alex Johnstone: Statistical evidence indicates that the right to buy was withering on the vine anyway. The number of houses that were being sold to their tenants had dropped to less than 1,000 a year. In addition to that, the assumption can be made that if the 1,000 tenants a year who were choosing to take up that right were denied that right, very few of them would vacate the property, so not many properties are being saved to be re-let, are they?

Margaret Burgess: It will keep those properties in the social rented sector and the landlords will keep getting the rental income to use. If houses are sold at huge discounts, the landlord’s asset base also diminishes. We therefore think that it is the right step to take. Huge support for ending the
right to buy was expressed during the consultation.

Alex Johnstone: Has the Government assessed the impact on demand for right to buy of setting a date for its ending? Is there a serious danger that, by moving to end the right to buy, we might give it a sudden and explosive lease of life at the end?

Margaret Burgess: We certainly considered whether there would be a spike in demand if we announced the end of the right to buy. The most recent figures show that there has been an increase, but we anticipated that that would happen after the announcement. During the last quarter, there has been an increase of 101 house sales under the right to buy. We do not think that that will continue.

There is also going to be stricter regulation in mortgage lending to make affordability in right to buy absolutely clear so that people know what they are getting into. Likewise, the Scottish Government is giving tenants clear guidance so that they realise that buying a house under the right to buy has disadvantages as well as advantages.

We still think that we will save 15,500 homes over the period under the bill.

Alex Johnstone: You do not think that we are going to see a rush of sons and daughters buying their parents’ houses as we have seen occasionally in the past, or teams of young men going down streets and knocking on doors to offer to lend money for people to buy their council houses?

Margaret Burgess: I do not think that we will see that. I repeat what I said about the more stringent mortgage regulations that are coming to ensure that, when people are borrowing to buy a house, they can afford the house. It is called the mortgage market review. We do not anticipate what you describe. We did not get evidence from the consultation that that would happen.

Alex Johnstone: When we spoke to officials at the start of this process, we talked about the three-year period that had been proposed to end the right to buy. We have spoken to a number of witnesses who have talked about shortening that period. Do you have a view about the period that will be allowed at the end of the right to buy and whether it can be changed?

Margaret Burgess: As I think I said in my opening statement, that is something that I will consider when I get the stage 1 report. In evidence I alluded to the fact that three years had not been agreed to be the right period. We are looking at that.

We have to balance the need to protect the housing stock against the tenant’s right to buy. Colin Brown might want to add to that with regard to the European convention on human rights.

Colin Brown (Scottish Government): 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.

The three-year 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. Again, as the minister said, any alternative proposals would have to be assessed.

Alex Johnstone: Thank you very much.

The Convener: We move to part 2, which is on social housing.

Mark Griffin (Central Scotland) (Lab): Section 3 proposes that “reasonable preference” in allocations is given to people who are homeless or living in unsatisfactory conditions and who in both cases have “unmet housing needs”. Can you explain what is meant by “unmet housing needs” and how they will be assessed?

Margaret Burgess: 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.

With the bill, we are trying to allow more flexibility and a focus on the need for housing, which can be down to a number of things. People may live in poor housing conditions or overcrowded housing, or they may need to be rehoused because of harassment or a medical condition. It is about having a need for a home. One of the conditions for giving reasonable preference is when someone is living in “unsatisfactory housing conditions”. We are looking at flexibility and focusing on need, as opposed to anything else. In the allocation of housing, it is need that is important.

Mark Griffin: You mentioned housing that is below the tolerable standard. Government statistics show that up to 15,000 socially rented houses are below the tolerable standard. Why is the requirement for giving reasonable preference
Margaret Burgess: It will not be removed, because those people’s situations will be covered by “unsatisfactory housing conditions”. We wanted to widen that. I think that 2.5 per cent of housing is below the tolerable standard. People who live in housing that is below the tolerable standard will still have a housing need under the “unsatisfactory housing conditions” category.

Mark Griffin: A number of witnesses raised concerns about the possibility of age discrimination in the allocation policy. Witnesses have said that age “could be used in a discriminatory way”, and that allocations should be made on the basis of “need and circumstance”. How would you respond to those concerns and how will you monitor use of that provision, to ensure that younger people are not discriminated against?

11:30
Margaret Burgess: The first thing to say is that there is no intention to discriminate against anybody. Landlords cannot use discriminatory practices in allocating houses—I think that that is clear. As I said, need is the absolute priority. However, the issue of flexibility for landlords came up during the consultation in that they want to make better use—and sometimes better sense—of how they allocate houses when people have needs.

Age should never take precedence over need, but 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.

It is therefore about being more flexible to make better use of allocations, but that flexibility is certainly not intended in any way to be discriminatory. The Scottish social housing charter states that there must be proper access to housing for everyone. We are very clear in the bill that 16 and 17-year-olds should not be discriminated against on the ground of age. There is no intention whatsoever to discriminate against young people or any other age group. The flexibility is about making good, sensible and appropriate use of housing when people with a similar need or an unmet need satisfy the “reasonable preference” provision. When a house is being allocated, a landlord can consider what the most sensible allocation would be.

We have all heard about cases where someone older has moved in beside groups of young people—or vice versa—and that has caused problems. The flexibility provision is about making sensible use of the housing stock.

The Convener: Mary Fee has some questions on antisocial behaviour.

Mary Fee: Part 2 contains provisions that are aimed at giving social landlords more tools to tackle antisocial behaviour, including the “ability to grant or convert existing SSTs to a short SST”. As part of its evidence taking, the committee heard recently from tenants groups in Dumbarton about the very real antisocial behaviour problems that they face. What evidence is there that the proposed tools in the bill will help landlords to tackle antisocial behaviour?

Margaret Burgess: During the consultation process, landlords, the Chartered Institute of Housing, the Association of Local Authority Chief Housing Officers and the Scottish Federation of Housing Associations welcomed the proposals for tackling antisocial behaviour. However, we recognise that, as they said, the proposals will not be the absolute panacea for antisocial behaviour. We are not suggesting that the bill will sort antisocial behaviour and bring it to an end. However, the provisions will give landlords key tools with which to tackle the antisocial behaviour that you heard about from the tenants in Dumbarton.

We have all heard about the difficulties for tenants who live beside antisocial neighbours and we know that landlords often face difficulties in trying to remove antisocial tenants. We want to give landlords the tools that will enable them to do that and to tackle the problems more quickly. In cases where there is a criminal conviction in relation to the use of a house, landlords would be able to do that without having to go through another process for behaviour that is clearly not acceptable for a community. The bill’s proposals are about getting better outcomes for communities.

Mary Fee: The Convention of Scottish Local Authorities has suggested that we need to think about more innovative ways of tackling antisocial behaviour. The Tenants Information Service suggested that partnership working was critical for dealing with antisocial behaviour. We have heard other evidence around the same theme, but the bill does not address those issues directly. How will the bill’s provisions regarding antisocial behaviour help to provide better outcomes for communities?
Margaret Burgess: As I said, I think that the bill will lead to better outcomes for communities. The measures on antisocial behaviour are intended to help landlords to play their part, by giving them the tools to act in circumstances in which they are currently unable to act. That should contribute towards better communities.

On partnership working, I think that we all agree that antisocial behaviour will not be resolved by one sector and that much antisocial behaviour is dealt with by other agencies, such as the police. However, putting that into the bill would not lead to better results. The Scottish social housing charter makes it clear that landlords must work with other agencies to tackle antisocial behaviour, and there is no evidence that landlords are not doing so. Agencies are working together, but we are giving landlords an additional tool, so that they can play their part. That is what we are trying to do in the bill.

Mary Fee: There is evidence that partnership working is quite patchy across the country. Some areas are far better at it than others are. Should there be something in the bill about the necessity of working in partnership, to strengthen and shore up the approach?

Margaret Burgess: The issue did not come up in the consultation—unless I am wrong on that. William Fleming might comment.

William Fleming (Scottish Government): We have not had evidence that we ought to be legislating in that area. I think that the evidence was that we should do more to give landlords the right sort of tools, so that they could play their part, in a partnership. There is a presumption that partnership working is always going on, although it might not be as good everywhere as it might be. The bill focuses on what landlords must do and does not address the wider issue. By giving landlords more tools, we hope that they can be more effective partners, with police and local authorities.

Mary Fee: The committee heard that the removal of the test of reasonableness in certain eviction cases, in section 15, is a fundamental erosion of tenants’ rights. How will the proposals strike an appropriate balance between the rights of landlords and the rights of tenants?

Margaret Burgess: The proposal on the reasonableness test relates to serious cases, in which someone has been convicted of an offence that has caused distress to their neighbours and community—it is not about offences that were committed inside the house and did not impact on other people. In such circumstances, a landlord who is already dealing with the antisocial behaviour aspect will have to go through a separate eviction process, which takes up time—people always complain about the time that it takes for landlords to evict people in serious antisocial behaviour cases.

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 the position in court if they think that they have been treated unreasonably or unfairly.

We are talking about serious cases, in which someone has been convicted of behaviour that has adversely impacted on their community and neighbourhood, but it is important that we have built in provision to allow for the tenant to change their behaviour. There is a lot of built-in support, too. A person will not have been convicted of antisocial behaviour automatically; a lot of work will have been done to charge the tenant and get the case to court.

Mary Fee: The Government consulted on the possibility of introducing initial probationary tenancies for all new tenants, although that has not been taken up in the bill. We have heard a mix of evidence, some of which supported initial tenancies while some did not. Why has the proposal for initial probationary tenancies not been taken forward, given that 62 per cent of respondents to the consultation supported the proposal?

Margaret Burgess: I am aware of the response to the consultation, but the initial tenancies were not the only proposal for dealing with antisocial behaviour. I do not think that the time is right to proceed with initial probationary tenancies. There is enough uncertainty just now with the welfare reforms. In other parts of the UK, social tenancies are a short-term thing—people have no right to remain and they are moved around. A tenancy in the social sector is only for a short time in someone’s life, and they have to move on. Given all those uncertainties, it would just not be right to implement the proposal.

We have included enough protections to deal with the antisocial behaviour measures. 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. I listened to the evidence that was given on the matter last week, and a lot of it was about antisocial behaviour and tenants and landlords getting to know each other. That can be done in a variety of other ways without putting people on trial.

**The Convener:** We move to part 3, on private rented housing.

**Jim Eadie (Edinburgh Southern) (SNP):** The bill makes provision to transfer jurisdiction for civil private rented sector cases from the Scottish courts to a first-tier tribunal. At the moment, if someone is pursuing a case through the courts, they are or may be eligible for legal aid. How do you intend to ensure that tenants, particularly vulnerable tenants, are able to access advocacy services or some other form of representation through the tribunal process?

**Margaret Burgess:** The tribunal procedures are designed to be accessible, understandable and less formal than the court system. That is how tribunals currently operate, and that is the way in which I would expect the private rented sector housing tribunals to operate. People can represent themselves; they can be represented by family members; or they can be represented by friends. Some people might have legal representation. Many people will be represented by other agencies, advocacy services and advice agencies, as you described.

The intention would be to ensure that the private rented sector tribunal is where people can go for help, advice and representation with regard to the private rented sector. We will certainly be considering that. My intention would be for such assistance to be accessible to everyone. People should be able to go along somewhere to get advice. It does not have to be from a legal representative—there are many other agencies that provide housing advice and other advice. I am sure that they will be involved.

We will have to monitor the case load to see what impact there is on other agencies. In my view, we do not need to specify in the bill how that advice will be provided, but I should make it absolutely clear that I anticipate that such advice will be there for people. The tribunals should be accessible. If people require representation, they should be able to get it.

**Jim Eadie:** I take the point entirely that the process is less formal. I hear what you say about ensuring that people can access the tribunal system. What specific measures is the Scottish Government taking to ensure that?

**Margaret Burgess:** I hope that my comments made it clear that we will ensure that that happens and that tribunals are accessible. That does not have to be in the bill; it is something that we will discuss with the agencies that will be involved and the stakeholders. The intention is absolutely clear: the tribunal system will be accessible to people. We know that some people will have difficulty in accessing it, but we need to look at the measures that we can introduce to deal with that and we will monitor the situation. I do not think that we need to put in the bill how we will make it accessible, however, as we have yet to draw up the tribunal procedures.

**Jim Eadie:** Okay. The policy memorandum makes the point that, under the current dispute resolution system, “cases can take a long time to reach court.” Are you confident that the new tribunal system, which is yet to be established, will be adequately resourced?

**Margaret Burgess:** We are confident that it will be adequately resourced. The ethos behind the system is to make it more accessible. We hope that that will also speed up the process, but the absolute priority is to provide access to justice for people who do not currently use the system. I do not know whether any of the officials want to comment on the figures that we arrived at.

**Daniel Couldridge (Scottish Government):** The costings that we developed for the private rented sector tribunal are based on data and best practice from other existing tribunal jurisdictions. We have also costed a range of scenarios based on how many cases the tribunal can hear in a day, which should give a good range for the tribunal to develop properly.

**Jim Eadie:** The financial memorandum states: “It is expected that there will be no additional costs for local authorities” arising from the proposal to establish the tribunal. Are you able to share with the committee the likely budget and staffing arrangements for the tribunal?

**Margaret Burgess:** We cannot do that at this stage. Sorry—could you repeat what you said at the start of your question?

**Jim Eadie:** The financial memorandum states that “there will be no additional costs for local authorities” arising from the establishment of the tribunal. My question is whether you are in a position to share with the committee your current estimates of the staffing arrangements and budget of the new tribunal.
Margaret Burgess: We will come to the staffing arrangements and budget in a minute. Those will come under the tribunal set-up. There should be no additional costs to local authorities from the setting up of the tribunal system. I am not sure why local authorities would feel that there would be an extra cost to them from our setting up the tribunal system.

Jim Eadie: It has been suggested to the committee in evidence that councils might have to train their staff, for example, or that there might be appeals against landlord registration decisions.

Margaret Burgess: My understanding is that only one local authority has suggested that. We will look at that, but we do not expect that there will be any significant cost to local authorities from our setting up the private rented sector tribunal. Colin Brown or Dan Couldridge might be able to address your point about the financial memorandum.

Daniel Couldridge: In the financial memorandum, we set out that the private rented sector tribunal will need up to 63 members to hear the estimated case load and that there will be one-off set-up costs of between £90,000 and £130,000 and annual operating costs of between £585,000 and £880,000 thereafter.

Jim Eadie: The set-up costs will be £130,000, and what will be the annual running costs?

Daniel Couldridge: They will be between £585,000 and £880,000.

Jim Eadie: What about the staffing arrangements?

Daniel Couldridge: Up to 63 tribunal members will be needed to hear the estimated case load. Those will be fee-paid tribunal members who will give around 15 days per year to hearing cases for the tribunal.

Jim Eadie: Am I right in saying that the impact of the change will be a widening of access to justice for people and that there will not necessarily be a resultant saving to the court service?

Margaret Burgess: The intention is to widen access to justice. It is not for us to save money for the court service.

Jim Eadie: Okay. We heard in evidence that the private rented sector will be covered by the new tribunal but the social rented sector will be excluded. Can you explain what the rationale for that decision was and how you intend to monitor and evaluate the situation?

Margaret Burgess: The rationale for that was the evidence that we heard, which was that in the private rented sector, there were fewer tenants—and even landlords—taking forward cases through the court system. It is about balance. Someone put it very well at the committee evidence session last week—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.

As regards the court reforms that are coming in, they are talking about specialist summary cases and sheriffs—perhaps Colin Brown could talk a bit more about the court reforms. 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, there has clearly been very strong support for the private rented sector tribunal.

Jim Eadie: Can you add anything to that answer on the changes to the court system in relation to the social rented sector as regards the use of mediation services?

Margaret Burgess: We are looking separately at mediation services between landlords and tenants—we do not have to legislate for them. We are taking forward mediation services in any case, so we do not have to put that in the bill. Colin Brown can add a bit more about the court reforms and how they would apply in the social rented sector.

Colin Brown: We will have to watch to see how the court reforms develop. It is for the Lord President to decide how the courts operate, and the indications are that the Lord President is minded to create specialist summary sheriffs in housing cases; when that system is developed, it would be expected to have advantages in how housing cases are handled. However, it is a work in progress and it will have to be watched as it develops to see how it goes and also to see how it impacts on things such as mediation and the choices that parties make on what goes to court.

Jim Eadie: Does the Scottish Government intend to evaluate whether social rented sector cases could or should be transferred to a tribunal system at some future point?

Margaret Burgess: 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 sector.
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.

Patrick Harvie: Moving on from the tribunal to the other aspects of the bill that relate to the private rented sector, the bill could have gone into a number of other areas. What scope do you see for the bill to develop over stage 2 and stage 3 into addressing other aspects of the private rented sector—in particular cost, given rent levels? We do not have the chronic problem that exists in some parts of the south of England, for example, but in areas such as Glasgow, Edinburgh and, in particular, Aberdeen, costs are spiralling and that is becoming extremely burdensome.

It would seem to be very consistent with the Government’s approach to cost of living issues, which generally fall under the heading of the social wage—trying to address the costs that people face—to consider what measures could be put in place through a bill such as this to address rent levels. What consideration has the Government given to that? Might other issues be addressed in the bill, such as discrimination against people on housing benefit and issues around evictions and harassment?

I will leave it at that. The principal issue that I am asking about is rent levels.

Margaret Burgess: We did not consult on rent levels. The issue was not raised during our consultation on the private rented sector strategy, and nor has it been raised with me, other than by you, Mr Harvie. We have a group that is looking at private rented sector tenure but, again, the issue of rent levels has not been high on the agenda in that group. We do not intend to legislate on rent levels in the bill. We have not consulted on it and the issue has not been raised with us frequently, if at all.

Patrick Harvie: It is possible that organisations such as the National Union of Students will seek to raise the issue. The NUS has certainly already made public arguments about it.

You mentioned security of tenure. From the research that has just been published on that, it is pretty clear that there has not been a proactive attempt to find the views of people who have had negative experiences. I think that 63 tenants were involved in the survey for the research, and that most of those who had moved on had done so for voluntary reasons rather than as a result of being forced to move at short notice because of insecure tenure. Does the Government remain open to the argument on security of tenure? To me, the issue underpins the inequality of arms, or power imbalance, between tenants and landlords. For the growing number of people in Scotland for whom the private rented sector is the only housing that our society provides, that inequality and power imbalance is a serious problem that underpins every aspect of their relationship with their landlord.

Margaret Burgess: I have said from the outset that, for the bill, we were not consulting on security of tenure. I have had discussions about that with Shelter Scotland and other organisations and told them clearly that, if the evidence is there, we will consider legislating on the issue, not in the bill, but during the current session of Parliament. We set up the group that I mentioned to put forward proposals, evidence and suggestions. Mr Harvie has suggested that he does not think that the research is wide enough, and we will look at all that. If a need to change the tenancy regime is demonstrated, I am open to doing that. We will not do it in the bill, but we would certainly do it in the current session.

The Convener: We will move on to part 4, which is on letting agents.

Gordon MacDonald (Edinburgh Pentlands) (SNP): In evidence, the Royal Institution of Chartered Surveyors pointed out that the proposed registration processes for letting agents are largely based on those for property factors. The RICS has suggested that the 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".

What evidence do you have on the effectiveness of the registration system and its appropriateness for letting agents?

Margaret Burgess: I have listened carefully to what the Royal Institution of Chartered Surveyors has been saying. We are absolutely clear that any regulation or registration has to be set at a meaningful level. We have looked at the Property Factors (Scotland) Act 2011, and I agree that, in practice, we might need something stronger for letting agents. That is the intention. We have to have something, and it has to be set at a level that is meaningful and can be enforced. It cannot just be about putting names in a register and thinking that that is fine.
12:00

Gordon MacDonald: What changes will you introduce?

Margaret Burgess: I want to wait until stage 1 is over and we have looked at all the evidence and the report, but 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. We are looking at a number of things. We have received a lot of evidence from letting agents and the sector, and you may see changes at stage 2. We are looking at the matter very closely.

Gordon MacDonald: You said that you are not going down the route of letting agents having to be members of a professional or trade body. What will be the visible policing body for the letting agent sector whose purpose it is to inspect and investigate the industry in a bid to scope out unregistered or substandard practitioners?

Margaret Burgess: First, we are not saying that we will police the agents through a regulatory body such as that for social housing—the Scottish Housing Regulator. That was not costed or consulted on.

We have said that all letting agents will require to be registered with the Scottish Government, which will hold the register of letting agents; they will not be registered with local authorities. The Scottish Government will apply the fit-and-proper-person test, and obviously that will be clear.

On how we will regulate, the first-tier tribunal can look at breaches of the code of practice, which will be the key. Exactly where the standards will be set and what we expect letting agents to be able to do to operate a business will be drawn up with stakeholders. The code will cover things such as the training that we have talked about, and it may cover issues such as how we would expect letting agents to operate in relation to equality and discrimination issues. That is the intention.

We would expect either tenants or other letting agents to report an agent that is not operating under practice. I think that we will find that if agents who are registered and conduct their business in a professional manner as we expect them to do are aware of other agents in their area who are not doing that, that will be brought to the attention of the Scottish ministers very quickly.

We also need to do a lot more to ensure that tenants know what we expect of a letting agent, so that when they go into properties with a tenant information pack and everything else, they are clear about the role of the letting agent and the services that it provides to the landlord and the tenant. If that has not been done, we would take action. The Scottish Government will hold the register.

Gordon MacDonald: Okay. Finally, do you have any views on how the code of practice could help to support the Scottish Government’s aspiration for sustainable homes that help to meet Scotland’s climate change targets?

Margaret Burgess: I do not think that the letting agent code of practice will cover that. It will be more about the quality and standards of professional services; it will not be about climate change or sustainable housing. That would be covered by our sustainable housing strategy, when we look at consulting on standards for the private sector, which includes the private rented sector and home owners. It is not covered in the bill.

The Convener: Does Patrick Harvie have a question on that part of the bill?

Patrick Harvie: Yes. I am grateful to you, convener.

First, the minister said that it is possible that the code of practice will address discrimination issues. I encourage the minister to go a wee bit further on what Parliament can expect in the code. I have raised the specific issue of discrimination against housing benefit or welfare recipients in advertising properties with a clear indication that housing benefit claimants will not be considered and in telling existing tenants that they have to leave if they claim housing benefit.

The second issue is the workarounds that some letting agents are coming up with to get round the deposit protection schemes, by charging advance rents or finding different ways of getting the same money in without calling it a deposit.

Thirdly, can the code of practice address the reasons why a landlord might end a tenancy? In the insecure tenancy regime that we currently have, many tenants are given notice to quit without any justifiable reason.

Will the code of practice address such issues? That would raise standards in the industry as a whole, rather than just weed out a few of the worst apples—we do not weed apples; I am sorry about the mixed metaphor.

Margaret Burgess: The code of practice is about raising standards and ensuring that agents can meet them. Some of the issues that you raised can certainly be addressed in the code of practice—some perhaps more easily than others. For example, I think that we can address the
problem of landlords getting round the tenancy deposit scheme in the code of practice. I want to address such issues in that way.

I certainly want to explore the issues that you raised. I agree with you about the “No DSS” approach, whereby landlords say that they do not want tenants who are on benefits. We will want to talk to stakeholders about that as we put together the code of practice.

I think that you had a third point.

Patrick Harvie: It was about giving tenants a reason why they have been given notice to quit, when they have insecure tenure after a period of secure tenure.

Margaret Burgess: That should be happening in any case, I would have thought. The code of practice should say that letting agents should know what the rules are and how and when they can issue a notice to quit—we talked about training. Tenants should know that, too.

I am more than willing to take the matter on. We know that some landlords do not adhere to the rules. In the context of the letting agent code of practice, we will expect agents to follow the rules on notices to quit and everything else that goes with tenancy agreements. It should be clear how such things operate.

Patrick Harvie: Thank you.

The Convener: Why is there no provision in the bill to give bodies—in addition to local authorities—third-party rights to report to the Private Rented Housing Panel? Would not such an approach help to meet the policy aim of expanding access to the panel?

Margaret Burgess: I understand where you are coming from. During the consultation, local authorities asked for such a power, which they thought would help in relation to their strategic approaches. I have sympathy with the suggestion that other people should have reporting rights. Of course, a person can act via the local authority, and a tenant could act with the support of an agency to report their landlord to the local authority.

There is provision in the bill for the Scottish ministers, through secondary legislation, to designate other bodies that have the power to report to the Private Rented Housing Panel. If it is deemed necessary, we will consider doing that. As you rightly said, such an approach would improve access to the panel. Local authorities are given the power in the bill; the question is where to include other bodies and how many bodies to include. However, there is the ability to do that in secondary legislation.

The Convener: Okay. What action is the Scottish Government taking on issues to do with the enforcement of existing private rented sector legislation, such as the private landlord registration scheme? Does the bill present an opportunity to improve the operation of the scheme, or is the scheme working?

Margaret Burgess: There are existing powers for local authorities to take action against landlords who do not abide by the private landlord registration scheme. I accept that the scheme is probably not operating as we hoped that it would do. However, local authorities have the power to take action against bad landlords.

We can all give examples of people who have come to our surgeries telling us about their landlords' behaviour and what they have done to them, and that those landlords are still on the register. If there are continual complaints about a landlord when a house has been allocated or when a new tenant is moving in, although a local authority might not have taken action, the powers are there and it is a question of getting local authorities to use those powers. We will certainly be discussing that as we move forward. I know that local authorities are of the view that they have insufficient resources to do things the way that we would all want them to be done, but we have to remind them of the powers that they currently have and encourage them to use those powers. I do not think that we need to do anything additional in the bill, because the powers are there.

The Convener: Do you agree with some of the suggestions that have been made to us about supplementing the bill’s provision of improvements to the physical standard of private rented housing? In particular, I am referring to the need to be clear about how electrical safety should be achieved, making the provision of smoke alarms mandatory in private rented properties and the installation of carbon monoxide alarms.

Margaret Burgess: Safety in homes is paramount and I am sympathetic to some of the proposals that have been put to the committee. I have followed the debate and I would certainly be interested in the committee’s recommendations.

The Convener: I move on to part 5, on mobile homes. We heard evidence suggesting that site owners could use the three-year licence period as a threat against vulnerable residents. What is the policy intention behind the three-year licence period and what can you do to prevent site owners from using it as a threat to vulnerable tenants?

Margaret Burgess: The intention behind the fixed-term licence was to protect residents on a mobile home site and to ensure that the site owner was operating the site effectively and was a fit and proper person to do that. 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.

I know that the committee has heard lots of evidence from mobile home owners, and I have spoken to a number of them as well, so there may be some changes to what we are doing for mobile home owners.

The Convener: The park owners have also suggested that a three-year licence term could impact negatively on lenders providing finance to residential park homes in Scotland. Is not there an argument for a five-yearly review and a rolling licence, a bit like the arrangements for Care Inspectorate inspections of care homes that are less likely to meet the standards rather than those that are consistently meeting them, or the arrangements for school inspections?

Margaret Burgess: We heard suggestions that it might prevent lenders from lending to site owners, and it is not our intention that that should happen, but we do not have any concrete evidence at this stage that that is the case. Officials are speaking to colleagues in the Welsh Assembly to determine whether that is an issue in Wales, and we shall keep an eye on that.

Three years were deemed to be an appropriate period. 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.

The Convener: The provisions sit in that context, because they cover a number of situations in which local authorities can enforce repairs, which can include measures such as insulation. The provisions are part of keeping houses to a standard that means that people can maintain and live in them. The bill amends existing powers on repairs and maintenance.

Margaret Burgess: The intention is to improve the quality of the stock generally. In that sense, the provisions go towards a more sustainable approach.

William Fleming: We expect licensing to be a small cost that would be passed on to each resident—that will be part of the site owner’s costs—but we will look into whether the impact of what is in effect a fine could be prevented from being passed on to residents.

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

The Convener: Residents would have paid for a good service, but they would not have got it.

Margaret Burgess: I absolutely take your point. Why should residents pay twice?

The Convener: Adam Ingram has questions on private housing conditions.

Adam Ingram: Part 6 amends local authority powers to enforce repairs and maintenance in private homes. How does that sit in the context of the Scottish Government’s sustainable housing strategy?

Margaret Burgess: The provisions vary among local authorities. Do local authorities have the resources to be able to inspect sites regularly and fully use the proposed site licensing enforcement powers?

Margaret Burgess: 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.
Adam Ingram: The missing share proposal will solve one of the problems.

Margaret Burgess: 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.

The Convener: Finally, you mentioned the Scottish Housing Regulator in your opening remarks. Having listened to tenants—especially when we were in Dumbarton on the Parliament day—we know that they are concerned about the removal of the need to consult. Why do you think that the Scottish Housing Regulator might not have to consult tenants? Insolvency or the threat of insolvency does not happen from one day to the next. There is a build-up to it—whatever the reason behind it—so it is not a sudden thing. Why are there proposals in the bill to remove the need to consult? Should we not be genuinely trying to find means to protect tenants?

Margaret Burgess: The bill is seen as a means to protect tenants. I think that I made it clear in my opening remarks how important consulting tenants is for the Scottish Government. This very narrow exception in the bill addresses a circumstance that I hope would never arise, but it came close to happening on one occasion, so we have to address it, and that is why we want to include that exception to the duty in the bill. 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. Those four tests would have to be met before the need to consult would be removed.

We have said to all the stakeholders that if we can tighten that regulation any further, we will. We intend it to be an extremely tightly drawn power that is used only in exceptional circumstances. I hope that it would never have to be used, but if that option is there it will provide ultimate protection for tenants. It is not about regulation; it is about protecting tenants to ensure that in those very extreme circumstances they would be protected and they would have a landlord.

The Convener: There is also some concern in the sector about amalgamations of housing associations. Would it still be the case that tenants would have to vote on whether their housing association amalgamates with others? Where is the drive for that coming from?

Margaret Burgess: As I said in my opening remarks, the Glasgow and West of Scotland Forum of Housing Associations put forward quite compelling arguments for why, when there is an amalgamation or a merger, tenants should be balloted. Currently, tenants are balloted only if they change their landlord, whereas if a housing association amalgamates with or forms a constitutional partnership with a larger housing association, in effect tenants have the same landlord and they are not required to be balloted.

We are looking at protecting tenants’ rights and some of these mergers can make a difference to tenants. We therefore believe that, for there to be openness and transparency, tenants perhaps should be consulted in those circumstances. That is why I have written today to all stakeholders to say that we are minded to consider that at stage 2.

The Convener: So we will see amendments on that from you at stage 2.

Margaret Burgess: Possibly.

The Convener: As there are no further questions, I thank the minister and her team very much.
ANNEXE C: OTHER WRITTEN EVIDENCE

Aberdeen City Council
A Flat in Town Limited
Almond Housing Association
Amnesty International
Angus Council
Argyll and Bute Council
Article 12 in Scotland
Borders Edinburgh East Lothian and Midlothian RTO Network
Brodies LLP
Cameron, Anne (Individual)
Capability Scotland
Carers Scotland
Citizens Advice Scotland
City of Edinburgh Council
Clackmannanshire Tenants and Residents Federation
Clouds Property Management
Colinton Lettings
Council of Mortgage Lenders
Craigendmuir Limited
Craigtoun Meadows Ltd
Cramond, R D (Individual)
Crisis
Diponio, Maria (Individual)
Dundee Federation of Tenants Associations
East Ayrshire Tenants and Residents Federation
East Fife Federation of Tenants and Residents Association
East Lothian Tenants and Residents Panel
Edinburgh University Students Association (EUSA)
Electrical Safety Council
Elliot, Douglas (Individual)
Energy Action Scotland
ESPC
Factotum
Five Sisters and Cairn Rock Housing Networks
Glasgow City Council
Gilmore, Sheila MP, Edinburgh East
Glenholm Property
Gowans, Gavin (Individual)
Hewitt, Dr Sam (Individual)
Homeless Action Scotland
Homes for Scotland
Houston, Donald (Individual)
Huyton, Alan (Individual)
Inclusion Scotland
Laird, Ricky (Individual)
Livingstone, Neil (Individual)
Low, Gerald P. (Individual)
Martin & Co.
Maryhill Housing Association
MECOPP
Methven, John (Individual)
Maxwellton Court Residents Association
MacDonald, Donald (Individual)
McLean Forth Properties Limited
Merrylee Residents and Tenants Organisation
Mould, Robert (Individual)
North Ayrshire Council
North Lanarkshire Federation of Tenants and Residents Association
NUS Scotland
Palmer, Lynne (Individual)
Paragon Housing Association
Partick United Residents Group
S & D Properties Group
Schofield, A Mr & Mrs (Individual)
Scottish Borders Tenants Organisation
SCCYP
Scottish Disability Equality Forum
Scottish Gas
Scottish Independent Advocacy Alliance
Scottish Property Federation
Scottish Refugee Council
Scottish Tribunals and Administrative Justice Advisory Committee
SELECT
Simply Let
South Ayrshire Council
South Lanarkshire Council
South Lanarkshire Tenants Development Support Project
South West Scotland Regional Network
Stoddart, Janis and Thomas (Individual)
Tenancy and Estate Management Service
Tenant Organisation Regional Networks
The Property Ombudsman
Tughan & Cochrane Property Managers
UNISON
West Lothian Council
West Strathclyde Regional Network
Wheatley Group
Williams, Frank (Individual)
Williamson, Jacki (Individual)

SUPPLEMENTARY WRITTEN EVIDENCE

Letter from Scottish Government officials following 15.01.14 oral evidence
Additional written evidence, Chartered Institute for Housing following 22.01.14 oral evidence
Additional written evidence, Scottish Federation of Housing Associations following 22.01.14 oral evidence
Additional written evidence, The Law Society of Scotland following 22.01.14 oral evidence
Additional written evidence, BH&HPA following 19.02.14 oral evidence
Additional written evidence, BH&HPA dated 11.03.14 following 19.02.14 oral evidence
Additional written evidence, Let Scotland
Letter from Minister for Housing and Welfare dated 20 March 2014, following 12.03.14 oral evidence
Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q. What are your views on the provisions which abolish the right to buy for social housing tenants?

A. This is a welcome provision to tidy up a complex policy and will help protect the stock of affordable rented housing in Scotland. However the loss of capita receipts will be an issue for councils and RSLs which will need to be factored in to the budget setting process.

Q. Do you have any views on the proposed 3 year timetable before these provisions come into force?

A. This is too long a grace period, it should be reduced to 12 months this should give potential applicants plenty of time to exercise their option.

Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

A. Landlords currently have a reasonable amount of flexibility, however the provisions clarify and update to some degree Reasonable Preference categories, and we look forward to guidance on what “Unmet Housing Need” means. With regard to age, this flexibility is welcome as it removes a barrier to social housing landlords wishing to allocate to particular age groups in specific situations and locations. This will assist in the better management of housing stock.

The inclusion of ownership as an allocation criteria is also welcome however the practicalities and possible cost involved in landlords being able to verify an applicant’s home ownership status and therefore fully implement this criteria are unclear at present.
Q. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

A. With regard to SSST’s, whilst the bill wishes to protect tenants on this type of lease for ASB, in reality an initial period of 12 months makes it a lengthier and more costly process to evict them should this prove necessary given that landlords will have to lodge court action and also take up court time and may lead to extra costs of providing support due to the longer period involved?

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?
A. Aberdeen City Council welcomes this provision.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. Do you have any views on the proposed new licensing scheme?

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

S19 Right to adapt rented houses

This section is welcomed by Aberdeen City Council as we believe that the growth in the private rented sector will only be effective if this right is enshrined in law. However, the Council believes that the proposed changes to
the legislation is in itself not sufficient; in that while the PRHP may find in favour of the tenant, the tenant may not benefit from grant assistance under the Housing (Scotland) Act 2006, s73.

In order for the Council to award grant we are required to seek the owner's approval (2006 Act s75 Determination of applications (4)(a)), and to serve conditions of grant on the Title Deeds which remain in effect for a period of 10 years (s83 & s84). In the event that a landlord fails to sign the grant application form, the Council will be unable to award grant.

In order for the change in legislation to be truly effective, it would be necessary for the appeal process to make direction that the conditions of grant can be appended to the Title Deeds whether the landlord has consented or not.

On a separate issue not covered by the Housing Bill,

Disability Adaptations – Mandatory assistance.

When approving grant applications for disability adaptation there is no ability included within the Housing Scotland Act 2006 to permit local authorities to take into consideration any awards of compensation in relation to a disability. This means that as the legislation stands, an applicant who may have received a considerable level of compensation for their disability and which may specifically have taken into consideration their long term housing needs, can apply for and be bound to receive, a minimum 80% grant from the local authority. Therefore, the applicant can receive double funding for the same assessed needs.

It was standard practice under the 1987 Act and the 2001 Act, and indeed the Scottish Government's own prescribed grant application forms, for all types of grant earning works to ask the applicants’ if they had received funding from other sources and in the case of disability applications, asked; “have you or your partner received or applied to receive any compensation or insurance payment as a result of this disability, during the last 3 years?”

Aberdeen City Council are of the opinion that this requirement to declare compensation should be re-instated for current disability grants, but with the limit of “in the past 3 years” dropped so that it simply means any award ever given for this purpose. The thinking behind this is that an award could be made for a child and then some years later an application could be made where that child is now an adult, but the original award may well have made lifelong assessment. It would then be up to the local authority to consider whether or not the original award is still satisfactory or if exceptional circumstances could allow them to disregard the original award.

It is regretted that the Bill does not extend the opportunity for more flexible tenancy arrangements for Local authorities. This would be of particular use in allowing LA's to provide mid-market rent houses on assured tenancies. The extra income derived would fund enhanced standards and would be of
particular use in supporting mobility of labour for families moving into an area to take up employment. It is particularly disappointing that no consideration appears to have been given to the role that social landlords, including local authorities housing stock can facilitate mobility of labour.

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

It is regrettable that the issue of Initial or Probationary Tenancies was not part of this Bill, so that discussion and debate could have take place around this well supported proposal during this consultation period.

Also taking income into account in the allocation of housing, with the pressure on social housing so acute and the requirement to house those in greatest need, this is an issue that many landlords would have liked an opportunity to advocate for in the passage of this Bill.

Aberdeen City Council
28 February 2014
A Flat In Town Ltd are letting agents and property managers and wish to make the following observations on the Housing (Scotland) Bill:

In response to questions submitted earlier we wish to respond accordingly

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards. It is essential that the reputation of the industry is improved while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

We believe there should be a new stand-alone Letting Agent Register operated by the Scottish Government.

The Register should include all businesses which let and manage private rented residential property in Scotland. It may be more appropriate to consider the registration process to be more the issuing of a licence approving the Letting Agent.

A strong Code of Practice is needed. Along with the other representative organisations, we welcome the planned consultation in preparing the Code as secondary legislation.

We believe that any Registration process should be Government operated free of any involvement with professional bodies such as the RICS or ARLA and others.

The impact of these proposals on our industry is to be welcomed. It will however highlight even further the disparity in enforcement that currently exists on compliant letting agents and landlords and those who operate below the required standards. The passing of legislation and implementation of registration of Letting Agents will create an environment where landlords who are self-managing will perceive the enforcement of regulation on them to be far less onerous. It should be important that the whole industry meets a suitable standard. We recommend that at the same time as these regulations are implemented that the Landlord Registration regulations are enforced more robustly. Further to this, we would also comment that private landlords seem to be frequently unaware of any changes in legislation that affect them, particularly if such changes should occur mid-tenancy when they are not actively seeking any information about letting. The landlord and letting agent registration process should therefore also mean that if changes occur, the database of registration information is used to supply landlords/agents with the relevant update.
Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

A Flat In Town Ltd
27 February 2014
ALMOND HOUSING ASSOCIATION

WRITTEN SUBMISSION

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

Almond Housing Association has charitable status so it is only our tenants with the Preserved Right To Buy who would be affected by these changes, a total of 355 as at February 2014. There have been many changes to RTB following the Housing (Scotland) Act 2001 and the situation throughout Scotland is confused. RTB is no longer equitable, as neighbours can have differing entitlements - from a Preserved Right to Buy with high discounts, to none at all.

Almost half of our tenants with the preserved right are past retirement age and the property is being bought on their behalf by family members. Since 2007 three of the twenty-seven properties we have sold are now in the private rented sector.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

Three years is too long. When the 2001 Housing (Scotland) Act was going through the legislative process with the modernised RTB being introduced, there were agencies 'cold calling' and encouraging tenants to exercise their RTB whether they had a right or not. We have no reason to believe that will not be repeated.

Since the proposed change to RTB was announced we have seen an increase in the number of RTB applications from our older tenants. In one case the family were blatant in their intention to purchase the property (extract from e-mail below):

“I am making an enquiry into buying my mothers house, she lives in Manitoba Ave, Howden, and has been in the house for 40 years, she has stayed in Livingston for over 45 years and just want to find out information about this”.

A three years timescale will just give a longer period for families who see RTB as an investment to pressurise tenants to exercise their right to buy, whether it is appropriate for them or not. The intention to end the right to buy has been well publicised in the media. One to two years should be sufficient to give any who wish to purchase time to seek financing. This will also protect rented stock for future applicants.
Part 2: Social Housing

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Reasonable preference
On under occupancy Section C states “tenants of houses held by the social landlord which the social landlord considers to be under occupied”. The statement could be widened to include tenants of houses held by social landlords in general. This would allow priority to be given to the tenants of any social landlord who are under occupying a property and want to move to a smaller home. This could free up larger homes for waiting list applicants.

Age
There may be instances where it will benefit applicants to take into account their age. We appreciate that there may be concerns that this will be used to disadvantage younger applicants. However there will be instances due to location, or other issues such as ongoing antisocial behaviour issues, where it is more appropriate to let a property to a younger applicant.

Ownership of Property
We do not see this as being much of an issue. 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.

Suspensions
This provision could allow for the greatest flexibility and protection for other residents, but that is tempered by the insertion of the line “a minimum period cannot be placed on a homeless applicant to whom the Local Authority has a duty to provide settled accommodation”.

Unless there is new guidance issued regarding homeless assessments this is going to perpetuate the two tiered system of access to housing that currently exists, where homeless applicants bypass the sanctions placed on non-homeless applicants (see: Tensions between Allocations Policy and Practice, Scottish Government (2007)).

The Association receives requests from the Local Authority to house homeless applicants who we have suspended under the terms of the Housing (Scotland) Act 2001 from receiving offers. While the homeless assessment will take into account intentionality when assessing a homeless applicant it is only concerned with the reason for the immediate homelessness. We do not think the current system is equitable nor will the new housing bill address the inequalities.
For example, a tenant who is evicted for Anti-Social behaviour or rent arrears and who applies to the LA would likely be assessed as intentionally homeless, but if they go to stay with a relative or friend who later asks them to leave, the assessment takes no note of the earlier anti-social behaviour or tenancy debt, focusing only on the recent relationship breakdown, and this would likely result in an unintentionally homeless decision.

Amended guidance to the 2003 Homelessness etc. (Scotland) Act would allow the LA to look at the housing history over a longer period for intentionality. This would go some way to meet the aims of the Housing (Scotland) Bill to give greater protection to existing communities.

In addition, once the Homelessness assessment is made that decision cannot be revoked until permanent secure move-on accommodation is provided. Homeless applicants evicted by the Local Authority from temporary tenancies for rent arrears or other breaches of tenancy still have to be housed, but this is not equitable with other tenants who lose their home for breaches of tenancy conditions and would be assessed as intentionally homeless.

These are not one-off incidents. There is often a history of failed tenancies and the tenant is also often refusing to engage with support. In these circumstances a different tenancy model needs to be found which will allow for the Homelessness duty to be discharged, protects communities from the cost of tenancy failure and works with the tenant to achieve a sustainable tenancy

**Assignation, Sublet**
Extending the period to 12 months that a person has to have occupied a property as their only or principal home, and placing a responsibility on the person seeking the property to inform the landlord at least 12 months before making an assignation or sublet request that they were living in the property, should help to protect the rights of waiting list applicants.

**Succession**
Successions are more emotive. The proposed changes will address the issue we often find where a family member claims to have been living at an address at the point of the tenant’s death.

**Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?**

We cannot see any instance where issuing a tenant with a short Scottish Secure Tenancy would be of advantage.

**Almond Housing Association**
28 February 2014
AMNESTY INTERNATIONAL
WRITTEN SUBMISSION

Amnesty International works, in conjunction with organisations working directly with Scottish Gypsy Travellers, to monitor and support the implementation of the recommendations as outlined in the Scottish Parliament’s Equal Opportunities Committee (EOC) “Inquiry into Gypsy/Travellers and Public Sector Policies (2001)” and their more recent inquiries; “Gypsy/Travellers and Care (2012)” and “Where Gypsy/Travellers Live (2013)”

The EOC’s thorough research on accommodation issues; based on evidence submitted by various stakeholders, testimony provided by community members and site visits led to the production of comprehensive recommendations. The Government’s response so far demonstrated a lack of understanding and a failure to assume leadership in the implementation of the recommendations.

With regard to site tenancy rights, the EOC recommended:

“Gypsy/Travellers as site tenants should have the same rights and responsibilities as people living in fixed housing. We expect that the Scottish Government will work with Gypsy/Travellers and supporting bodies on the development of a standard Gypsy/Traveller site tenancy agreement.”

Amnesty International calls for strong Governmental leadership in implementing the EOC’s recommendations and establishing a comprehensive legal framework that would provide for effective and efficient actions and accountability at all levels. The focus must shift from further research and discussion towards concrete actions with a clear timeframe as well as robust evaluation and accountability mechanisms. Finally, all action must be considered and undertaken with the active involvement and participation of community members. Comprehensive actions not only within legislation and policy concerning the right to adequate housing were also called for by the UN Special Rapporteur on adequate housing who visited Scottish Gypsy Travellers’ sites during her mission to the United Kingdom in 2013. The Rapporteur recommended that the Government “strengthens efforts to address stigma and discrimination for the Gypsy and Traveller communities in relation to the wider spectrum of rights, starting with the recognition that cultural adequacy in housing is a pillar for inclusion, and that legislation and policy are not enough to overcome local obstacles.”

Therefore we see the current Housing (Scotland) Bill proposal scrutinised by Parliamentary Infrastructure and Capital Investment Committee as a unique opportunity to address housing issues of Scottish Gypsy Travellers community, implement EOC’s and Special Rapporteur’s recommendations regarding accommodation of the community, and ensure equalisation of rights and responsibilities of Scottish Gypsy Travellers as site tenants with those of people living in fixed housing. We suggest that the Committee considers amending the current proposal and includes site tenancy issues relevant to Scottish Gypsy Travellers in Housing (Scotland) Bill.

Amnesty International
27 February 2014
1. Introduction

Angus Council welcomes the opportunity to comment as part of the consultation on the infrastructure and capital investment in connection with the Housing (Scotland) Bill. Angus Council is a supporter of more flexibility for landlords and believes that this will help deliver better outcomes for communities.

Part 1: Right to Buy

Q1 – What are your views on the provisions which abolish the right to buy for social housing tenants?

The local authority is supportive of the removal of the right to buy and the provisions to abolish the right to buy entitlements would mean that the right to buy for all social tenants will end by 2017. We agree that the change in this legislation would be a benefit to Angus Council. We have a healthy waiting list for properties and this would help us retain our remaining stock. We have seen a reduction on right to buy receipts and we would continue to reap the benefits from the rental income for all properties and manage our assets effectively.

Q2 – Do you have any views on the proposed 3 year timetable before these provisions come into force?

Our view is that 1 year lead in before the provisions come into force would be sufficient time for tenants to complete the right to buy process. However, we understand that there other views from local authorities but this anticipated timetable would allow any tenants who qualify for the right to buy the opportunity to apply. Consideration to reduce the proposed 3 year period to 2 years would allow ample time for anyone to make an application if they were interested in the right to buy scheme.

Part 2: Social Housing

Q4 – In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Angus Council supports more flexibility and think that Community Based Letting Plans should be the mechanism to meet local needs and the best way for delivering outcomes. It will also allow us to make sensitive lets in areas where necessary to and continue to make best use of our stock.

Q5 – Will the proposals which will adjust the operation of the short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling anti-social behaviour in an appropriate and proportionate manner?

Angus Council agrees that landlords should have the flexibility to consider previous anti-social behaviour of applicants and their household. Circumstances are all different which means that guidance will be open to interpretation. Short Scottish secure tenancies
should be a tool for landlords in managing anti-social behaviour and increasing the SSST for up to 12 months to allow the appropriate support to be put in place and to monitor the tenants’ behaviour. In particular we think that landlords should be allowed to convert a tenancy to a SSST where misconduct has occurred but eviction can be avoided.

Q6 – Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

This gives tenants in a short SST, more protection as when they are allocated the tenancy there must be a housing support package in place. Should the SSST be in place for 12 months, it would give that tenant more security and could help new tenants adopt a more responsible attitude to their tenancy and help create more sustainable communities.

Part 3: Private Rented Housing

Q7 – Do you have any comments on the proposals for transferring certain private rents sector cases from the sheriff courts to the new First tier Tribunal?

Angus Council agrees that it would be beneficial to transfer certain private rent sector cases from the sheriff courts to the new First tier Tribunal. It is important that this will take pressure off the civil court system and the new approach will be more cost effective. This forum could also be more accessible to tenants involved and they might not experience the same anxiety if the case was dealt through the court system.

Q8 – Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The introduction of more discretionary powers in relation to private rented housing will give local authorities more tools to use in tackling poor standards of properties. However, we have concerns that there will be an expectation that we will solve disputes in the private sector that are really not disputes but a general fall out. There are little or no resources at the moment to allow local authorities manage this change. The regulation of letting agents will also be seen to improve standards.

Q9 – Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at the area characterised by poor conditions in the private rented sector?

Granting local authorities discretionary powers to apply to the Private Rented Housing Panel to enforce the repair standard or target enforcement action on areas characterised by poor conditions will improve standards across tenures and help people to adopt a more responsible attitude to their properties making communities more sustainable in the longer term. However, although allowing local authorities additional powers in the current financial climate there is not the proper resources available to carry out this task effectively.
Part 4: Letting Agents

Q10 – do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This will be another step towards better regulation of private landlords. It will benefit landlords and tenants if there is a mandatory register of letting agents introduced in Scotland. However, to allow this is progress effectively additional resources needs to be made available or the system would need to be self financed. We agree that it will promote good standards of service and establish good practice with minimum standards.

Q11 – Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The introduction of a mandatory register of letting agents is an improvement on regulation of private landlords and includes a code of conduct for all parties concerned. The introduction of the First-tier Tribunal will have the power to make certain decisions and issue enforcement orders to letting agents, this should improve the process for disputes between landlords and tenants.

Part 5: Mobile Home Sites with Permanent Residents

Q12 – Do you have any views on the proposed new licensing scheme?

In Angus, we have recognised that there has been an increase in “holiday” sites that are now being used for permanent occupation, which then becomes a breach of the site licence and planning consent. 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. Clarity is required as to whether the new legislation will apply to migrant workers sites. At present we don’t have sufficient tools in place to manage, police and enforce breach of conditions. The inclusion of the “fit and proper person” test will assist authorities when granting, managing and reviewing licences. The introduction of site licences being valid for 3 years will be beneficial to the management of the sites as at the moment they have no expiry date.

Q13 – What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

It can be difficult and resource intensive to police licence conditions, and 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. The new licence regime should protect the interests of legitimate site owners also by creating a system which brings greater penalties for poor site managers.
Part 6: Private Housing Conditions

Q14 – Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and secure work, particularly in tenemental properties?

Although in Angus we do not have many tenements in the area, we welcome the additional powers to enforce repairs and maintenance in owner occupied homes and private rented housing. The additional legislative changes including powers to issue a maintenance order will improve the repair standard and encourage a more consistent approach across all tenures. 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 on resources and if they were given more discretionary powers additional resources would be needed.

Part 7: Miscellaneous

Q16 – Do you have any comments relation to the range of miscellaneous housing provisions set out in this Bill?

The amendment of the 20 year rule will benefit and overcome previous hurdles that potential lenders in these tough conditions where they must comply with the Financial Conduct Authority’s Mortgage Market Review Guidance which comes into force in April 2014.

Other Issues

Q17 – Are there any comments you would like to make on the Bill’s policy objectives and specific provisions?

Angus Council welcomes the opportunity to work with The Scottish Government to help improve housing in Scotland. We believe that the Bill’s policy objectives will deliver a more effective housing system that gives more structure but a flexible approach with realistic outcomes. We agree that there is a need for decision making to be decentralised and the ability to decide the actions and outcomes. This is a real opportunity to allow housing providers to operate as efficient organisations, create flexibility however; there is a need to identify additional resources in an environment where resources are spread thinly.

Q18 – Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Angus Council agree we have been consulted on and give the opportunity to comment and the appropriate time to respond in all the areas within the Bill.

Angus Council
25.02.14
ARGYLL & BUTE COUNCIL
WRITTEN SUBMISSION

Part 1: Right to Buy
This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

We would agree that the Right to Buy should be abolished and fully support the provisions of the Bill which will bring an end to an outmoded and counter-productive policy.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

While recognising that a reasonable lead-in period is appropriate when an existing right is being withdrawn, we would nevertheless prefer that the timetable for the abolition of the right to buy is reduced i.e. the provisions should be implemented sooner. This might also help to preclude any unintentional spike occurring in pre-emptive sales prior to abolition.

{NB. Q3 appears to be missing}

Part 2: Social Housing
This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

It is important to emphasise to social landlords that they are still required to give reasonable preference to people who are homeless and who have unmet need which cannot be met by other housing options. As a stock transfer authority, Argyll and Bute Council has some concerns as to how the new powers will be interpreted and that it will mean the most vulnerable people are being disadvantaged. It is acknowledged that social landlords are required to take account of the Local Housing Strategy for the area and we look forward to Scottish Ministers’ guidance on persons who social landlords must include in its rules governing priority of allocations.

The fact that ownership of property can be taken into account will mean that in certain circumstances it is possible to make best use of the social housing. Provisions to enable the short Scottish secure tenancy to be used
where an applicant is an owner and requires a short term solution will be useful for landlords. However, in respect of the provisions intended to address anti-social behaviour, we believe that there are appropriate mechanisms through the criminal justice system to deal with anti-social behaviour and criminal activity. Consideration of these factors to limit access to social housing will mean that these persons and their dependents will be excluded from social housing. The right of appeal to the Sheriff court is unlikely to be practical for people who have limited means.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

No, people who live chaotic lives still need and have a right to accommodation. We are a stock transfer authority with limited temporary accommodation. There needs to be clear guidance and definitions attached to the legislation and it should set out what constitutes evidence of someone ‘acting in an anti-social manner’.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

Yes, it does give tenants more rights and we welcome the fact that there is an option to request a review.

Part 3: Private Rented Housing
This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This is welcomed as a positive move as it will hopefully make the process more accessible and resolution should be reached more quickly.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?
This is a major issue but we believe these proposed adjustments will lead to only a marginal change and are not significant. The problem is so widespread and resources to tackle it are so limited that we do not envisage that these adjustments will make much difference overall.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

We would be interested to see the detail of the provisions to be brought forward at stage 2 but suspect that these may not make a difference – there are risks associated with these powers for the local authority if it involves local authority expenditure. There is a need to target owners and encourage them to take responsibility. There is also an issue about how older people are supported to maintain their property and an expansion of care and repair type organisations may be worth exploring.

Part 4: Letting Agents
This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

In principle this is a good idea but practically it is unlikely to make much difference unless resources are committed to address non-compliance. We would also recommend that local authorities should be exempt from the requirement to register as a letting agent if they are letting property to discharge their obligations in terms of the homeless legislation.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

We would support the proposals.

Part 5: Mobile Home Sites with Permanent Residents
This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.
Q12. Do you have any views on the proposed new licensing scheme?

This Council is generally supportive of the proposed scheme but we have some concern about the availability of resources to implement the proposals effectively.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

There will be more regulation and control over how they operate their business and it may mean that there is some investment required so that they can comply with the necessary standards. Operators will also have to ensure that the staff they employ to manage the site meet the ‘fit and proper person criteria’. As this authority appears to have a significant number of residents on such sites, we would welcome any moves to improve and safeguard their position.

Part 6: Private Housing Conditions
This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

There are problems associated with the use of existing default powers and we do not believe that these provisions will make much difference.

{NB. Q15 appears to be missing}

Part 7: Miscellaneous
This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

No comment.
Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

None

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

None

Argyll & Bute Council
15 January 2014
A recurring theme in the comprehensive and on-going research of Article 12 in Scotland and others (see for example, The UN Special Rapporteur on Adequate Housing, MECOPP and Amnesty International) on accommodation needs of the Gypsy/Traveller community is the absence of a standardised Site Tenancy Agreement (STA).

Currently, the content and context of STAs varies from Local Authority to Local Authority: a practice that leads to confusion, conflict and dispute and a belief that Gypsy/Travellers do not enjoy the same accommodation rights as members of the sedentary community.

Cognisant of this, the Scottish Parliament’s Equal Opportunities Committee 1st Report, 2013 (Session 4) Where Gypsy/Travellers Live made the following recommendations:

It is essential that Gypsy/Travellers, as site tenants, have the same rights and responsibilities as people living in fixed housing. We welcome the Minister’s agreement on this, and expect that the Scottish Government will, as a priority, work with Gypsy/Travellers, local authorities, ACHA and Amnesty International on the development and implementation of a standard Gypsy/Traveller site tenancy agreement, containing as a minimum rights and responsibilities for all parties comparable to the Scottish Secure Tenancy Agreement (p.21).

Article 12 in Scotland views the Housing (Scotland) Bill as an opportunity to address the lack of a standardised STA and equality of accommodation rights. This can, in our opinion, best be achieved by the inclusion of an explicit reference to STAs in the proposals for Scottish Secure Tenancy Agreements section of the Housing (Scotland) Bill.

Article 12 in Scotland
27 February 2014
**BEEM (BORDERS, EAST LOTHIAN, EDINBURGH, MIDLOTHIAN)**

**WRITTEN SUBMISSION**

1. **BEEM (Borders, East Lothian, Edinburgh, Midlothian)**
   BEEM is one of the 9 Regional Networks of Registered Tenants Organisations (RTOs) formed in 2008 and cover the local authority areas of Borders, East Lothian, Edinburgh and Midlothian. We are a committee of 9, elected annually, and generally represent the views of our tenant and resident members of the 90 RTOs across our area.

2. **General comments on the Bill**
   BEEM welcomed being involved in the extensive consultations held on many of the proposals included in the Bill and we particularly welcome the proposals to abolish the Right to Buy and the provisions on social sector allocations and tenancies.

3. **Issues not included in the Bill**
   We are disappointed that the proposal to create a Housing Tribunal for the social rented sector and the introduction of Probationary Tenancies are not included in the Bill.

4. **The Bill**
   **4.1 Right to Buy (RTB), Part 1**
   BEEM is pleased that the Scottish Government has announced the ending of Right to Buy and welcomes this decision. However, we believe the proposed transitional period of 3 years is too long and feel that this should be reduced to a period of one year from the date of Royal Assent.

   **4.2 Social Housing (Part 2)**
   **Allocations**
   We agree with this measure as it removes an unhelpful barrier to landlords wanting to allocate to particular groups in specific situations and believe the Bill makes it explicit that removing this age bar does not mean that landlords can discriminate against particular age groups or that it contravenes the Equality Act 2010.

   **Probationary Tenancies (Initial tenancies)**
   The outcome of the Governments consultation concluded that the majority of the sector, including tenant responses, were in favour of introducing Probationary tenancies (or Initial Tenancies) and BEEM were disappointed that it was dropped for this Housing Bill. BEEM strongly support the introduction of initial tenancies and support the introduction of probationary tenancies for all social housing tenants and believe that the benefits of introducing this outweigh any negativity especially when it has the real potential to help deal with tenancy problems, such as anti-social behaviour, sooner.

   **Short Scottish Secure Tenancies (SSST)**
   BEEM generally welcomes the introduction of this SSST extended power.
4.3 **SHR Amendments.**
These changes were not the subject of previous consultation. BEEM strongly disagree with this provision and would like to see this removed from the Bill and that the consultation with tenants’ clause is retained. We feel that tenants should always be consulted on issues as important as this and that consultation could be carried out quickly without jeopardising any actions that the SHR takes or requires the RSL to take to protect the interests of tenants and their homes.

4.4 **Private Rented Sector, Parts 3 & 6**
BEEM is pleased to see the focus on the Private Rented sector and making it fairer and safer for the growing number of tenants relying on the sector. The difficult financial situation and the growing waiting list have made renting in the Private Sector the only housing option for many families and individuals, yet despite this growth there continue to be a lack of protection for tenants in this sector.

The Regional Networks feel that the regulation of the private sector still does not give adequate protection for tenants in this sector.

**Letting Agents**
BEEM is disappointed that the proposed regulatory framework for letting agents falls far short of proper and full regulation similar to the way the social rented sector is regulated. We would like to see a mandatory set of professional standards for letting agents introduced and monitored. This will ensure proper checks and balances where there are disputes between Agents and Landlords/Tenants.

**Tackling poor housing standards in the Private Rented Sector**
BEEM believes that the Bill does not go far enough and want effective and transparent mechanisms in place to ensure that Private Landlords adhere to the new legislation and that they will be monitored for compliance with the legislation.

4.5 **Housing Tribunal**
The decision not to introduce a Housing Panel for the Social Rented Sector in the Housing (Scotland) Bill is disappointing and BEEM believe this has been a missed opportunity. A Housing Panel for the Social Rented Sector would be more efficient in dealing with complex housing needs and vulnerable people and it would take less time than going through the court system.

**BEEM (Borders, East Lothian, Edinburgh, Midlothian)**
Registered Tenant Organisation (RTO) Regional Network
14.02.21
We welcome the opportunity to respond to the Call for Views on the Housing (Scotland) Bill. We do not have comments to make on the Bill as currently drafted but would suggest that the opportunity should be taken to revisit the 20 year restriction on leases of dwelling houses which currently applies in Scotland.

We appreciate that others before us have petitioned for the removal of student accommodation from the properties affected by the 20 year lease restriction but felt compelled to raise the issue once more. With the welcome upturn in the property market and the increased demand for student accommodation, we are increasingly finding that the 20 year restriction on leases of residential property is causing difficulties in connection with the investment in and funding of such accommodation.

The Private Rented Housing (Scotland) Act 2011 provided the Scottish Ministers with the power to prescribe other bodies or types of body who would be free to enter a lease of residential property for more than 20 years. We would suggest that, when the Ministers consider the terms of the Housing (Scotland) Bill, they should at the same time exercise the power provided by the 2011 Act and remove providers of student accommodation from the 20 year restriction.

Background

Section 8 of the Land Tenure Reform (Scotland) Act 1974 restricts the length of any lease of property used as a private dwelling house to 20 years. Section 138 of the Housing (Scotland) Act 2010 removed the 20 year restriction for leases granted after 1 March 2011 to social landlords, bodies connected to social landlords, rural housing bodies and to lessees who are “a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”

Should student accommodation be treated as private dwelling houses?

We have canvassed some opinions and the consensus has been that, whilst it may not have been the intention of the legislators, certain types of student accommodation are affected by Section 8 of the 1974 Act.

Student accommodation comes in different forms. In the case of buildings with a number of rooms which share kitchen, bath and living facilities, we would strongly
argue that such buildings should be treated as institutions and should not be treated as residential dwelling houses. However, there is no definitive commentary or guidance to say that this should be the case for the purposes of the 1974 Act. It is harder to argue that buildings containing self-contained student apartments / bedsits should not be treated as buildings containing residential dwelling houses. Indeed, for VAT purposes, HMRC confirms in their VAT Information Sheet 02/14, that ‘cluster flats’ which have their own front door and en suite facilities but share kitchen and living facilities will be treated as dwellings. The potential for the restriction in the 1974 Act to apply is therefore clear and therein lies the problem for long term investment in such an asset class.

**Funding the development of student accommodation**

There are several transactional structures for the development, funding and leasing of student accommodation. One example would be where a developer constructs student accommodation and then leases it on a long lease to a university which will enter short term letting arrangements with the students. Another would be where the university grants a long lease to the developer, the developer then constructs the accommodation and either undertakes the management of the short term lettings itself or, employs another company to do so. Whatever transactional structure is chosen, the common denominator in most is the long lease which is an asset which can be sold for investment purposes. The long lease is employed to ensure that control over the use and maintenance of the property is retained and the investment is protected. It is also favoured by the student accommodation operators such as the university or the developer referred to in the examples above. The basic funding model for investment in student accommodation will involve a lender providing the funding for the lease of the building as a whole in return for a standard security over that lease. For it to be possible to grant such a standard security over a lease, the lease must last for at least 20 years and one day (a “long lease”). In terms of Section 8 of the 1974 Act, there is an implied condition that no part of a property subject to a long lease may be used as a private dwelling house.

**The effect of breaching Section 8 of the Land Tenure (Reform) (Scotland) Act 1974**
Section 9 of the 1974 Act provides that if the condition prohibiting the use of the property or part as a private dwelling-house is breached (the condition implied by Section 8), the lease will not become void or unenforceable. However, the landlord is then entitled to serve notice asking the tenant to cease the use of the property for residential purposes. If the tenant fails to do so, the landlord may take action to remove the tenant. If during that action it is proved that the landlord approved of the residential use, the court will limit the remaining term of the lease to 20 years or the remainder, whatever is the shorter.

Notwithstanding Sections 8 and 9 of the 1974 Act, long leases of student accommodation most certainly have been granted. However, various agreements such as purchase options and buy backs are often entered into between parties to mitigate the effects of the 1974 Act. None of these additional agreements is entirely satisfactory as they are binding on the parties to them and are not binding on successors. This leaves tenants exposed in situations where the property is sold by the original landlord to a third party who is not party to the agreements which were put in place to protect a tenant from the effects of the 1974 Act.

The threat of Section 9 of the 1974 Act being invoked by a landlord, such as the university or the developer mentioned in the examples above or, more likely, a successor purchaser of the university or the developer, is a threat which makes long term investment in student accommodation less attractive and more complicated than it need be. This in turn can also severely limit the ability to invest capital in the development of the necessary infrastructure at a point when such investment is so badly needed.

Conclusion

Student accommodation is a popular and in demand form of investment across the UK. The Scottish Government has expressed its desire to lift barriers on residential leasing in order to make this a more attractive option and encourage institutional and larger-scale investment. In the interests of removing one such barrier, we would urge the Scottish Ministers to exercise their power under Section 8 3(A)(d) and prescribe student accommodation providers as bodies which will be permitted to take long leases of accommodation to be occupied by students. Should the Ministers decide to proceed with the necessary statutory instrument, we would be happy to assist and
share our experience of advising clients in connection with the developing, funding and leasing of student accommodation.

Brodies LLP
28 February 2014
ANNE CAMERON (INDIVIDUAL)

WRITTEN SUBMISSION

Q 1 Should have been done long ago.

Q 2 3 years is far too long – many more houses could be sold in that time. One year is ample.
Will the date stipulated relate to completed house sales, or can tenants wait to the last minute before applying? So it could be 4 years in reality

Q 4 It is to be hoped that it will

Q 5 Again, I would hope so. There should be initial (probationary) Scottish Short Secure Tenancies which automatically convert to a full tenancy when conditions have been met satisfactorily. There are far too many instances of anti-social behaviour blighting other people’s lives and these families flit from area to area creating havoc and this must be stopped

Q 7 No, but the new measures must be enforced. This must also apply to all Council and HA houses. Court proceedings are far too long and often Sheriffs are not supportive of the landlords and innocent Tenants suffer far too long.

Q 8 Anything that can be done to enforce better conditions is welcome. Enforcement is essential

Q 9 Anything that can be done to make landlords accountable is good. What is the point of them being registered, if no sanctions can be taken against them?

Q 10 Mandatory registers are fine, but there must be “some clout” to force landlords to improve their properties. What is the point of registration and “no clout”? 

Q 11 No point in registering, and then nothing else is done

Q 12 Yes, a good idea.

Q 13 Sites and caravans must be kept up to a good standard.

Q 14 It is high time that there was far more power for local authorities to enforce good living conditions

Q 16 No. HA Houses should be transferred without consulting Tenants. It the SHR and others are doing their job properly, this should not happen.

Anne Cameron
24.02.14
Part 1: Right to Buy
This part of the Bill abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

We understand the rationale behind proposals to maximise supply in the social rented sector by ending the Right to Buy. We are pertinently aware that disabled people are over-represented in social housing and are therefore disproportionately disadvantaged by the shortage of available stock in the social rented sector in Scotland. The SHCS found in 2009 that 52% of disabled people live in their own home and 48% in rented accommodation, compared to 69% and 31% respectively for non-disabled people. This shortage often leads to disabled people living in completely inappropriate homes, sometimes unable to use the toilet, go outside or spend quality time with their family.

However we do not believe that this shortage, caused by the inability of housing providers to engage with the housing needs of disabled people, should be used to justify further limitations to disabled peoples' ability to secure suitable housing. It should instead be tackled head-on by building more accessible social rented accommodation suitable for disabled tenants of all ages, and maximising the current supply by improving the system for adaptations.

We have no firm position on proposals to end the Right To Buy, our central concern is that disabled people should not be singled out and disadvantaged by such measures. 52% of adults in social rented accommodation with an illness or disability have a preserved RTB compared to 40% of adults with no self-reported illness or disability and we have concerns that these proposals will create another barrier to disabled people who want to become homeowners. Disabled people, who are more likely to be living in poverty¹, face numerous barriers to homeownership including the lack of suitable financial products, limited employment opportunities and a lack of suitable housing supply².

The Scottish Government must also appreciate that the ability of disabled people to become and remain homeowners has come under further pressure as a result of changes to Support for Mortgage Interest Payments (SMI)³.

¹ 20 per cent of individuals in families with at least one disabled member live in relative income poverty, on a Before Housing Costs basis, compared to 16 per cent of individuals in families with no disabled member. Source: Family Resources Survey 2010/1
² PRECiS (2004) A summary series of recent research from Communities Scotland No 51 Mind the gap: evaluation of owner occupation for disabled people in Scotland
³
Thus, in limiting the Right to Buy, the Scottish Government is closing off an important avenue to home ownership for disabled people on lower incomes. It is essential that the Scottish Government takes steps to mitigate this effect and ensure that disabled people have alternative means of becoming homeowners.

Abolishing the Right to Buy will increase the supply of temporary accommodation available to those classified as homeless. This is of particular importance to disabled people given that the Scottish Government’s own statistics show that in 2012-13, of 30,583 social housing applicants assessed as being in priority need, 4,165 required mental health support, 633 had a learning disability, 1,019 a physical impairment, and 2,240 a medical condition.  

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

We are unclear about the rationale behind a 3 year delay with these proposals and have concerns that this will simply complicate an already complicated system.

Part 2: Social Housing
This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Disabled people awaiting adaptations in housing that does not meet their assessed needs constitute the ‘hidden homeless’. Whilst they have a place to live it is recognised within housing law that ‘it is not reasonable for them to continue to occupy this accommodation’. This cohort of people have the right to present as homeless but in general do not, either because they are unaware of homelessness legislation or have legitimate concerns that they might end up in unsuitable temporary accommodation.

Combined data from the 2005/06, 2007 and 2008 SCHS suggests that 137,000 dwellings in Scotland require adaptations and that “one in five disabled people requiring an adapted house live in a house that is ‘not at all’ or ‘not very suitable’ to their needs.”

Capability Scotland’s advice service has received hundreds of calls from disabled people who have been told their landlord does not have the money to carry out the adaptation which would allow them to use the toilet, wash, cook or spend time with their family. In one case an individual was told that it was unlikely that she would be given a wet room in the next three years as there was already a huge backlog for funding for adaptations in the Register Social Landlord sector.

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The right to adaptations and sufficient grant funding for adaptations is critical in addressing this problem. The Scottish Government and local authorities need to pool resources from health, housing and social care budgets to ensure that funding is made available for all housing providers to adapt properties to meet assessed needs.

Where houses cannot be adapted to meet the assessed needs of disabled tenants we would like to see landlords taking the opportunity provided by provisions to prioritise allocations to those living under ‘unsatisfactory housing conditions’ to provide support for disabled people whose assessed housing needs are not being meet.

**Part 3: Private Rented Housing**
This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

**Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?**

Section 52 of the Housing (Scotland) Act 2006 gives private sector tenants the right to carry out work to adapt their homes to meet the needs of a disabled occupant. This right is subject to the landlord's consent, which cannot be withheld unreasonably, and may be subject to reasonable conditions. At present the tenant can appeal to the sheriff against the landlord’s refusal of consent or their response of unreasonable conditions.

Capability Scotland generally welcomes proposals to transfer cases involving adaptations to let property from the Sheriff Courts to the new First-tier Tribunal subject to this transfer enabling quick and responsive treatment of these cases. 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.

**Capability Scotland**
**28 February 2014**
Call for views on the Housing (Scotland) Bill

The national carer organisations welcome the opportunity to provide written evidence on the Housing (Scotland) Bill. Whilst the Bill in its entirety is of interest, we have confined our response to the questions surrounding Part 2: Social Housing as this is the part of the Bill where we have significant concerns over its potential impact on unpaid carers.

Introduction

There are almost 660,000 carers in Scotland, of whom 115,000 provide care of over 50 hours each week. Below, we outline some key statistics on carers which highlight the significant disadvantage they already face, just because they provide care. This information is intended to outline the profound impact of caring and the concerns we have that, an unintended consequence of changes to succession rights, will have a direct and detrimental impacts on carers who are already struggling.

Carers face significant levels of poverty. Almost half (47%) are in debt as a result of caring. 1 in 6 carers in debt over £10,000. A fifth relying on overdraft or credit card simply to make ends meet. As a result of the financial impact of caring almost half cutting back on essentials like food (44%) and heating (46%) and 59% are in fuel poverty. Few carers have any savings to fall back on, with 1 in 10 having these totally drained by basic bills and everyday living costs.

"The “cutting back on essentials” happened last year. I’m NOT coping now."

Carers are less likely to be in work than non-carers. 170,112 people in Scotland had given up work to care at some point. Half of working-age carers in a household with no-one in paid work – almost triple the percentage of UK households without paid income. 41% cannot work because of their caring responsibilities or because of their own illness or disabilities. People from lower socio-economic backgrounds and in areas of multiple deprivation are more likely to need and to provide care.

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1 Census 2011
2 Caring and Family Finances (2013) Carers UK/Carers Scotland
3 ibid
4 ibid
5 EHRC, How Fair is Britain (2010)
6 Caring Together – The Carers Strategy for Scotland (2010) and Scottish Household Survey, Scottish Government & CoSLA,
Unpaid carers are more likely to suffer poor physical and mental health, particularly those who are providing intensive levels of care.\textsuperscript{7}

The role of carers is significant in the delivery of care and support. Currently the cost to replace the care provided by carers would be more than £10 billion each year\textsuperscript{8}. Carers are critical in enabling older and disabled people to live safely in their own homes and communities.

**Proposals Section 14 (b)**

We have concerns about the proposals outlined under Section 14(b) to extend the qualifying period for succession on the death of a tenant for unpaid carers (where this has been the carer’s only or principal home), from 6 months to 12 months. We are 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. We are deeply concerned that carers, having given up their own home to provide care (on the death of the person they care for) may find themselves not only bereaved but faced with homelessness.

Without detailed research by social housing providers, it is difficult to estimate how many carers have given up their own home to care but research\textsuperscript{9} shows us that the majority of carers, some 80%, live with the person they care for. We also know that 41% of carers care for someone with dementia or because of illness or frailty associated with older age. This cohort of carers may be those most likely to have moved in to provide care to a parent or other older relative. In addition, carers who have given up their home to care for someone who has a terminal or life limiting illness will also be affected. These carers may find, despite giving up their homes, their careers and financial security to care, they are unable to meet the new qualifying criteria for succession.

\textit{“I am unable to leave the house to work. I have used my modest savings in supporting my household and paying my bills in order to care for my mother. We are dependent on her income and savings. I have no independence but I am responsible for all bills, financial decisions and outgoings. I worry constantly and sleep poorly”}\textsuperscript{10}

Caring often involves providing high levels of care which can leave carers with little time for seeking out information and support, much less finding out that they must  

\textsuperscript{7} Carers in Crisis (2008) Carers UK/Carers Scotland  
\textsuperscript{8} Value of Caring (2011) Carers UK/Carers Scotland  
\textsuperscript{9} State of Caring (2013 Carers UK/Carers Scotland  
\textsuperscript{10} Caring and Family Finances (2013) Carers UK/Carers Scotland
inform landlords. Indeed the most recent Census showed an increase in the intensity of caring, with the percentage of carers caring for at least 35 hours each week increasing.

Moreover, carers often simply do not recognise themselves as carers, instead identifying themselves as, for example, a daughter, a son, a parent. We know from our research that carers repeatedly say that they did not know that support and assistance are available. For example, our research\textsuperscript{11} found that 16% of carers say they have did not know about help or financial support for 10 years or more. 62% did not find out for between 1 and 10 years. Only 22% knew about their rights within a 12 month period. This lack of awareness of rights and entitlements within the given period proposed for informing landlords is deeply worrying.

Furthermore, in a recent survey by Carers Scotland\textsuperscript{12}, 51% of carers said that they had not been given any advice on what was available. We are concerned that this lack of availability of appropriate advice to carers will include the provision of information on the right to succeed a tenancy.

Furthermore, the proposals do not provide details on the Scottish Government's intentions for supporting those carers who have already given up their own home to live with and provide care to a family member. It is unclear whether the policy will be applied retrospectively and what steps housing providers should be required to undertake to inform these carers of the new qualifying period for succession.

**Conclusion**

The Scottish Government and its partners in health and social care have clearly stated policy intentions to deliver improved outcomes to older and disabled people, including enabling older people to live safely in their own homes and communities. Carers are key partners in delivering this and, as such, should be supported effectively. This includes ensuring that they do not face uncertainty and homelessness simply because they have given up their own home to care.

The national carer organisations urge the Scottish Government to reconsider their proposals around increasing qualifying periods for succession for carers and related requirements to inform landlords.

**Carers Scotland**

21.02.14

\textsuperscript{11} State of Caring (2013) Carers UK/Carers Scotland
\textsuperscript{12} Caring and Family Finances (2013) Carers UK/Carers Scotland
Introduction
Citizens Advice Scotland (CAS) and its member bureaux form Scotland’s largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres. Citizens advice bureaux in Scotland helped clients with over 500,000 new issues in 2012/13 – more than 1,400 new issues for every day of the year. Nearly 200,000 clients brought new issues to a bureau over the year.

CAS welcomes the opportunity to submit evidence to the Committee on the Housing (Scotland) Bill. Citizens advice bureaux in Scotland advised on 35,228 new housing issues in 2012/13 – around 140 per working day.

Citizens Advice Scotland broadly supports the Bill as introduced, but has some recommendations for areas where it could be strengthened or clarified.

Key Points

- Citizens Advice Scotland agrees that the provisions will increase the flexibility that social landlords have in their allocations policies, which has the potential to benefit tenants. However we recommend proposals to allow an applicant’s age to be taken into account should be removed from the Bill.

- CAS supports the proposals to make it easier for social landlords to change an SST to a short SST if a tenant’s anti-social behaviour causes a negative impact on their neighbours. However we recommend that social landlords conduct an assessment of a tenant’s support needs when a tenancy is changed.

- CAS recommends that a simplified eviction process where a tenant has been convicted of a relevant crime by another court should only be used if the offence is serious, and has been proven to have a directly negative effect on their neighbours or local community.

- Citizens Advice Scotland (CAS) welcomes the movement of private rented sector (PRS) housing cases from the civil court to the new first-tier tribunal.

- CAS believes that social rented housing cases should also be dealt with by the first-tier tribunal.

- It is crucial to ensure readiness of the PRHP to absorb the business – in terms of recruitment and training of new tribunal members and also ensuring the availability of mediators.
There should be a clear policy outlined for providing support to users in the form of advice and, where needed, representation.

CAS strongly supports Local Authorities being given the power to report to the PRHP regarding repairs.

CAS would like to see the addition of mandatory electrical safety checks in private rented housing.

CAS unconditionally supports the introduction of a letting agent register with a mandatory code of practice to be developed.

CAS is extremely supportive of the move to license permanent mobile homes sites in Scotland.

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

Demand for social housing in Scotland far outstrips the supply of available stock. As the Policy Memorandum to the Bill points out, in March 2013, the waiting list for social housing in Scotland stood at almost 185,000 households. The social housing sector plays a crucial role in providing a suitable and affordable home for people who need one, particularly vulnerable tenants who require additional support. For instance, people with a disability or a long-term illness are more than twice as likely to choose social rented accommodation compared with the rest of the population\(^1\) and almost half of specially adapted housing is in the social rented sector\(^2\). Social housing also has a pivotal role in ensuring that temporary accommodation can be provided for people who become homeless through no fault of their own, in line with Scotland’s homelessness legislation.

Social housing should remain a viable option for those who need or want it, and there is a need to increase the supply of available stock to ensure it remains so. In that light, Citizens Advice Scotland supports the proposal to abolish the right to buy for social housing tenants in order to safeguard remaining supply.

The abolition of right to buy will not solve the shortage of social housing by itself however, so it is vital that it is complemented by a clear strategy to ensure the building of new social sector stock. It is also important that routes into home ownership previously offered by right to buy are not lost and as such we recommend that funding is made available to continue LIFT (the Low-cost Initiative for First Time Buyers) and the Help to Buy scheme.

\(^1\) [http://www.scotland.gov.uk/Topics/People/Equality/Equalities/DataGrid/Disability](http://www.scotland.gov.uk/Topics/People/Equality/Equalities/DataGrid/Disability)

Part 2: Social Housing

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Citizens Advice Scotland agrees in principle that the provisions in the Bill will increase the flexibility that social landlords have in their allocations policies which have the potential to benefit tenants.

In particular, CAS welcomes the addition of tenants who are deemed to be under-occupying their housing to the list of groups who should be given reasonable preference in allocating social housing. Since the introduction of the reduction in housing benefit entitlement for people deemed to be under-occupying their home – dubbed the ‘Bedroom Tax’ – citizens advice bureaux have advised a number of clients who are willing to move to smaller accommodation to avoid deductions to their housing benefit, but have been thwarted by the lack of smaller properties available.

CASE STUDY: Under-occupation

- An East of Scotland CAB reports of a client who has fallen behind with council tax payments (about £32) and is having his current payments and arrears being deducted directly from his benefit. Additionally, he has been unable to make payments towards his TV licence and owes about £40-50. His income after council tax deductions is just £45.90 per week, yet he has also recently been presented with a ‘bedroom tax’ of £7.70 per week, which he can’t afford to pay. He went to the council to ask about a one bedroomed property, but was told that it would probably never happen as they are so in demand due to the recent changes to Housing Benefit rules.

Giving reasonable preference to under-occupying tenants will not in itself create vacant properties for the almost 76,000 households who have been affected by the ‘Bedroom Tax’ in Scotland, according to the latest official figures. There are also a number of types of households, such as people living in significantly adapted housing, for whom moving to alternative accommodation to avoid under-occupancy charges is unrealistic. Nonetheless, requiring social landlords to give reasonable preference to households who require to move to a smaller property, should result in an increase in the number of those who are able to do so.

CAS agrees with the rationale behind effectively merging the existing categories of ‘currently in houses which do not meet the tolerable standard’, ‘occupying overcrowded houses’ and ‘large families’ into a single reasonable preference category of ‘households living under unsatisfactory housing conditions’. Overcrowded houses and those in a poor state of repair could reasonably be described as unsatisfactory, and the simplifying of the

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3 ‘Number of Housing Benefit claimants and average weekly spare room subsidy amount withdrawal’ Department of Work and Pensions, November 2013
categories will give landlords more discretion to assist tenants whose housing conditions have become unsatisfactory.

We would however recommend that clear guidance to social landlords is published, giving examples of the types of situations where they might consider that a household is ‘living under unsatisfactory conditions’ to ensure the flexibility is used appropriately. Houses below the tolerable standard and overcrowding should feature in these examples.

CAS welcomes changes to allow landlords to take possession of adapted accommodation where no-one in the household requires it. This should 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. It is important however that the sitting tenants are not disadvantaged and are moved to accommodation that is suitable for their needs.

**CASE STUDY: Adapted Housing**

> An East of Scotland CAB reports of a client who suffers from osteoarthritis and pernicious anaemia. He has undergone 52 knee operations and walks with an aid. Until recently he has been living with his mother as her carer in a two bedroom Council property. His mother has now been admitted to a care home and he is being charged for the extra bedroom under the ‘under-occupancy’ rules. Currently the property contains a stair lift which was originally installed for his mother’s care needs. As the client struggles to use the stairs he has asked to keep the lift but his request has been declined and the stair lift is due to be removed.

Citizens Advice Scotland is concerned about proposals in the Bill to allow an applicant’s age to be taken into account by a social landlord when making decisions on allocations. Whilst discrimination based on age is unlawful under the Equality Act, allowing landlords to take age into account could result in particular age groups being placed together in undesirable areas, or those on the waiting list finding themselves overlooked when properties become available. With suggestions that a future government may seek to restrict or remove housing benefit from those aged 16 – 24, there is a clear possibility of this group being disadvantaged by this change to the allocation policy. CAS recommends these proposals are removed from the Bill.

**Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?**

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4 ‘Housing Benefit: withdrawing entitlement from the under 25s’ House of Commons Library, December 2013
Antisocial behaviour by tenants can cause considerable difficulty for their neighbours and communities. Having ‘neighbours from hell’ can cause misery and distress to tenants who are affected and efforts to reduce antisocial behaviour are to be welcomed.

CASE STUDY: Impact of anti-social behaviour on neighbours

➢ An East of Scotland CAB reports of a client in local authority housing who was concerned about her living conditions. She lives in a third floor flat, with her husband and grandchild and while her home is well maintained and furnished, she feels that the stairs and other public areas are not safe, with a high level of drug dealing and misuse in evidence. She was concerned that the local authority did not appear to view her request for rehousing as a priority.

However, care must be taken to ensure that those who have engaged in antisocial behaviour, or been accused of doing so in the past do not find themselves in a situation where they are left homeless, or are restricted from finding housing. Tenants who behave in an anti-social manner are often in vulnerable circumstances, and may require support rather than punishment.

CASE STUDY: Difficulty finding accommodation

➢ A North of Scotland CAB reports of a client who was homeless. His mother put him out after he was beaten by his father at the weekend and will not take him back. The council will not house him, temporarily or otherwise. A phone call to his probation officer revealed that he had been evicted more than once, failed to keep up housing payments and had been aggressive towards other tenants. The client was looking for help to get somewhere to sleep tonight.

On balance, CAS supports the proposals in the Bill designed to make it easier for social landlords to change a Scottish Secure Tenancy (SST) to a short SST if a tenant’s anti-social behaviour causes a negative impact on their neighbours. It is important however that the support needs of the tenants are considered and catered for, and we recommend that social landlords conduct an assessment of this when a tenancy is changed to a short SST. It should also be considered to what extent the anti-social conduct is being carried out by visitors to the property, rather than the tenants themselves when a change to a short SST is considered.

CAS has concerns about the potential scope of the proposed power to introduce a simplified eviction process when a tenant has already been convicted of a relevant crime by another court. The Bill as introduced proposes that the current requirement to prove anti social behaviour has occurred would be removed for convictions for using the house for immoral or illegal purposes or of an offence punishable by imprisonment, committed in, or in the locality of, the house. This opens up the possibility that social landlords could seek to evict for a crime which has no impact on their neighbours or direct community, but was simply committed there. In order to prevent
homelessness and minimise additional housing issues for offenders, CAS recommends that this power should only be used if the offence is serious, and has been proven to have a directly negative effect on their neighbours or local community.

**Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?**

CAS has some concerns about the list of circumstances in which tenants can be made ineligible for an offer of housing by a social landlord for an unspecified period of time. As outlined in the above response to Q5, we would caution use of the power by social landlords in relation to anti-social behaviour and criminal convictions. Decisions to make applicants ineligible for social housing should be made proportionately and should not result in people being ‘locked out’ of housing for extended periods to prevent homelessness.

As the list appears to override the ‘reasonable preference’ categories, the presence of rent arrears on the list of circumstances could have the effect of exacerbating a situation that citizens advice bureaux have reported since the advent of the ‘Bedroom Tax’ – under-occupying tenants being unable to downsize to a smaller property due to rent arrears caused by the under-occupancy charge.

**CASE STUDY: Downsizing and rent arrears**

- A South of Scotland CAB reports of a client who has a £9.41 under-occupancy charge and £10.80 housing benefit overpayment. She has outstanding rent arrears with the local housing partnership. She has informed the housing partnership that she would be happy to downsize, but has been told she cannot downsize when she has rent arrears.

This has the potential to undermine the welcome addition of under-occupying tenants to the ‘reasonable preference’ allocation category, and runs the risk of encouraging the counter-productive practice above. If outstanding rent arrears is to be included on the list of circumstances in which applicants can be barred from offers of social housing, CAS recommends it is accompanied by guidance to ensure under-occupying tenants who wish to move to a smaller property are not prevented from doing so by arrears caused by the Bedroom Tax.

In line with our recommendation in Q7, we would support the tenant’s right of appeal being considered by the new first-tier Tribunal rather than in court.

CAS agrees with the proposal in the Bill to extend the period where tenants who have a history of anti-social behaviour can be placed on a short SST from 6 months to 12 months, with the potential for a further 6 month extension. We agree that this has the potential to give communities greater protection from anti-social behaviour, whilst giving tenants more time to
receive support to change their behaviour. As in our response to Q5, it is important however that social landlords conduct an assessment of this when a tenancy is changed to a short SST to ensure that the support provided is as effective as it can be.

Part 3: Private Rented Housing

**Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?**

Citizens Advice Scotland (CAS) welcomes the movement of private rented sector (PRS) cases from the civil court to the new first-tier tribunal which will be formed from the Private Rented Housing Panel (PRHP). Business before civil courts can present many barriers to users:
- the length of time taken for a case to reach court
- frequent delays
- low priority of housing cases within the court system
- difficulty understanding/following process and procedure made worse by lack of representation
- inconsistent and unpredictable decisions

This is compounded by the variety of proceedings under which cases may be brought. Summary Cause, Small Claims and Summary Application processes are all applicable in different situations. Each presents a different set of procedures to be followed, requires different forms to be completed and different fees to be paid (some require no fee and some can require a significant fee).

Together these elements can present marked difficulty in accessibility for users which the move to tribunal-administered proceedings seeks to redress. The explicit aim put forward by the Scottish Government is “to provide more efficient, accessible and specialist access to justice for both landlords and tenants in that sector” [the PRS].

Characterised by their specialist, interventionist and less formal nature, tribunals create a level of accessibility which courts do not offer users. CAS believe that the new specialist tribunal jurisdiction for housing is a positive development for users: by offering a single gateway for claims, the complexity and confusion of multiple processes is lessened; hallmarked by expeditors

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5 Paragraph 123 of the Policy Memorandum which accompanies the Bill
6 In cases where a landlord has not paid a deposit into the Tenancy Deposit Scheme and a tenant seeks to recover their deposit, the case is brought under Summary Application procedure. Lodging the initial writ to commence a summary application with the court costs £85.00. The writ must then be served on the landlord by way of a solicitor or a sheriff officer. A sheriff officer will charge £25.35 for this service, plus the recorded delivery cost. A solicitor is likely to charge even more. If the landlord disputes the action and a proof hearing is required, then there is a further cost of £48.00 to fix a date for the hearing, and the hearing itself will cost £201.00 for each day or part of a day needed to run it. This means that a tenant could have to pay up to £359.35 just to have their case heard by a sheriff.
and user-focused procedures, delays are lessened and proceedings themselves are more accessible; and 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.

While CAS welcome the creation of a new tribunal jurisdiction in PRS cases, we are disappointed that social rented business is not to be migrated as well. Tenants within the social rented sector (SRS) face the same barriers as those within the PRS. Accessibility is no less of a problem and so the decision to keep SRS cases within the court system creates a disparity which disadvantages those with a social landlord.

Changes to the civil court system which may help to improve the situation of SRS tenants – specifically the introduction of Summary Sheriffs – are planned as part of a wide programme of court reform but there is no guarantee that this reform will improve accessibility to the same level as offered by a tribunal. There is also no published timeframe for these changes. Some discussion has suggested that the induction programme for Summary Sheriffs (recruitment and training) will be staged and will take 10 years to roll out across all courts. This means that there will be a period of time where the type of justice forum will depend on where you live.

The vast majority of the current housing caseload is social rented business meaning that the majority of users will not benefit from the new jurisdiction and will continue to face barriers to accessibility. By moving SRS cases to the new specialist jurisdiction, access to justice would be improved more quickly and would afford all consistency.

Absorbing Business into the PRHP

The new first-tier tribunal will be formed from the current Private Rented Housing Panel (PRHP). Citizens Advice Scotland believes it is crucial to ensure the readiness of this body to absorb the PRS business.

The caseload of the PRHP is currently around 300 cases per year and has a clear jurisdiction for cases relating to the repairing standard and rent. Overall, the number of cases which transfer from the civil court will not be large – on current predictions the numbers should not exceed 1000. In absolute terms the number may seem low, however this is over triple the caseload volume of the current PRHP and the cases will introduce new and complex jurisdictions such as actions for possession.

It is therefore key that there is a planned recruitment and training programme which precedes the movement of business to the tribunal. This recruitment and training programme should also extend to ensure the availability of mediators. Currently the PRHP encourages mediation as an alternative dispute resolution mechanism and this positive work in the field of ADR should be supported as part of any planned recruitment and training programme.
**Ensuring users receive effective support**

Although tribunal processes are designed to be more accessible and user-friendly, it is still hugely important that users have access to advice and representation to support them through their case. There is much evidence to support the benefit which access to representation (both legal and lay) offers\(^7\) but there is also recent research to suggest that pre-hearing advice is crucial to self-represented applicants\(^8\). Those who have not had the benefit of advice or representation have lower success rates than those who have access to such resources.

CAS strongly recommends that there should be a clear strategy for the funded provision of advice and representation. ‘Advice’ should be understood as a spectrum of resources from accessible online resources and toolkits to the provision of telephone or face-to-face advice. Representation should also be available in complement to this when necessary.

Q8. *Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?*

CAS is strongly in favour of the proposals regarding Local Authorities being given the power to report to the PRHP. We believe this will be a key move in ensuring that properties meet the repairing standard and help in cases where tenants fail to report due to fear of eviction. Tenants often report to CAB that they feel unable to take action against poor standard of repair as they fear, rightly or wrongly, eviction in retaliation for taking action to secure their rights. The new system of reporting by local authorities must be sensitive to this and keep tenants secure in their property while a case is being decided by the PRHP. We would therefore support no eviction action being taken against a tenant while a case is being considered to ensure that tenant security is protected while directly, or indirectly, making an application to the PRHP.

On consultation with advisers in CAB there was suggestion that this could be opened up further with a neighbour being able to report to the PRHP as some tenants may not be willing to even speak to their local authority. CAB advisers also reported their frustration at the length of time the PRHP currently takes to consider cases and there was a suggestion that localised panels at council level may prove more effective.

**CASE STUDY: Reporting faults**

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\(^8\) M. Adler, ‘Tribunals Ain’t What they Used to Be’, available at: [http://ajtc.justice.gov.uk/adjust/articles/AdlerTribunalsUsedToBe.pdf](http://ajtc.justice.gov.uk/adjust/articles/AdlerTribunalsUsedToBe.pdf)
A West of Scotland CAB reports of a client who lives in a flat which is currently suffering from a rodent infestation. The rodents are able to enter the property due to the fact that the floor has sunk in level, which has left gaps and entry ways for the rodents. This has created unsanitary conditions. Furthermore the controlled entry of the property has broken allowing anyone to enter the stairway and this has led to antisocial behaviour. The landlord has refused to rectify any of these defects but the tenant doesn’t want to put the tenancy at risk by making a report.

CAS would support the addition of mandatory electrical safety checks in all private rented property in a similar way that gas safety checks are currently required. Good practice in the sector already sees landlords instructing safety checks by registered electricians and we would envisage such a check could be carried out on a mandatory basis. We are also aware that other respondents have suggested that in addition to smoke alarms, carbon monoxide alarms should be included as part of a minimum standard. CAS would support this for properties that are main gas supplied. However we are not aware of a need for properties that are electric powered only to be supplied with one.

CASE STUDY: Electrical safety

A West of Scotland CAB reports of a client who has problems with his landlord in respect of repairs and standard of accommodation. He advised that he has already written and spoken to his landlord who is ignoring his requests for repairs. The bathroom is in bad disrepair and his kitchen is in a similar condition. This includes an electric shower which is sparking when switched on. He is worried that he will be victimised if he makes too much fuss with the landlord. He advises that other tenants of the same landlord are having similar problems but are afraid to say anything.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

Advisers from the CAB network consulted were concerned that this would lead to an inconsistent approach to enforcing repairs and were not clear as to how such an area would be defined. They supported the powers but there was a lack of understanding as to why these had to be linked to specific geographical areas. CAS looks forward to more detail on this proposal in the future.
Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

CAS fully supports the introduction of a mandatory register of letting agents in Scotland. This is being supported by the industry itself who are keen to cut out any rogue agents and promote good practice across the sector. We are made aware by CAB advisers across the country of problems between both tenants and landlords and their letting agents.

While the Scottish Government has gone a long way to make unequivocally clear that they are illegal, charges and fees still exist in the sector for tenants. In Quarter 2 of 2013/2014 (July to September 2013) CAB were approached by 102 clients regarding additional letting agent fees, representing a 76% increase on the previous quarter. In addition cases involving problems with letting agents has increased from 161 in Q1 to 293 in Q2, an 82% increase. We continue to support tenants reclaiming these fees where they seek advice from us and many clients report using Shelter’s ‘Reclaim Your Fees’ support pack.

CASE STUDY: Letting fees

- An East of Scotland CAB reports of a client that rents a house as one person in a HMO with four other people. When a new letting agency took over they imposed new terms when one person moves out and another moves in. They are charging £125+vat charge to the new person taking up the tenancy. The letting agent have said in correspondence they need to make this charge for things like "dealing with the initial request for changeover", "contacting the landlord to gain their approval for the process", etc.

As part of this consultation we surveyed CAB advisers on the proposals and of those who responded there was unconditional support for a code of practice. Advisers were keen to see a scheme where those who breached the code would be removed from the register and therefore unable to continue trading as a letting agent.

We would be extremely interested in helping inform the writing of a code of practice, which we understand will be introduced through secondary legislation, by providing evidence that tenants and landlords have given to use in case evidence with regard to the common issues faced when dealing with agents.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?
We agree that there needs to be a better form of dispute resolution between letting agents and their customers that does not rely immediately on the court system. We therefore support the referral to first-tier tribunal for such cases. We would however stress that costs for accessing such a method must be kept low, especially in relation to cases that deal with illegal fees from letting agents. If the cost of accessing the tribunal is more than these fees many landlords and tenants will not take action as the additional cost will be a major barrier to redress. We would support free access to the tribunal for those on low incomes.

**CASE STUDY: Letting agent**

- **A West of Scotland CAB reports of a client who is a student and found a flat through a letting agent. The client paid £100 'key money' and was given a receipt with few details. He was emailed a blank tenancy agreement and was sent in a filled-in copy by post. The client checked and discovered that the property was not registered. The client and his father asked 3 times which deposit scheme they were using but the agent did not give this information. A meeting was scheduled for 29th June to sign the tenancy. The client emailed the agent to say he would not be attending as he did not have all the relevant information. The agent replied on June 28th to say he would be charged with the cancelled viewings and all the new marketing costs.**

CAS would also propose that where a case is being considered, or is due to be considered by a tribunal that no letting agent may take additional fees or charges from landlords nor commence eviction proceedings against tenants.

**Part 5: Mobile Home Sites with Permanent Residents**

**Q12.** Do you have any views on the proposed new licensing scheme?

**Q13.** What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

Citizens Advice Scotland have, following the UK Government’s consumer reforms, followed on from work carried out by our partner organisation, Consumer Focus Scotland, on this subject. We are pleased to note that many of the recommendations that were identified by Consumer Focus in their 2012 Scottish park homes report have been taken up by the Scottish Government either in the Mobile Homes SSI (2013/219) or in this Bill.

Citizens Advice Scotland are extremely supportive of the introduction of a new licensing system for permanent mobile home sites in Scotland. We believe that the terms of the new scheme are appropriate to tackle issues that have persisted in this area of housing. We believe the new system will act to drive

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9 'Stories to be told – A snapshot of the lives of park home residents in Scotland’, Consumer Focus Scotland, May 2012
out rogue site owners who have a detrimental impact on the lives of the residents who live there while providing a suitable environment for the responsible owners to operate in.

We support the introduction of statutory minimum application criteria for licences. During the Consumer Focus investigation they found examples of where licences had been issued in the name of one business but the management of the site had been carried out by another business in practice. The minimum application criteria should provide local authorities with the information that they require to know who to contact regarding a site if necessary. We are also supportive of section 57 which makes a duty on licence holders to inform a local authority if changes have been made to the information they previously provided. Not only will this seek to ensure records are accurate but it will also bring to light any reason to reconsider a licence holder under the Fit and Proper Person test (FPPT) if necessary (i.e. a new conviction).

We agree with the proposal to introduce a FPPT as is used in other regulatory regimes. We especially support part (d) of the proposed FPPT (Anti-social behaviour) as Consumer Focus research found that 18% of the permanent mobile home residents surveyed reported problems regarding intimidation, abusive behaviour, vandalism, violence or damage to property by site owners and/or managers. In addition to the material considered as part of the FPPT that is presently in the Bill we would support a proposal that the profit making on resale of utilities is added. Currently the maximum price that can be charged by a site owner for electricity or gas (but not LPG) under the Ofgem resale price provisions is the same as they have themselves paid for it. A similar rule (with the addition of a small capped administration charge) is in place regarding charges for water under Scottish Water's reselling guidance. 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.

CASE STUDY: Mobile Home Energy Costs

- An East of Scotland CAB reports of a client who came in for help regarding an outstanding debt on his energy bill. His bill is to the park manager of the mobile home site in which he lives. The adviser helped devise a repayment plan on the debt but was worried as the energy bills seemed high; the client reports he spends a lot more on energy than he did in his old home despite thinking moving to a caravan would help him cut down on monthly bills.

CAS is supportive of the licence length (3 years) as detailed in the Bill alongside the re-application procedures that are set out. We also support the charging mechanism as we are aware of the additional administrative costs that will fall to local authorities to administer the scheme. We believe however that there should be a statutory requirement on local authorities to carry out an inspection at the time of an application and renewals of licences; we do not
think that inspections should be optional. This would ensure that an inspection is carried out on each site at least every three years, although not stopping further inspections if required. Further inspections should be a risk-based approach with those sites considered high-risk visited more frequently. We would support inspectors taking the time to speak to residents during their inspections so as to take consideration of any issues that they may bring to light. We would broadly support local authorities to be given the powers to carry out unannounced inspections if they deemed them required.

**CASE STUDY: Problems with site owner**

- The Citizens Advice Consumer Service reports of a client who had been a victim of intimidation by the site manager after he had made a complaint about site maintenance. The client is now selling the caravan and has paid £150 to have the caravan advertised for sale on the park’s website. The site owner stopped communication and has not put the caravan for sale online. The client has left messages with the manager but never got any answer. Maintenance has not been done on the site as agreed and the client is desperate to move somewhere else.

We are fully supportive of the proposed enforcement powers for local authorities. However we believe that the increase on fine levels should be raised to an unlimited fine rather than a cap at £50,000 for running a site without a licence and £10,000 for a breach of licence.

We believe that the new licensing system will benefit permanent residents who live in mobile home sites. Research by Consumer Focus Scotland found that 40% of permanent mobile home residents had issues with maintenance, safety and security issues on site and 29% were dissatisfied with their living arrangements overall in the site, a substantial number. We believe the FPPT that is being introduced will help protect residents from anti-social behaviour from site owners and managers which was highlighted as a serious concern by those living in such sites.

**Part 6: Private Housing Conditions**

**Q14.** Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

CAS supports the objective of the policy where it will help homeowners to get common repairs completed in areas shared with neighbours such as roofs and stairs in a tenement property. We note that local authorities will be able to fund the ‘missing shares’ of costs and then recover this cost from owners. This will form powers rather than duties and we are therefore expecting a difference in the quality of help between local authorities. We note that this is something that has been requested by local authorities who believe it will
assist them in schemes they already run and as such we support anything that will help owners get shared repairs completed.

CASE STUDY: Shared Costs

- A West of Scotland CAB reports of a client who lives in a flat in a block of six with shared entry. The ground floor flat has been vacant for 12 years after the death of the previous owner. However problems have been occurring due to dampness from this property and the factor has refused to take any action to rectify it. This is due to the fact that two of the owners owe money to the property factor for work that was previously carried out. Due to the fact that the dampness issue was never resolved the owners have been served with a housing repair order from Glasgow City Council, the cost of which comes to £5000 for each owner. The client asked for advice on what course of action he should take to sort out this matter.

In some areas, especially in urban communities, this may have substantial workload and cost for local authorities. We would highlight the recent problems surrounding Edinburgh City Council’s statutory repairs up to 2012. While this scheme was under a specific power only applicable to Edinburgh there are similarities between what it set to achieve and any similar scheme. A report to Edinburgh City Council found many failings in the system, including overburdening workload that allowed for poor quality work to be carried out and in some cases fraudulent claims by contractors. CAS would suggest any system introduced by a local authority to help pay for missing shares is aware of the problems that Edinburgh City Council faced in running their system to ensure that homeowners are not left in poor conditions or significantly out of pocket.

CASE STUDY: Edinburgh Statutory Repairs

- An East of Scotland CAB reports of a client who was served with a statutory repair notice in 2005. There are 16 flats in the tenement block. The original estimate was £34,500 but rose to £63,000. Originally the work was only for repairing pointing but then the contractors advised that when they got to the top the chimney was askew. When all the work was done the gutters and down pipes were blocked so these had to be cleaned at additional cost. The client wishes to know if there is any way of finding out whether she was a victim of a scam in light of recent media coverage.

Other Issues

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?
CAS agrees with Shelter Scotland’s suggestion that the ‘right of repair’ should be extended to people in households with children and pregnant women placed in temporary accommodation and recommends provision for this measure is included in the Bill. Consideration should also be given to whether the duty on social landlords to carry out repairs should be extended to all local authority-owned temporary accommodation.

Citizens Advice Scotland
04 March 2014
CITY OF EDINBURGH COUNCIL
WRITTEN SUBMISSION

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social tenants?

The City of Edinburgh Council (the Council) supports the decision to abolish Right to Buy (RtB). Tenants who currently have preserved or modernised RtB will be brought into line with new tenants and tenants in new build housing where there is no provision for RtB.

While the Council agrees that RtB should be abolished, voluntary sales must still be permitted in line with landlords’ asset management strategies. This would allow for landlords to sell or purchase homes to reduce the challenges associated with managing mixed tenure blocks. Homes which are expensive or difficult to maintain could also be sold with receipts being used to fund better quality, more energy efficient homes.

While RtB did initially provide significant discounts to tenants and left little provision for local authorities to replace the homes that were sold, the scheme did provide the means for many households to enter home ownership. The Council welcomes the introduction of schemes such as MI New Home which should help to support a new generation of home owners following the abolition of RtB. Such schemes should be monitored to ensure that they are achieving the aim of helping people to access homeownership.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

The proposed three year timescale will allow sufficient time for a planned approach to manage the impact on the HRA budget and also avoid a major rush in sales. This will also allow tenants, who have the resources, time to consider purchase of their home.

Part 2: Social Housing

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make the best use of housing?

The City of Edinburgh Council agrees that the current reasonable preference categories are outdated and supports the proposed provisions outlined in the
Bill. Detailed guidance must be developed by Scottish Government to support organisations in the development of allocation policies and to ensure that social housing applicants are given fair and equal access to housing as outlined in the regulatory framework. However, for the measures outlined in the Bill to be effective, guidance on priority need groups and any wider guidance on social housing allocations must allow enough flexibility for organisations to develop policies to address local needs.

The Council supports the proposal to allow landlords to take age into account when allocating social housing. This gives landlords flexibility to ensure balanced communities and good outcomes for tenants. This approach is not incompatible with the requirement to ensure people have fair and open access to housing.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

The Council welcomes the extension of powers to grant Scottish Short Secure Tenancies (SSSTs) in cases involving antisocial behaviour. The Council agrees that support should be provided to households with SSSTs in order to encourage positive behaviour changes with a view to sustaining the tenancy. However, it is unclear who assesses whether housing support is appropriate for the household and what would happen if support is refused or if there are no support tasks to work on. It is recommended that refusal to engage with support services should be considered a breach of tenancy conditions which may result in eviction proceedings.

Streamlining the eviction process through the ability to end a SSST in Court without the need to prove further antisocial behaviour where a tenant has been previously evicted from a property, will significantly reduce the amount of time the Council would be required to devote to a lengthy investigative and evidence gathering process.

The Council notes that guidance from the Scottish Government will be produced to clarify issues in relation to levels of seriousness of antisocial behaviour and thresholds at which implementation of the extended powers may be considered. It is essential that this guidance is detailed enough to ensure a degree of consistency in the application of powers in dealing with anti social behaviour and must also be clearly communicated in order to manage public expectations around what actions can be taken and under what circumstances.
Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

The proposal helps to protect those tenants who are affected by the antisocial behaviour of neighbours, whilst ensuring adequate protection and support for perpetrators of antisocial behaviour.

The Council notes that a tenant may challenge the Council’s decision to evict by ending their SSST where that SSST was granted on previous antisocial behaviour grounds or eviction grounds. The requirement that the Council must be clear to the tenant about their reasons for seeking evictions also ensures that tenants are treated fairly and a balanced approach is applied.

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier tribunal?

The Council supports this proposal and it is anticipated that this will allow the court more time to deal with criminal cases. This will also provide greater access to the justice system by removing the costs associated with pursuing appeals through the court system.

There is a need for clarification as to whether issues relating to landlords delaying necessary common repairs will also be dealt with through this route.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The Council welcomes the opportunity to be able to make third party referrals to the Private Rented Housing Panel (PRHP), however considers that the Bill should make provision for other organisations such as local authority commissioned services or other support/advice agencies to make referrals on behalf of private tenants. This would empower tenants and improve access to the PRHP.

Poor conditions in the private rented sector not only impact on the tenant, but can also impact on neighbours. In addition to allowing third party referrals to the PRHP from other organisations, where a neighbour is affected by a
property not meeting the Repairing Standard, they should also be able to make referrals to the PRHP.

Further, where a landlord is not contributing to meeting the costs of common repairs, this should be viewed as a breach of the Repairing Standard and neighbours/adjoining owners should be able to refer the landlord to the PRHP.

In addition, it is important to ensure that the PRHP referral processes and decision making is as streamlined as possible to encourage speedy resolution.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

The provision of additional enforcement powers is welcome and these powers could be effective where they are used. Enforcement should be used alongside an approach that encourages compliance through working with landlords in order to maximise the supply and therefore affordability of homes in the private rented sector.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

The Council agrees with the principal of mandatory registration for all letting agents operating in Scotland as a means of ensuring better standards of service for private tenants. However, it is not clear how a national registration scheme will have any advantage over current arrangements whereby the majority of letting agents register locally in order to establish themselves as ‘fit and proper’ for the purposes of landlord registration.

The introduction of a national scheme means that letting agents are unlikely to continue to register locally on a voluntary basis. Currently, landlords are required to provide details of any letting agent that they use on the landlord registration application. They do this by including the letting agent’s registration number. Without clarification from the Scottish Government on how a national scheme would operate and how the registration information will be shared with local authorities, it is difficult to assess how this will impact on the current landlord registration service.

It is acknowledged that some larger letting agents may operate across several local authority areas and that a mandatory local registration scheme may
result in them having to register in several different local authority areas. However, it is not felt that the basic registration fee of £55 per local authority every three years will place an undue burden on a business of this size.

Clear guidance will need to be developed to define who will be required to register as a letting agent, whether this will just be professional companies employed by landlords to manage their homes or whether someone such as a friend or relative looking after a home on an informal basis would also have to be registered.

The Council supports the proposal to develop a Code of Practice for letting agents. The development of a private rented sector forum of stakeholders would provide a useful forum for future consultation and discussion.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The proposals may present an increased workload if officers are called to give evidence in cases brought to the Homeowner Panel.

Benchmarking the new proposals against the recent dispute resolution process for Tenancy Deposit Schemes would be worthwhile.

Part 5: Mobile Home Sites With Permanent Residents

Q12. Do you have any views on the proposed new licensing scheme?

The Council supports the proposals to introduce a new licensing scheme for mobile home sites with permanent residents. The requirement for site managers to register with the local authority and provide evidence of their fitness and propriety will bring this sector more closely in line with the private rented sector.

Q13. What implications might this new scheme have for both the mobile home site operators and permanent residents of sites?

The proposals will have positive impacts on the permanent residents of mobile home sites as increasing regulations regarding who can operate such a site will offer greater protection for residents.
Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

The Housing (Scotland) Act 2006 was intended to address problems of conditions and quality on private sector housing. To date, the success of this legislation has been limited. The Scottish House Condition Survey (SHCS) shows that the percentage of private homes in Scotland with some form of disrepair has actually increased from 76% in 2003/06 to 80% in 2010/12. During this time, the percentage of private homes in urgent disrepair has also increased slightly from 37% to 38%.

Lack of maintenance can affect the value of a property and its surrounding area as well as leading to potential health and safety issues and dangerous buildings. The issues of repairs and maintenance in the private sector are particularly significant in Edinburgh where 49% of homes were built before 1945 and 67% are flats. Older, flatted properties can be more difficult and expensive to maintain and issues surrounding mixed ownership mean that it is often difficult to carry out common repairs.

It is clear that more needs to be done to maintain and improve the fabric of our buildings to ensure that our residents are all living in safe, well maintained homes. The Council welcomes the additional powers contained in the draft Housing Bill in relation to covering missing shares, work notices and maintenance plans but feels that the amendments outlined below, along with some revisions to the Home Report, would help to strengthen the message that owners are responsible for the repair and maintenance of their properties.

Proposed Amendments to Part 6 of the Housing bill

Powers for Local Authorities to Pay for a Missing Share

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.

Case studies from Dundee City Council and Glasgow City Council which have both made use of powers to pay for missing shares in mixed ownership buildings suggest that recovering missing shares once work has been carried out is time consuming and labour intensive. There is also a risk that the money may not be recovered.

The 30 year payment period for recovery of funds through repayment charges as outlined in the Bill is excessive and the Council has limited resources to loan funds over such a long period. The Council would not be able to borrow
for this expenditure (as it would technically be revenue not capital), without express permission of Scottish Ministers. While the 30 year payment plan is better than not getting paid at all or an uncertain inhibition on the property, owners should be encouraged to pay as soon as possible and the existence of the 30 year option would discourage this.

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.

It is also recommended that the Scottish Government should establish a national fund that local authorities could access to facilitate shared repairs. Money would be paid back once recovered from the owner/s.

Requirement to Prepare a Plan for Managing Common Maintenance

In order for owners to maintain their homes, they must be aware of the condition that their property is in and any work that may need to be carried out. Proper maintenance of the roof of a building is crucial and regular roof inspections can be a core part of a preventative and planned approach to property maintenance.

It is suggested that the Bill is amended to require that homeowners have a plan in place to ensure the maintenance of common parts of their property. This plan should include:

- An annual roof inspection;
- A payment plan or other arrangements to fund maintenance and repairs; and
- Appointment of a responsible person or agent to manage the plan.

Local authorities would have to establish local enforcement policies which could include a requirement for homeowners to register details of property inspections and payment plans with the local authority or the use of powers in the Housing (Scotland) Act 2006 to require homeowners to establish a maintenance plan.

If a local authority has to intervene to carry out an emergency repair and it is discovered that there is no maintenance plan in place, the owners should be advised that they must establish a plan within an agreed time period. Local authorities may offer information and advice to support homeowners to develop their maintenance plan. If the owners still fail to implement a
maintenance plan, they should be subject to a fine. At this point a mandatory maintenance plan should be established to reduce the likelihood of future emergency repairs.

The process of implementing maintenance plans should be streamlined. It is recommended that when issuing a maintenance plan, local authorities should only have to inform the owner (or owners) of the building. The owner (or owners) would then have a duty to inform any other interested parties.

These amendments would be particularly effective if accompanied by changes to the home report.

**Requirement for information to be shared with co-owners**

The Bill should be amended to place a duty on any owner who carries out a survey of a communal area of a building to share that report with any other owners. This would prevent the duplication of surveys on the same building, encourage owners to work together and ensure better awareness of property condition.

**Strengthen role of solicitors in informing potential purchasers**

It is evident that home owners often do not consider the potential cost of repairs or how they might pay for these when deciding to purchase a property. Some may not be aware that they have a responsibility to maintain common areas of a building. The Council suggests that a duty should be placed on solicitors to advise potential purchasers of their responsibilities towards maintenance of the property and ensure that they have a plan to cover costs should any maintenance or repair work need to be carried out.

Solicitors should make clients aware of different options available to them to cover the cost of repairs such as savings accounts, remortgaging or taking out a loan. Purchasers could also be signposted to agencies offering advice on carrying out shared repairs and information on grants available for improvements e.g. for improving energy efficiency. The buyer would have to sign a contract confirming that they understand their responsibilities and will be able to fund necessary works.

It is also suggested that solicitors are required to encourage vendors to include a ‘service history’ in their Home Report as detailed below.

**Recommended Revision to Home Reports**

Home Reports are a useful tool in informing potential buyers about the property they are considering. However, the Council feels that there is potential to widen the scope of the home report and strengthen the role that it plays in reinforcing home owner responsibilities and improving conditions in the private sector.
The Home Report template should be amended to include basic information on homeowner responsibilities not only for the maintenance of their own property but for any common areas in a building. This should outline what constitutes a common area and reinforce the message that all owners in a block are responsible for monitoring the condition of these areas and arranging repairs where necessary.

The Home Report should contain more detailed information on the current condition of the property in order to encourage current owners to maintain properties to a high standard and to help potential buyers to make an informed decision. This should include the latest roof inspection report (no more than 12 months old) as detailed above.

The Home Report template should also be amended to include an optional “service history” of the property. This would detail maintenance and repairs that have been carried out on the property during their ownership and the associated costs. This will help to build up a picture of the property’s condition and the potential cost of repairs and maintenance.

It should be an offence for an owner to provide false information in a home report or to withhold information.

**Part 7: Miscellaneous**

**Q16. Do you have any comments on relation to the range of miscellaneous housing provisions set out in this part of the Bill?**

The Council does not anticipate any policy implications arising from the miscellaneous provisions.

**Other Issues**

**Q.17 Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?**

No.

**Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?**

No.

City of Edinburgh Council
04 March 2014
Introduction

In order to respond to the Scottish Government’s Housing (Scotland) Bill Clackmannanshire Tenants and Residents Federation organised an information and discussion session on the document’s content for members of the Federation. This session was facilitated by the Tenants Information Service.

The following report details our comments and feedback from this session.

Part 1 – the Right to Buy

We consider that:

- The Right to Buy (RTB) should now be abolished in order to safeguard and protect the limited social housing resource that we currently have in Scotland.

- The timetable for abolishing the RTB should 3 years as outlined in the consultation. That said, we consider that people who currently have the RTB, have had this right for a significant number of years and have not exercised it in these years and may now be unlikely to do so, but with a definite end to right to buy they may reconsider their options.

- The RTB should be abolished for all tenants at the same time, with the aim of retaining as much social housing stock as possible and ensuring everyone is treated the same that it does need to stop for all tenants at the same time.

It should be noted that we have some concern that abolishing the RTB:

- Will lead to an increase in applications at a time when demand for housing is high and needs to be protected.

- Clackmannanshire Council will need to review its Business Plan to take account of sales income and loss of rent.

- Some tenants may feel pressured into exercising their RTB before it is abolished, but may not really be able to afford the repayments or property upkeep in the future. Interest rates are not guaranteed and although low at the moment, this is bound to change.
• Some unscrupulous companies will target tenants to encourage them to exercise their RTB prior to the abolition of the right being implemented and may prey on vulnerable tenants.

• The forthcoming referendum may impact on RTB sales.

• It is essential that tenants have full access and advice to the RTB as the situation is both complex and for some difficult to understand.

Part 2 – Social Housing

a) Allocations
In terms of the allocation of social housing we agree with the reasonable preference categories of:
• Living below the tolerable standard
• Overcrowding and large families
• Unsatisfactory housing conditions and homelessness

However we consider that landlords should be enabled to allocate housing in a “common sense approach” in order to sustain tenancies, protect the interests of existing tenants in terms of their right to live in a safe and secure environment and allocate tenancies in a sensitive manner with regard to the demographic of other people living in neighbouring properties, with particular regard to areas or property types that are more suitable for or already have older people living in them.

Landlords should be able to take an applicant’s previous Antisocial Behaviour (ASB) into account when considering whether or not to offer them a house. This should also include homeless applicants previously evicted for ASB. ASB is not acceptable regardless of whether an applicant is homeless or not.

Landlords must consult tenants and tenants’ organisations on any proposals to change allocations policies and procedures. We are appalled to think that a landlord would not consult and consider us to have an excellent working relationship with this regard in Clackmannanshire with the Council.

b) Succession
On the whole, we consider that the current rule of 6 months in terms of succession usually works well in terms of people being able succeed the tenancy of the family home and propose this remains the same as long as it has been the person’s only and principle home for 6 months or more.

We do have concerns that at times people are not honest with the information they provide to the landlord in terms of the time lived at a property. This happens with the current term of 6 months, so with close monitoring perhaps these people may be “caught out” with the introduction of a 12 month period. However are we changing terms to “catch out” the minority and penalise the majority?
c) Joint tenancies
We consider that joint tenants should be able to succeed the tenancy as at present.

d) Assignation
We consider that tenants should only be able to assign a tenancy to a person who has lived in the house as their only home for the increased 12 months as proposed and that this person should only be allocated this house, if they would be normally allocated this type of property under the landlord’s allocation policy. We consider this should prevent people from moving into a tenant’s home with the intention of being assigned the house in order to “queue jump”.

e) Sub letting
Similar to assignation, we consider that tenants should only be able to sub let their home to a person has lived in the house as their only home for the increased 12 months as proposed and that this person should only be allocated this house, if they would be normally allocated this type of property under the landlord’s allocation policy.

We also consider that the principles around assignation and sub letting require further explanation and guidelines.

f) Short Scottish Secure Tenancies
We consider that:

- Short Scottish Secure Tenancies should be increased to 12 months which will test the “resolve” of tenant who can perhaps behave well enough to sustain a tenancy for 6 months.

- It should be noted also that we are still in favour of “probationary tenancies” and would like to see every steps taken to support landlords to support their tenants to sustain effective tenancies.

- People who own their own homes should only be allocated a Short Scottish Secure Tenancy in order to allow them time to make their own home suitable for their needs or make alternative arrangements. People fleeing violence and own their own home should also be given a Short Scottish Secure Tenancy to allow them to be safe and make alternative arrangements where possible.

Under no circumstances should people be allocated a social rented house and continue to keep their own home elsewhere or sell their house and move into a social rented house retaining the capital. With exception to the latter point, we feel that if an individual needs to move to supported accommodation which includes a care service, it would be appropriate for them to sell their home. We would like to see people living independently in communities as far as possible.
g) Antisocial Behaviour

SSST's

With regard to our feedback detailed below, it should be noted that we understand that landlords have a duty to house people and that eviction can just move the problem of ASB from one place to another. It needs to be clearer that tenants who make themselves intentionally homeless through ASB should not be rehoused. However as previously stated we consider that landlords have a duty to their other tenants in terms of ensuring people live in safe and secure homes and environments.

Therefore we consider that:

- Landlords should be able to give all new tenants Short Scottish Secure Tenancies where there has been previous ASB

- Landlords should be able to convert full Scottish Secure Tenancies to Short tenancies where they are dealing with a tenants ASB to allow them to work with the tenant to try to improve the behaviour or stop the tenancy where the ASB continues

- Increasing the timescale of a Short Scottish Secure Tenancy should allow landlords additional time to monitor tenancies and provide tenancy support. This should be an increase to 12 months with potential to extend to 18 months if things improve. However it should be noted it is vital that this does not mean that other tenants suffer ASB in their communities for a longer period of time

- Landlords should be able to continue to extend Short Scottish Secure Tenancies until they are convinced that the tenancies will not cause problems to neighbours and / or the wider community

- Landlords should continue to provide tenancy support whilst tenants have a Short Scottish Secure Tenancy and there needs to be powers for landlords to make sure that the ASB can be addressed or tenancy terminated

Part 3 – Private Rented Housing

In terms of the private rented sector, we agree that there needs to be increased powers and measures to deal with this sector, and that this is required in relation to:

- Ensuring private tenants have up to date and accurate information on their rights and responsibilities

- Protecting the rights of private tenants

- Protecting the rights of the private landlords and

- Protecting the rights of other tenants and residents in communities where:
- Private tenants are the cause of ASB, damage to the property of other tenants and residents in the block, street or community
- Ensuring common repair and investment work is carried out that social landlords need to or want to do for their tenants and properties
- Private landlords lack of care or investment in properties causes problems for social housing tenants or landlords

**a) The Tribunal**
We agree that the introduction of the private sector housing tribunal is positive especially if it saves resources and is a quicker course of action to deal with issues. However,

- Further information and clarification is required on the operation and enforcement powers of the Tribunal and that the Tribunal needs to “have clout and teeth” or it will not be worth the bother
- The Tribunal needs to be able to “streamline” the disputes process and make it easier and quicker than the current operation via the Sheriff Court system

**b) Private Rented Housing Panel**
We consider that:

- Local Authorities should have increased powers to enforce the repairing standard
- The Private Rented Housing Panel should make the process simpler and more streamlined and that the Panel should have “teeth” and be a less onerous process than using the Sheriff Court system
- Local Authorities will require enforcement powers to ensure the repairs and maintenance work is carried out
- All Private Lets should meet the repairing standard and Local authorities should have increased powers to enforce this

We recognise, that although this looks good on paper, in reality we are very concerned that the Local Authority currently does not have resources to address this activity. We need reassurance as to where extra resources can be found.

**Part 4 – Letting Agents**
We consider that:

- Letting Agents should be subject to a robust and effective registration scheme
- Local Authorities should have additional enforcement powers in areas where there are issues with management of all stock owned by a particular landlord
• Local Authorities should have increased powers to deal with private landlords where there are issues in relation to:
  - The behaviour of the tenant living in their property
  - The lack of repairs and maintenance of the property and any common areas, especially where there are social housing tenants and/or properties

• Letting Agents should be required to meet and sign up to a Code of conduct

• Guidelines need to be developed in full consultation with tenants, both social and private

• Letting Agent Registration and Code of conduct “needs to have teeth”

• The Bill and the Scottish Government needs to look at “beefing up” existing systems and ensure Local Authorities and other involved implement the use of the full powers already available rather than adding new things

**Part 5 – Mobile Home Sites with Permanent Residents**
In terms of protecting the rights of tenants living in these sites or parks we agree that:

• Mobile and Park Home sites should be licensed and meet with the new standards to be introduced

• Managers should be fit and proper persons

• Local Authorities should have new powers to grant and revoke licences

• Local Authorities should have powers to ensure sites are maintained, repaired and improved to a high standard

Once again it should be noted that we do have concerns regarding where Local Authorities will acquire the funding to do this and want guarantees that this will not come from HRA funding

**Part 6 – Private Housing Conditions**
As above, we consider that Local Authorities should have powers to enforce private landlords to carry out repairs and improvement to their properties. In addition in properties where social landlords own some of the properties, social landlords should have additional powers to enforce repairs and easier mechanisms to encourage private landlords to contribute their share of improvement works required.

Consideration should be given to developing a private rented housing standard, similar to the Scottish Housing Quality Standard.
Others

a) SHR Transfer of Assets

We would like to express concern that with the introduction of the Scottish Social Housing Charter and the Annual Report on the Charter, we would hope that any evidence of potential insolvency will be made known to the SHR in ample time to ensure the RSL tenants are consulted on any proposals to transfer to or merge with or be taken over by another landlord, therefore we do not agree that the requirement to consult should be removed.

This proposal within the Bill came as a surprise to us and unless the SHR can provide specific details of cases where there has been cause for concern we are adamant that tenants should be involved in any decision making regarding the future position of their landlord.

For the reasons outlined above, we also do not consider that the duty on the SHR to always obtain a valuation of assets or direct a transfer at an open market valuation should be removed. The value of assets should always be known.

Clackmannanshire Tenants and Residents Federation
27\textsuperscript{th} February 2014.
Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?
This is a welcome proposal as it will drive out poor practice and improve standards. It is essential that the reputation of the industry is improved while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

We believe there should be a new stand-alone Letting Agent Register operated by the Scottish Government.

The Register should include all businesses which let and manage private rented residential property in Scotland. However, we would not support simply replicating the processes and principles established for the Property Factors Register. Whilst it has improved that sector, this system is not robust enough in our opinion for the letting and management sector, and considerable consideration needs to be given to the detail of implementation for our sector.

A strong Code of Practice is needed. Along with the other representative organisations, we welcome the planned consultation in preparing the Code as secondary legislation.

Registration should include:

- an annual renewal (not every 3 years)
- a legally binding commitment each year to possessing:
  - adequate professional indemnity insurance
  - appropriate client money protection
  - a ring-fenced client money bank account
  - an annual audit of client accounts
  - membership of an ombudsman scheme to ensure an easily available redress mechanism for tenants and landlords.

Depending on the registration processes put in place there could be a requirement for the agent to produce annual documentation to confirm the above. It may be more appropriate to consider the registration process to be more the issuing of a licence approving the Letting Agent.

We believe that any Registration process should be Government operated free of any involvement with professional bodies such as the RICS or ARLA and others. Agents should aspire to differentiate themselves in the market place by achieving the standards required to gain membership. Within the code of practice there may be the requirement over a period of time to require owners of an staff employed in an agency to be say 50% qualified to a certain level of professional knowledge and competency.

The impact of these proposals on our industry is to be welcomed. It will however highlight even further the disparity in enforcement that currently exists on compliant letting agents and landlords and those who operate below the required standards. The passing of legislation and implementation of registration of Letting Agents will
create an environment where landlords who are self-managing will perceive the enforcement of regulation on them to be far less onerous. We recommend that at the same time as these regulations are implemented that the Landlord Registration regulations are enforced more robustly.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

See the above comment about ombudsman services in response to Question 10; under these schemes redress is readily available to customers of such organisations at no cost to the claimant.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

Clouds Property Management
21.02.14
COLINTON LETTINGS
WRITTEN SUBMISSION

We are a small family run letting agency with rental property in Scotland and support all of the feedback recommended by SAL / CLA in relation to the new housing bill. However we are particularly concerned with the new regulations for letting agents.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

If I’m honest I do not welcome new regulation of letting agents any more than I did the legislation of tenancy deposits. I think that many landlords generally bear costs which really should be paid for by tenants but it is not worth the time and effort to prepare and argue a case. Having said that our experience of how Safe Deposits Scotland is performing is generally very positive and I dare say it has reduced rogue landlords abilities to withhold deposits unreasonably.

So perhaps new regulations for Letting Agents will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent. But could it please be kept VERY SIMPLE such as a code of practice similar to the Council of Letting Agents, requiring minimal administrative burden on small businesses.

CLA have helpfully pointed out potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered letting agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Apparently the proposed mechanism will be appropriate in providing a simple and swift method of resolving disputes – I do hope so. I always felt that the Private Sector Landlord Team were a very effective mediator in minor disputes between tenants and landlords, such as those arising over the deposit refund at the end of the tenancy. I have yet to test out Safe Deposits Scotland Arbitration and hope never to need it. I feel the same about any Letting Agent panel but better that than the stress of a small claims or other court.
Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

The problem of communal repairs in Edinburgh in particular has become very problematic since the withdrawal of the Statutory Repair Notice scheme. For landlords of properties in multi-ownership buildings this proposal will I HOPE be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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. Inevitably in a shared stair with up to 10 owners including perhaps businesses on the ground floor, there may be certain owners who cannot or simply will not agree to pay their fair share. Attaching these unpaid bills to any subsequent sale of the property seemed to be an excellent way of ensuring that all bills would eventually be settled and to allow essential repair works to go ahead in a timely manner.

Colinton Lettings
01 February 2014
1. The Council of Mortgage Lenders (CML) is the representative trade association for mortgage lenders. Our 115 members comprise banks, building societies, insurance companies and other specialist mortgage lenders who, together, lend around 95% of the residential mortgages in the UK. In addition, the CML’s members have lent over £60 billion UK-wide for new-build, repair and improvement to social housing of which just under £4 billion is in Scotland.

2. CML Scotland welcomes the opportunity to respond to the call for views by the Scottish Parliament Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill.

General

3. We have restricted our comments to those Parts of the Bill in which our members have a direct interest and are generally supportive of other parts of the Bill which we have not commented upon.

Part 1 Right to Buy (RTB)

4. When the Scottish Government last consulted in 2009 on proposals relating to the RTB which found their way into the Housing (Scotland) Act 2010 which ended the RTB for new supply social housing and for any new tenants entering the social rented sector we welcomed the fact that the RTB would remain for existing tenants. Nothing has happened in the intervening period to change our stance in this regard, particularly in light of recent research which still demonstrates a strong desire for home ownership.

5. Having said that we fully recognise RTB sales have fallen dramatically in recent years and RTB could be regarded as a policy which is effectively coming to a natural end as the majority of tenants who wished to buy and could afford to do so will have already exercised their right. We also recognise the demand which there is for all types of affordable housing and that ending the RTB will allow houses which would otherwise have been lost to the social rented sector to be retained in it.

6. While we recognise the strength of aspirations to home-ownership and the many benefits it delivers, we also acknowledge that it is not the tenure for everyone all of the time. The real challenge is to deliver a healthy balance of tenures, providing a choice of affordable housing. There is a need for diversity and for the balance of tenure to respond to economic and social change. Lenders do, of course, help fund housing across all tenures and have a considerable interest in both the private rented and social rented sectors.

7. The proposals either to end the RTB will undoubtedly impact in a negative way on some people who aspire to homeownership and in response to this the Scottish Government should consider the development of an intermediate tenure for households to be able to lower or raise their level of home-ownership according to
their changing personal circumstances. This would also be one way of managing the higher risk profile of mortgage lending which has occurred over the last decade as a result of extending home-ownership lower down the socio-economic spectrum.

8. We believe that a 3 year period before the RTB ends is more than an adequate notice period for those affected by the withdrawal of the RTB.

Part 7 Miscellaneous

20 year rule

9. We are supportive of powers being given to Scottish Ministers to exempt certain Standard Securities from the provisions of Section 11 of the Land Tenure Reform (Scotland) Act 1970. It is our view that this is an area of the law which is now outdated and requires fundamental review.

10. Section 11 previously caused issues in terms of long term private funding for the Housing Association sector and the Housing (Scotland) Act 2010 exempted Standard Securities granted over Housing Association assets from the provisions of Section 11.

11. More recently it has caused issues in relation to the Scottish Government shared equity loan schemes in that the owner of the property could repay the original equity contribution from the Scottish Government after 20 years without any uplift in the value of the property. While this is an issue for the Scottish Government it is also creates an issue for mortgage lenders in that the new Mortgage Conduct of Business Rules due to be introduced by the Financial Conduct Authority in April 2014 require a lender to take into account in assessing affordability any foreseeable event which could impact on the ability to repay the mortgage during its lifetime. This would mean that if the mortgage was for 25 years the lender would have to consider how the shared equity loan would be repaid at the end of year 20. Most lenders have indicated that they will not lend under the Scottish shared equity schemes unless the length of the shared equity loan matches the length of the mortgage.

Scottish Housing Regulator (SHR) powers

12. The Bill’s provisions amend Section 67 of the Housing (Scotland) Act 2010 and would allow the SHR in certain circumstances in a potential insolvency situation to transfer the assets of an RSL without consulting tenants or secured creditors. It also allows the SHR in a partial transfer situation to transfer assets without a valuation.

13. While understanding the need of the SHR to move quickly in potential insolvency situations the current obligation on the SHR under Section 67(4) to consult with secured creditors is not an onerous one. There is no minimum consultation period and no specification as to the level of consultation required. There is also no obligation on the SHR to comply with the views of secured creditors. Any decision still rests at the discretion of the SHR. Secured creditors therefore currently enjoy very limited protection and safeguards and it is therefore difficult for us to understand why they are now being removed even if they are restricted to the situation where the viability of an RSL is in danger for financial reasons.
14. We know of no case in Scotland where the SHR has not consulted with the lender to an RSL facing financial difficulty and we can think of no circumstance in which it would not be appropriate to do so. In practice in rescue situations we cannot see how a transfer can be conducted without involving a lender where it holds security over the assets of the distressed RSL. In addition where the rescuing RSL is also borrowing there will also be a need to consult with their lender/s to ensure that their lender/s is happy for them to take on additional obligations and that their loan covenants are not being breached. In rescue situations it needs all parties to be working together—the SHR, the distressed landlord, the receiving landlord and lenders to both landlords. It is only by this happening that the interests of the tenants of the distressed landlord can be protected.

15. It is therefore hard to understand why the obligation to consult with secured creditors is being removed.

16. As regards the obligation to consult with tenants, we can foresee issues arising if urgent action is required, but again simply removing the obligation in its entirety seems draconian. We would have thought an obligation to consult to the extent viable in the circumstances taking into account the need for urgent action would have been a more appropriate approach.

17. So far as the removal of the obligation to obtain a valuation in the event of a partial transfer is concerned we cannot see how a partial transfer could possibly be structured in the absence of an indication of the value applying to the stock to be transferred. In the absence of any linkage to a valuation, it would be open to the SHR to direct a transfer at a nominal value (or any other figure chosen). This provision is a major concern for lenders.

18. We have a number of specific reservations relating to where a lender held a security over assets subject to the partial transfer:

- Is it assumed that any transfer would be free of security? If so, then the relevant bank debt would need to be refinanced.
- If alternatively the transfer is to be subject to security, then this would create a situation where a transferee RSL would acquire stock subject to security for debt owed by the transferor RSL. The transferor RSL would lose the benefit of the stock (and the rents arising from it) but retain the debt obligation.
- We are also not clear on the insolvency position. Transfers of assets at less than their market value can normally be challenged as gratuitous alienations or fraudulent preferences.

19. Overall it is difficult to envisage why a partial transfer should ever be at less than ‘market value’ and if a valuation (full or desk-top) is required for this purpose, this should be a condition to such a transfer. As with whole transfers, there would appear to be other adequate controls and powers presently available to the SHR to ensure appropriate interim management of the relevant stock pending a properly structured partial transfer.

20. We would call on the Scottish Government to reconsider this matter.
Repeal of defective designation

21. In our submission to a consultation on this matter we advised the Scottish Government that we do not believe the removal of the designation “defective” from Precast Reinforced Concrete (PRC) homes in Scotland would improve the availability of mortgages on these types of property. There is little doubt that the problem and stigma attached to these properties is fairly deep rooted. Lenders will still adopt a cautious attitude to them and unless approved repairs have been carried out to them they will still be regarded as not being suitable as security.

22. The present proposal has also the ability to create a confusing picture so far as our members are concerned. The majority of lenders operate on a UK wide basis and many of the PRC house types exist in both Scotland and England and Wales. It will raise questions going forward of why in Scotland these house types are not considered defective but in England and Wales they are.

23. The development of new approved repair schemes in conjunction with the Buildings Research Establishment is in our view more likely to bring long term benefits in relation to PRC homes although it cannot be guaranteed that such schemes will meet all aspects of every lenders’ individual lending policies.

COUNCIL OF MORTGAGE LENDERS

30 JANUARY 2014
CRAIGDENMUIR LIMITED
WRITTEN SUBMISSION

Part 5 Mobile Home Sites with Permanent Residents

We own & operate a Residential & Holiday Park park in Stepps, Glasgow, we are a family business who have been in this industry for over 30 years, we have owned our park in Glasgow for 10 years come June of this year, this was a very run down site that had been allowed to fall in to disrepair with a lack of investment with many breaches to the site license conditions,

We have found that the fault for a majority of the problems on this site & the reasons for it being allowed to fall in to disrepair are down to North Lanarkshire Council who have in our view failed to police the site properly, re carrying out annual inspections of the site on a regular basis, on purchasing this site we approached environmental health services pointing out to them that there appear to be numerous problems with regard to breaches to the site license, the main ones being Density & Spacing with many of the homes being to close to each other this making it more possible for the risk of fire spreading, another main area of concern was the amount of fire points that where on the site being only 5, this was a short fall of 12 as there should have been 17 in total, in our view if we had not put the appropriate amount of pressure on the environmental Health Services then this site would still be in the same condition today, in our view they did not have the experience or the will to implement the required works,

We have sought to rectify the outstanding breaches by fully redeveloping this site to a 5 star standard, this has been a long haul with lots of hard work put in from ourselves, family members & of course our staff, of which we employee 12 local people plus numerous local contractors, everything that is here has had to be replaced such as the sewerage, gas, electrics, concrete bases, roads, street lighting, fire fighting equipment the list is endless, these items are to mention but a few,

When complete our site will accommodate 187 Residential Park Homes, we still have a long way to go as we are still in phase one but work is progressing well, this development is for the over 50’s which allows the semi / retired the ability to down size this freeing up other housing stock for younger families to locate in to the local area, which has huge benefits for the whole community as a whole,

We do now receive yearly visits from environmental Health Services & have done for the past 3 years, in our view it is a paperwork exercise as we still have a couple of outstanding matters relating to Density & Spacing with regard to some of the older homes on the site, On their last two visits over the past two years I have given them copies of our latest Fire Risk Assessment regarding a particular home, we are still awaiting a response!!

We keep hearing the reasons for all the changes in legislation & the more we hear the more puzzled we are, in our opinion if the local authorities carried out their duties in a proper manner then a lot of the problems that exist would not be there, the new
proposals for the local authority to be able to come in & do any required works in the
owners absence to us is quite unbelievable, if they do not currently have the
expertise or the will, then how are they going to be able to resolve the perceived
problems that others say exist in absence of the owners,

The proposals to introduce time limits on the site licence would in our view be very
damaging to our industry, as we often get asked by potential customers what
happens to us if you go bankrupt & can you put us of the park if you feel like it, our
answer is you are purchasing the home & taking a license over the land that the
home sits on, the license is for an indefinite period, there is no time restriction
as long as you maintain the home & the pitch, if we start telling potential occupiers
that our license is only for 3 - 5 or 10 years this is in our opinion going to add a lot of
scepticism on their decision to purchase, as the next question is what if you lose
your license then what happens, we do not think that this will help the potential
customer come to a decision to purchase, if the right frame work is put in place
then the authorities already have the powers to do the work to a site that is in
disrepair, if they decide to use them, if there is unacceptable behaviour from a site
owner & they allow the site to fall in to disrepair, then at the pitch fee review process
the residents now have the power to decrease the pitch fee, what respectable
business owner would want this to happen, so it is in our interest to keep the site to
the highest of standards,

Our Holiday side of the park has been awarded last year in 2013 a 5 star grading
from Visit Scotland, they only grade the Holiday side of the park, a lot of this is down
to the work that has been carried out from the entrance throughout the park as a
whole, this is what the majority of park owners want to achieve,

To change the site licensing time limits that would effect the majority of good park
operators, because of the very small minority of rogue park owners would in our
view be counter productive, as it will have a negative impact on the industry & to the
new purchasers that we are trying very hard to attract,

We own a small residential park in Andover, Hampshire which we have owned for
over 23 years, this was also a very run down site when we purchased it back in
1991, it was fully redeveloped a number of years ago & is fully occupied, re the new
site licensing proposals that are to come in to force in England re site licensing fees
in April, I called the Environmental Health Services last week & spoke to a Mr Tim
Blackmoor I asked him have they published a fee policy yet re proposed site
licensing fees, he replied no, as he said we do not know what we are supposed to
be charging for, he said we have written to the goverment to ask them to clarify what
we are supposed to be charging for, as Mr Blackmoor replied we don’t want to be
dreaming up fees for no reason, as he stated we do not have any badly run parks
in our area so why would we be issuing fees?

This makes you wonder if the vast majority of residents are happy on their parks,
which we believe they are & only a small minority of residents
have had problems, it seems like introducing time limits for site licenses is in effect is
using a sledge hammer to crack a nut!! if residents are not happy then this brings
negative publicity to all park owners & this is not in our interests, we do believe that
residents should have the fullest protection of the
law available to them,

If site licensing should have time limits introduced then at the bare minimum it should be a least 10 years with 5 yearly reviews, but preferably not at all!!

And the requirements should be only if a park owner has been convicted in a court of law for harassment or fraud should they be considered to lose their site license,

**Craigendmuir Limited**

23.02.14
CRAIGTOUN MEADOWS LTD
WRITTEN SUBMISSION

I believe that the Consumer Focus research is flawed ie they spoke to less than 3% of those who live in Park Homes in Scotland, so the percentages subsequently quoted in their findings then become less reliable.

The Social research Report Licensing of Caravan Sites in Scotland - An Analysis of Consultation Responses is also a bit disconcerting when the report states that 55 of the 76 respondents came from 2 park homes. I am sure they mean 2 Parks and in the report it states that all the respondents gave exactly the same response, word for word. The BH&HPA could have done exactly the same thing for each of its' Parks, who would all have signed letters. That would have heavily weighted the findings the other way.

In effective both reports have been slanted in a negative way towards Parks. I do agree that there is a need for a change in legislation to weed out the 'rogue' element that exists in this business as it does in every other, though there is an element here of using a sledgehammer to crack a nut.

It is also worth noting that this legislation will have a knock on effect on Holiday Parks who also have Residential homes, who will now need 2 licences to operate as a result of this. Where our Company only has 3 couples living on a 32 acre Park, it seems excessive that we need a separate licence for facilities that are shared with holiday makers on a site that has been graded as 5 star by VisitScotland for many years. There will be potential for a negative effect on Tourism as a result of some of the implications of this legislation.

Statutory Minimum Application Criteria
As a Company we have no difficulty whatsoever with this, though it is strange to note that almost 50% of Local Authorities who responded perceived difficulties in applying this criteria.

Fit and proper Person Test
I'm wholly in favour of this. It would need to be standard across Scotland with no variations available to Councils and a straightforward criminal record check would suffice as the Council would already have a record of non-compliance issues anyway. There should be a specific legal definition of what constitutes non-compliance, with a legal challenge procedure in place. The system should be one which permits only court/ Tribunal findings to be taken into account.

Some of the proposed tests - any reports of antisocial behaviour, any breach of site licence, any complaints that have come to the local authority's attention - are vague, and petty issues could be used without the court/tribunal element.
**Issue of a Site Licence**

Based on past experience, the administrative burden on a Council to issue a new licence every 3 years would be too much. 5 or 7 years is much more reasonable and practical and any ‘action’ taken against a Park or change of ownership would justify a re-examination of that Licence anyway. While a fee of £600 is more reasonable than suggested by some councils, there should be something in place to ensure that Mixed Holiday/Residential Parks only need to pay one fee. The presumption should always be in favour of renewal, which is disapproved only in prescribed circumstances which would then require a fuller application. I would also suggest that a 'renewal' would be a smaller fee than a full application.

In 2008 Fife Council attempted to amend our Licence following a Planning Application, but an Appeal to the Scottish Office by ourselves was successful and found that the Council had not followed their own rules. It is important that proper checks are put in place.

**Failure to comply with formal notices to require works to be done**

This could be useful for catching rogues but can also cause problems for those that are not. I had an 18 month dispute with Fife Council over damage their workmen did at the entrance of our Park. The damage caused great inconvenience to our customers and Residents. For 18 months they argued it was my problem and insisted the Park should deal with it. Given the power they would have enforced this. Eventually with the help of a local Councillor they accepted liability and carried out the repair work.

Fines for non-compliance should also be laid down on a scale for the offence, as with driving licences.

A penalty notice for suspending pitch fee payments etc could be problematic if it relates to a Holiday Park with Residential homes - do holidays get cancelled? There would need to be restrictions on this type of notice. Fees are often paid at the beginning of a year. Removing the right to these in say, April would be meaningless in many cases.

**Management Order**

It is unlikely that many Councils will have appropriate Staff in reserve with the right skill set to do this. The owners’ right of contact with residents has already been all but removed. If the Council were to apply to the Court for a Management Order, where would the funding for running the business come from? How liable would the Council be if they made things worse? Based on potholes in roads, blocked drains etc that isn't as unlikely as it sounds.

**Ability of the Council to Charge a Fee**

This is inevitable and should not cost a Park more than it costs the Council and must be transparent. It was interesting to note that a majority of Local Councils (social report) thought they should be given the right to exempt certain sites from fees (7.5).
Recovering Licence costs from fees

It has been suggested that Parks can't recover the cost of licences from pitch fees. Are there other businesses who can't recover licence costs from their main source of income? The inference for our Park is that Holidaymakers will effectively pay for the Licence for the 3 Residents.

While very much in favour of change to clear up those that do damage to the industry, I am concerned about giving Local Authorities too much power without recourse to the Courts. The number of extra Staff that Councils would need to employ to justify the fees would probably be prohibitive, as would the cost of training to the level required.

As a simple example of the powers already in play and how they are used - in 2012 the Fife Council Environmental Health Team carried out an unannounced Health and Safety check on our 32 acre Park. It lasted 15 minutes and the 2 staff said 'see you in 5 years' at the end of it. I didn't consider that a 'Fit and Proper' test of our Park.

While there are benefits to be gained from the changes in legislation it is important that changes are not just for the sake of it and do not hurt those Park Owners and the 97% of Residents who were not consulted as part of this exercise.

Craigtoun Meadows Ltd
15 February 2014
Part One: the History of Housing Policy

I chose to research the history of state assisted housing because, when I first started work in the Housing Division, I was dealing with then current Housing Acts, but knew nothing of previous systems of State assistance. So when I made suggestions about solving a particular current problem, the head of the Housing Division, who was about to retire after long service, would tell me that it had been tried before, under a particular Act, which he specified, but had failed because of reasons which he again specified. I had never heard of the Acts which he quoted – e.g. the "Addison Act" of 1919, the "Chamberlain Act" of 1923, and even what I later found out to be the important "Wheatley Act" of 1924.

Nor was I aware of the reports of the Scottish Housing Advisory Committee in 1944, which set out the basis for post-war housing programmes, such as the return to "General Needs" subsidies in the Housing (Financial Provisions) (Scotland) Act, 1946, and the assistance for improvement of existing houses in an Act in 1949. The latter's deletion of all references to "the working classes" in previous Housing Acts gave local authorities, in effect, pre-eminence in housing provision. Accordingly, in only thirty years Scottish housing policy had changed from virtually complete reliance on private enterprise to an almost equally complete reliance on the public sector. However, as so often in major organisations, public and private, there was no corporate memory. Knowledge about previous public policies and systems of assistance was contained only in my boss's head, and would disappear when he retired.

Accordingly, my research paper on Housing Policy in Scotland, 1919 -- 1964 dealt with trends of policy on housing subsidies, council rents and assistance to private building. My conclusion was...
that policies over half a century varied more in response to immediate expediency than to long-
term, consistent principle. Subsidies had been attached to houses, rather than families, so that, in
the absence of a link between allocation policy and financial need, the beneficiaries of subsidy
were not necessarily those whose financial need was greatest.

Moreover, the failure to attract private enterprise back into building houses for letting meant that
public sector housing became synonymous both with subsidised housing and with rented housing.
The result was that the rents of council houses became a political issue. There were long drawn-
out arguments between central and local government (particularly Glasgow, Dunbarton County and
Dundee), culminating with public inquiries, chaired by Q.C.s, being held in 1955, 1956 and 1957
respectively. In each case central government successfully argued that local authority rents were
far too low. The point was that income from rents had to be enough, over the longer term, to
enable councils to build more houses

Nothing in these Housing Acts required council houses to be let, so in theory a council could build
for sale. Glasgow had built some houses for sale before World War Two, and at least one local
authority built a small scheme of houses specifically for sale after that War. However, there was no
general move by local authorities to compete with private builders in this way. It was certainly not
envisaged that local authorities should sell off large numbers of their houses. I note and welcome
the Bill's proposal to abolish the right to buy. This is crucial. Once bought, the new owners are free
to sell the houses at current market value. The houses will no longer be "affordable", a vague term,
commonly used in the media, which immediately prompts the question "affordable by whom". I am
glad to note that the Housing Bill refers rather to "social housing" and "social landlords", which
makes clear that the Bill is about houses built by non-profit organisations, such as local authorities
and housing associations, for letting at less than current private market rents. In effect, the Bill
harks back to council housing as envisaged and/or enabled in previous Housing Acts since
Wheatley.

Abolition of right to buy links with building for "General Needs" at less than commercial rents to
prompt questions about what are these "needs", and how did local authorities choose which of
many applicants should benefit from the lower rents? Hence my decision to research also systems
of allocation of Council houses in my paper on Allocation of Council Houses.

I am sending this note to you because I suspect that the inevitable turnover of staff, since
my research paper was published, means that there will be no corporate memory of it in
organisations that you may be contacting. Yet it is surely important that we should try to
learn from the past. So I hope that the above brief summary may help your Committee to
put the proposals in the current Housing Bill into their historic context, as successors to
previous visions and policies for state assistance to, and/or regulation of, public sector
housing.

Part Two: Allocation of Social Housing

In 1944 the Scottish Housing Advisory Committee estimated that 500,000 houses were needed to
meet accumulated arrears of housing needs in Scotland. By 1962, almost that number had been
built but it was still officially estimated that another 300,000 were needed over the following ten
years. The supply of good houses had consistently lagged behind potential demand, and that
potential demand had been made effective because of the policy that "no one in genuine need of a
house should be asked to pay more rent than he can reasonably afford". (The then Secretary of
State for Scotland, Mr J.S. Maclay, speaking during the Second Reading of the Housing and Town
Development (Scotland) Bill on 18 February 1957).

Accordingly, with no price mechanism to regulate competing claimants, what principles should
govern decisions on allocating tenancies of a limited supply of houses, and how much weight
should be attached to each principle? Who gets priority, given that the shortage is so acute, and
the waiting lists then so long (as indeed they are now in 2014) that allocation policy may decide not
just in what order families will be housed, but which of them might get a subsidised house at all? Applicants were entitled to be satisfied that decisions were being taken fairly, and for good reasons.

Moreover, decisions on allocation not only shape the living conditions of individual families, but can also affect the economy. For example, do allocation policies limit the scope for expansion of industry? Do they allow reasonable freedom of movement to industrial workers?

Local authorities alone could supply the information required, because they were their own masters in allocating their houses. Despite the millions of pounds voted by Parliament, or charged to the rates for council housing each year, no government department could direct a local authority to allocate a house to a particular family, because no Minister could be held responsible for decisions taken by local authorities within their statutory powers.

Accordingly, I asked the various housing authorities what their policies were. Information was obtained in two stages – first by a standard questionnaire, and then by correspondence and discussions with the responsible housing officials on specific points that arose from the answers to the questionnaire, or from supplementary material, chiefly in the form of points schemes, which they supplied.

There were 231 Scottish housing authorities: cities, large burghs, small burghs, and counties. To contact all of them would have been impractical, so only a sample of the small burghs was taken, and the predominantly rural and Highland counties were omitted, because their housing problems were smaller in scale and less acute.

In 1962 Scottish local authorities completed nearly 19,000 new houses, but let more than double that number because of vacancies arising in existing houses. As more houses were built each year, the proportion of these “re-lets” would keep on rising. So applicants for council houses had to realise that when their turn came it was a better than even chance that they would be offered a re-let, not a new house. There were, of course, great differences in the standard of “second-hand” houses, but the advantage did not always lie with the newest. People were refusing offers of tenancy in some recently built schemes because they were prepared to wait years longer for a re-let in popular groups of houses, often having been built in the 1920s, but with their own front doors, gardens, and “no roughs”. These “cottage-type” houses were in great demand.

This parallels what happened when “right to buy” was introduced. Tenants of Council houses of popular types, and in popular areas, especially in the cities, seized the opportunity to buy, while tenants in flats in “system built” multi-storey blocks did not, particularly in designs of the “deck-access” type, where teenagers ran along the decks, disturbing older tenants. Without resident caretakers, vandalism was rampant, and lifts broke down. So flats in many multi-storey blocks became difficult to let. This imbalanced Housing Revenue accounts, because rent income from older houses with relatively low remaining loan charges was being lost, but there was decreasing rent income and very heavy out-goings in the high blocks. This made it increasingly difficult for local authorities to finance building more houses. Accordingly, “right to buy” contributed, at least in part over the years, to the current shortage of houses available to rent at less than current commercial market rates. (I hope this author is not regarded as making a political argument: I am simply pointing to what seems to be the economic and market facts).

As indicated above, therefore, I believe the abolition of “right to buy” is essential. Indeed I would go further, and recommend that each new tenant should sign a document accepting that there will be no right to buy, and recognising that the tenancy itself is not a right, but in effect a privilege, after competition with many other applicants, to obtain occupation of a house with a rent considerably lower than in the commercial market.

I recommend this because, when “right to buy” was introduced, many buyers believed that they were entitled to buy at a discounted price because they had been paying rent for many years.
They did not realise that the "rent" they had been paying in those days included also the council's "domestic rates". (This was the predecessor of council tax until it was ended by the Abolition of Domestic Rates (Scotland) Act, 1987. Since then Council Tax, and water and sewerage charges have been billed separately). So only part of their payments had been rent, and even that part was far less than the Council needed to cover maintenance, repairs and the repayment, with interest, of the capital cost of the house. It had gone nowhere near financing the building of replacement houses.

In short, for new houses of any kind to be built, each development must, in the private sector, be commercially viable and, in the public sector, viable in the sense that income has to be enough to finance, on a non-profit basis, the building of replacements at the end of the expected lifetime of the houses.

It might also be argued that it would be helpful to make clear that the tenancy is not necessarily for life, and is not inheritable, but is for a period of years to be determined by the local authority in the light of changes in the family situation and the needs of other applicants. For example, while it seems reasonable, as the Bill provides, that when the original tenant dies, the widow, widower, surviving civil partner or carer could be assigned the tenancy, the local authority should have flexibility to specify that the tenancy is for a period of years related to the time when any children of the family would reach an age when they could reasonably be expected to leave home and set up for themselves. These children would then have to compete with other applicants on the waiting list, and should not expect simply to inherit their parents' secure tenancy.

The local authority might also have flexibility to offer a surviving original tenant a smaller house, so that the original family sized house could be made available to an applicant family who needed the bigger house. This may sound hard, because people become accustomed to living in a particular house, but it would give the local authority the ability to measure - sympathetically of course, and with regard to the existing tenant's reasonable needs - that tenant's expectations against the needs, in a time of considerable housing shortage, of other families on the waiting list.

My survey showed that many authorities accepted applications from people whose need was not urgent, but who saw a council tenancy is the only way they would ever get a decent house at a reasonable rent. Many authorities also failed to keep their waiting lists up to date by regular revision. This made it difficult to arrive at an accurate assessment of housing needs, or even housing demand. So your Committee may wish to ask Scottish local authorities on what basis they are assessing housing needs in their area.

The basis of any allocation scheme must be an assessment of relative priorities. However, how does one judge between the needs of different families, of different sizes and compositions, some of whom might be homeless, others overcrowded, others living in insanitary slums? Many authorities in my survey adopted schemes loosely referred to as "points schemes", but many did not award points at all, while others awarded points for only some of the many categories of need. Almost none were alike. It is interesting, however, that the categories of need listed by many of the authorities surveyed resemble fairly closely the categories listed in the Housing Bill.

Of the two main types, a "straight" points scheme put all applicants on one list, with points awarded according to a scale which measured all types and degrees of need, along with other factors - such as length of residence - which the local authority deemed relevant. However, many authorities awarded so many points for length of residence, or of marriage, or of rate paying - and in some cases all three, that it was possible for the points earned for these reasons to outweigh points for valid and urgent housing needs such as overcrowding or ill-health. Indeed in one small burgh it was possible to accumulate 10 points solely for having lived, and paid rates in the town for 20 years, while a maximum of only three points was obtainable for even the severest degree of overcrowding. This was particularly common in smaller communities where local ties were strong and people from not very distant districts were regarded as strangers. The Scottish Housing Advisory Committee had for many years recommended that employment should be accepted as
equivalent to residence, with the same minimum period — say a year. However, my survey showed that this had been ignored.

A "group plus points" scheme accepted that the types of need were so different in kind that it was virtually impossible to compare them on any objective, arithmetical basis. So the authority allocated, to each group or type of housing need, a proportion of the houses becoming available annually, with each applicant placed in his/her own group by a scale of points peculiar to that group. However, it was not clear how authorities arrived at decisions about the relative gravity of the various types of need, as measured by the proportion of houses allocated to them. Particularly in the absence of any detailed survey of housing conditions in the area, how could they be sure that their priorities were correct?

A substantial minority of local authorities, including some of the largest, did not award points at all. In these cases it was not clear how individual allocations were decided, except for the few councils who just allocated in turn according to the date the application was lodged. This system was easily understood by the applicants, but it is difficult to think of any other arguments in its favour as a means of dispensing social justice in areas of housing shortage. In rural areas and in some of the smaller burghs, decisions were taken on the basis of personal knowledge of the applicants and of their housing conditions, by a small sub-committee for an electoral district or even simply by the councillor for that district. In these areas canvassing of councillors was rife, and no matter how well and honestly they may have tried to do the job there were suspicions that those who shouted the loudest got the houses.

A surprisingly large number — more than half of the authorities surveyed — did not print their rules of allocation and issue them to applicants. Obviously, it would be preferable now, as it would have been then, if all authorities published their rules or point schemes in a simple pamphlet. Nothing was more calculated to infuriate or discourage applicants than suspicions that their applications were not being dealt with fairly. Justice must not only be done: it must be seen to be done.

There were provisions for some "Special Groups". One such was ex-servicemen, for whom residential qualifications presented difficulties. So a circular suggested to local authorities that where an ex-serviceman had found employment in an area, or had family connections with it, his application for a house should be dealt with on the principle that his family should be placed at no disadvantage by his absence on service. In the light of ex-service men currently returning from areas such as Afghanistan, your Committee may wish to consider recommending some similar principle.

Another "Special Group" was Key Workers. Most authorities in my survey said they gave special consideration to a key worker, but this was defined as a person who was sponsored by the Board of Trade as being essential to the establishment of a new industry or expansion of an existing one. This did not help ordinary workers who simply wanted to move to an area where they saw better employment prospects. It also did nothing to help recruitment of people such as teachers or nurses who might be badly needed in some areas.

Housing need is not necessarily synonymous with financial need, but most allocation schemes assumed that it was. Only four of the authorities surveyed said that they operated any kind of financial test on applicants.

Transfers of tenancy from one council house to another, within the same authority, usually operated quite extensively, but the attitude of local authorities to mutually agreed exchanges with people living outside the local authority's own boundary varied widely. Indeed one did not permit any exchanges whatsoever with tenants of other local authorities. There was often considerable local opposition to such exchanges. People on the waiting list resented the allocation of a house to a newcomer, even though no one on the waiting list had lost the chance of a house. All they could see was an outsider getting a house ahead of them, and this feeling, although illogical, was strong and a real barrier to large-scale operation of "external" exchanges. Feelings ran highest where
there was great competition locally for the popular "cottage" types of house described above, or end-terrace houses with space for a garage.

I hope that the above description of allocation policies (or lack of them) emerging from my survey will be of help to your Committee in considering the provisions in the Housing Bill about housing need, regulation of allocation, assignation of tenancies, and secure tenancies. I would simply emphasise the importance of consulting widely, as the Bill proposes, publicising the selected allocation policies as widely as possible in plain English, and ensuring, so far as possible, that the decisions on allocations are not only fair, but seen to be fair, and are applied and regulated consistently, on a national basis, so far as is reasonable and practicable, given the different scale and urgency of housing need in each area.
Crisis, the national charity for single homeless people, welcomes the publication of the Housing (Scotland) Bill 2013. In particular we welcome the introduction of measures to regulate letting agents.

In addition to the issues Crisis has raised previously in our responses to the Private Rented Sector Strategy and Better Dispute Resolution in Housing Consultations, there are some additional areas of concern which we would like to highlight to the Committee.

Part 2 - Allocation of social housing based on age

The provisions in Part 2 of the Bill to allow social landlords the ability to take age into consideration when allocating housing has the potential to further restrict access to housing for younger people in Scotland.

The new legislation appears to be contradictory to the equal opportunities requirements in the Housing (Scotland) Act 2001\(^1\) and there is a real danger that this unnecessary provision will further reduce the already limited housing options for younger people.

This is a particular issue for those in receipt of benefits as at present single claimants aged up to 35 years old are only eligible for the Shared Accommodation Rate (SAR) of Housing Benefit (HB) in the private rented sector which is based on the cost of a room in shared accommodation. In many areas of the country this type of shared accommodation simply doesn’t exist or there is not enough available. Crisis research\(^2\) has found that only 13% of properties were affordable at the SAR, but when we took into account landlord willingness to let to benefit claimants, which is a longstanding problem, only 1.5% of the total were both affordable and accessible to SAR claimants.

As a result social housing is often the only choice for single people receiving HB in this age group. However, they also face restricted access to this sector as 75% of social housing stock in Scotland is estimated to be family sized\(^3\) and as a result of the bedroom tax, claimants would not be eligible for the full rent in these properties. Even with the recent increase to local authority Discretionary Payment funds many tenants are reluctant to move into a property which they would be deemed to under occupy and social landlords are wary of housing tenants who would face a shortfall.

An argument put forward for the introduction of consideration of age when allocating social housing is that it will reduce future anti social incidents. Crisis believe this is an unfair measure as the vast majority of younger tenants do not engage in anti social behaviour, and anti social behaviour is not restricted to young tenants. A more productive approach to reducing anti social behaviour would be through the use of pre tenancy training. There are also a number of existing measures available to social landlords to tackle anti social behaviour.

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\(^1\) The Housing (Scotland) Act 2001 - Part 7, Section 106.
\(^2\) Crisis (2012) No room available: a study of the availability of shared accommodation
for dealing with anti social behaviour, including the use of Short Scottish Secure Tenancy, and these changes should be given an opportunity to bed in before any consideration is given to restricting the allocation of housing to younger tenants.

In 2012/13, 40% of homelessness applications in Scotland were from single people under 35\(^4\), and there is a danger that limiting access to social housing for younger people could result in increased incidents of homelessness and rough sleeping.

Crisis therefore strongly believes that social housing should be awarded based on need and restrictions should not be put in place based on age.

**Part 3 – Transfer of sheriff’s jurisdiction to First-tier Tribunal**

The transfer of private rented housing cases from the sheriff court to a tribunal has the potential to address some of the issues with the current system. In particular, housing cases can be afforded low priority; sheriffs can lack expertise in housing law and the adversarial nature of the sheriff courts can be a barrier to some individuals accessing justice.

However, it is important to ensure that when setting up the First-tier tribunal the needs of vulnerable tenants are considered and they are afforded access to legal advice and support. This is particularly important when dealing with cases of eviction for rent arrears. Eviction has serious consequences for households and can result in homelessness. Any changes to the current regime must take this into consideration and ensure that landlords continue to take the necessary steps to try and resolve disputes before proceeding with repossession action.

We would encourage the new First-tier Tribunal to learn from the operation of the Private Rented Housing Panel (PRHP). The PRHP has been successful in dealing with repair and rent rise cases outside the court system, however, as a result of a lack of awareness there has been limited uptake of the service by tenants. In order for the tribunal to be a success the Scottish Government and local authorities must ensure that PRS tenants are fully aware of the changes and we would like to see promotional work carried out in addition to the updating of the tenant information pack.

**Part 3, Section 23 - Electrical Safety in the Private Rented Sector**

Section 23 of the Bill proposes changes to the repairing standard contained within the Housing (Scotland) Act 2006. Crisis believes there is a further opportunity to strengthen the repairing standard to ensure that those living in the PRS are not subject to unsafe electrical installations.

The current Repairing Standard requires private landlords to ensure that electrical installation and appliances provided as any part of a let are in a ‘reasonable state of repair and in proper working order at the start of and throughout the tenancy. However, given the growth of the PRS sector which has doubled in size in the previous decade and that 69% of domestic fires in Scotland are caused by electricity\(^5\), we believe there is a strong argument to introduce mandatory electrical safety inspections.


\(^5\) Analysis by the Scottish Government of Fire Datasets: DCLG and Scotland for 2012-13
Crisis support the Electrical Safety Council proposals for five yearly checks, by a registered electrician, of both fixed electrical installations in all rented property and any electrical appliances supplied with lets. We believe this strikes the right balance between protecting tenants from faulty electrics without being too onerous a financial commitment for landlords.

Part 4, Section 51 – Meaning of letting agency work

Crisis are funded by the Scottish Government to provide training, support and highlight best practice for rent deposit guarantee schemes (RDGS) in Scotland. RDGS provide a deposit, usually a bond, to help homeless and vulnerably housed people access the private rented sector. Schemes also provide tenancy support and assistance to both landlords and tenants to increase the sustainability of a let. As a result the majority of these schemes would come under the definition of a letting agent as set out in Section 51 of the Bill.

RDGS do not make a profit and all funds are used to house vulnerable clients, therefore any requirements to pay for registration could have an impact on their financial situation and the number of tenants they are able to house.

Schemes have also raised concerns with Crisis over potential limitations placed on their work as a result of being bound by a code of conduct designed for the professional profit making sector. Many schemes have to be selective of their clients and can place requirements into the granting of a tenancy, such as registering with a credit union, and there are concerns that this will not be compatible with the code of conduct.

We would encourage the Committee to look at alternative definitions or an exemption, to ensure that RDGS are not unfairly impacted by this provision. We would be very happy to discuss this area in more detail if required.

Crisis
28 February 2014
As a landlord with rental property in Scotland I would like to make the following comments in relation to the Housing (Scotland) Bill: -

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?

This is a welcome proposal as it will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

There is the potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered lettings agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The proposed mechanism is appropriate in providing a simple and swift method of resolving disputes.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

Maria Diponio
31 January 2014
DUNDEE FEDERATION OF TENANTS ASSOCIATIONS
WRITTEN SUBMISSION

Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

We agree with the provisions and the reasoning behind these

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

This is a reasonable length of time

Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Yes

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

Yes

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

Yes
Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

We support this move

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

We support the adjustments

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

We support this move

Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

No particular issues with the proposed mechanism
Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

We support this move

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. Do you have any views on the proposed new licensing scheme?

N/A

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

We support this provisions

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

N/A

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?
N/A

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Dundee Federation of Tenants Associations
18 February 2014
EAST AYRSHIRE TENANTS AND RESIDENTS
FEDERATION
WRITTEN SUBMISSION

Introduction

In order to respond to the Scottish Government's Housing (Scotland) Bill East Ayrshire Tenants and Residents Federation organised an information and discussion session on the document's content for members of all tenants and residents associations in East Ayrshire and staff representatives from East Ayrshire Council. This session was facilitated by the Tenants Information Service.

Part 1 – the Right to Buy

We consider that:

• The Right to Buy (RTB) should now be abolished in order to safeguard and protect the limited social housing resource that we currently have in Scotland.

• The timetable for abolishing the RTB should be less than 3 years and we would propose 12 months or less. We consider that people who currently have the RTB, have had this right for a significant number of years and have not exercised it in these years and may now be unlikely to do so.

• The RTB should be abolished for all tenants at the same time, including areas with pressured area status. We do recognise that this may seem unfair to the people affected as it is not the fault of these tenants that their RTB has been suspended. However with the aim of retaining as much social housing stock as possible and ensuring everyone is treated the same that it does need to stop for all tenants at the same time.

It should be noted that we have some concern that abolishing the RTB:

• Will lead to an increase in applications at a time when demand for housing is high and needs to be protected.

• Some tenants may feel pressured into exercising their RTB before it is abolished, but may not really be able to afford the repayments or property upkeep in the future.

• Some unscrupulous companies will target tenants to encourage them to exercise their RTB prior to the abolition of the right being implemented.
Part 2 – Social Housing

a) Allocations
In terms of the allocation of social housing we agree with the reasonable preference categories of:
- Living below the tolerable standard
- Overcrowding and large families
- Unsatisfactory housing conditions and homelessness

However we consider that landlords should be enabled to allocate housing in a “common sense approach” in order to sustain tenancies, protect the interests of existing tenants in terms of their right to live in a safe and secure environment and allocate tenancies in a sensitive manner with regard to the demographic of other people living in neighbouring properties, with particular regard to areas or property types that are more suitable for or already have older people living in them.

Landlords should be able to take an applicant’s previous Antisocial Behaviour (ASB) into account when considering whether or not to offer them a house. This should also include homeless applicants previously evicted for ASB.

Landlords must consult tenants and tenants’ organisations on any proposals to change allocations policies and procedures.

b) Succession
We consider that the current rule of 6 months in terms of succession usually works well in terms of people being able succeed the tenancy of the family home and propose this remains the same as long as it has been the person’s only and principle home for 6 months or more.

c) Joint tenancies
We consider that joint tenants should be able to succeed the tenancy as at present.

d) Assignation
We consider that tenants should only be able to assign a tenancy to a person who has lived in the house as their only home for the increased 12 months as proposed and that this person should only be allocated this house, if they would be normally allocated this type of property under the landlord’s allocation policy. We consider this should prevent people from moving into a tenant’s home with the intention of being assigned the house in order to “queue jump”.

e) Sub letting
Similar to assignation, we consider that tenants should only be able to sub let their home to a person has lived in the house as their only home for the increased 12 months as proposed and that this person should only be allocated this house, if they would be normally allocated this type of property under the landlord’s allocation policy. We consider this should prevent people from moving into a tenant’s home with the intention of sub letting the house in order to “queue jump”.

We also consider that the principles around assignation and sub letting require further explanation and guidelines.
f) **Short Scottish Secure Tenancies**

We consider that:

- Short Scottish Secure Tenancies should be increased to 12 months.

- People who own their own homes should only be allocated a Short Scottish Secure Tenancy in order to allow them time to make their own home suitable for their needs or make alternative arrangements. People fleeing violence and own their own home should also be given a Short Scottish Secure Tenancy to allow them to be safe and make alternative arrangements where possible.

Under no circumstances should people be allocated a social rented house and continue to keep their own home elsewhere.

- Landlords should be able to allocate Short Scottish Secure Tenancies to allow them to work with people with a previous history of ASB, but whom landlords are required to house as per legislation.

g) **Antisocial Behaviour**

**SSST's**

With regard to our feedback detailed below, it should be noted that we understand that landlords have a duty to house people and that eviction can just move the problem of ASB from one place to another. However as previously stated we consider that landlords have a duty to their other tenants in terms of ensuring people live in safe and secure homes and environments.

Therefore we consider that:

- Landlords should be able to give all new tenants Short Scottish Secure Tenancies where there has been previous ASB.

- Landlords should be able to convert full Scottish Secure Tenancies to Short tenancies where they are dealing with a tenants ASB to allow them to work with the tenant to try to improve the behaviour or stop the tenancy where the ASB continues.

- Increasing the timescale of a Short Scottish Secure Tenancy should allow landlords additional time to monitor tenancies and provide tenancy support. This should be an increase to 12 months with potential to extend to 18 months if things improve. However it should be noted it is vital that this does not mean that other tenants suffer ASB in their communities for a longer period of time.

- Landlords should be able to continue to extend Short Scottish Secure Tenancies until they are convinced that the tenancies will not cause problems to neighbours and / or the wider community.

- Landlords should continue to provide tenancy support whilst tenants have a Short Scottish Secure Tenancy and there needs to be powers for landlords to make sure that the ASB can be addressed or tenancy terminated.
Part 3 – Private Rented Housing

In terms of the private rented sector, we agree that there needs to be increased powers and measures to deal with this sector, and that this is required in relation to:

- Ensuring private tenants have up to date and accurate information on their rights and responsibilities
- Protecting the rights of private tenants
- Protecting the rights of the private landlords and
- Protecting the rights of other tenants and residents in communities where:
  - Private tenants are the cause of ASB, damage to the property of other tenants and residents in the block, street or community
  - Ensuring common repair and investment work is carried out that social landlords need to or want to do for their tenants and properties
  - Private landlords lack of care or investment in properties causes problems for social housing tenants or landlords

a) The Tribunal

We agree that the introduction of the private sector housing tribunal is positive HOWEVER it should be noted that we are disappointed that this has not been included in the Bill for the social rented sector as per our response to the Dispute Resolution Consultation in 2013. In addition it should be noted that:

- Further information and clarification is required on the operation and enforcement powers of the Tribunal and that the Tribunal needs to “have clout and teeth” or it will not be worth the bother
- The Tribunal needs to be able to “streamline” the disputes process and make it easier and quicker than the current operation via the Sheriff Court system

b) Private Rented Housing Panel

We consider that:

- Local Authorities should have increased powers to enforce the repairing standard
- That evidence in relation to private landlords not meeting the standard should not just have to come from tenants and that neighbours, fire and rescue services, police, others and the local authority itself should be able to provide this evidence
- Where appeals are made by the private landlord, the funding required from the Local Authority to defend their position / action should not come from Housing Revenue Accounts (HRA’s)
- The Private Rented Housing Panel should make the process simpler and more streamlined and that the Panel should have “teeth” and be a less onerous process than using the Sheriff Court system
• Local Authorities will require enforcement powers to ensure the repairs and maintenance work is carried out

• All Private Lets should meet the repairing standard and Local authorities should have increased powers to enforce this

**Part 4 – Letting Agents**

We consider that:

• Letting Agents should be subject to a robust and effective registration scheme

• Local Authorities should have additional enforcement powers in areas where there are issues with management of all stock owned by a particular landlord

• Local Authorities should have increased powers to deal with private landlords where there are issues in relation to:
  o The behaviour of the tenant living in their property
  o The lack of repairs and maintenance of the property and any common areas, especially where there are social housing tenants and / or properties

• Letting Agents should be required to meet and sign up to a Code of conduct

• Guidelines need to be developed

• Letting Agent Registration and Code of conduct “needs to have teeth”

• Disputes between agent and landlord should be addressed by Trading Standards

• The Bill and the Scottish Government needs to look at “beefing up” existing systems and ensure Local Authorities and other involved implement the use of the full powers already available rather than adding new things

**Part 5 – Mobile Home Sites with Permanent Residents**

In terms of protecting the rights of tenants living in these sites or parks we agree that:

• Mobile and Park Home sites should be licensed and meet with the new standards to be introduced

• Managers should be fit and proper persons

• Local Authorities should have new powers to grant and revoke licences

• Local Authorities should have powers to ensure sites are maintained, repaired and improved to a high standard

Once again it should be noted that we do have concerns regarding where Local Authorities will acquire the funding to do this and want guarantees that this will not come from HRA funding
Part 6 – Private Housing Conditions
As above, we consider that Local Authorities should have powers to enforce private landlords to carry out repairs and improvement to their properties. In addition in properties where social landlords own some of the properties, social landlords should have additional powers to enforce repairs and easier mechanisms to encourage private landlords to contribute their share of improvement works required.

Consideration should be given to developing a private rented housing standard, similar to the Scottish Housing Quality Standard.

Others
a) SHR Transfer of Assets
It is our view that if the SHR is “doing its job properly”, that evidence of potential insolvency will be known in ample time to ensure the RSL tenants are consulted on any proposals to transfer to or merge with or be taken over by another landlord, therefore we do not agree that the requirement to consult should be removed.

For the reasons outlined above, we also do not consider that the duty on the SHR to always obtain a valuation of assets or direct a transfer at an open market valuation should be removed. The value of assets should always be known.

East Ayrshire Tenants and Residents Federation
27 February 2014
Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

EFFTRA is in favour of the abolishment of the right to buy. Whilst we understand why it was introduced, giving people the chance to own their own home, we feel that in reality there was mismanagement i.e. often it was the families of tenants, not the tenants themselves who financed the house purchase.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

Three years is too long. EFFTRA feel that 18 months would be an adequate timescale. This will allow tenants to exercise the right to buy and will allow landlords to review their business plans accordingly.

EFFTRA are very worried about how the abolishment of RTB is communicated to tenants. There is a worry that there will be “panic buying” by tenants or their families and also “rogue lenders” will prey on vulnerable tenants.

Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

In principle EFFTRA agree with the provisions proposed to increase flexibility in the allocation of housing. Although we would like to state that we do not see much change to current arrangements apart from under occupancy. Homes would still have to be allocated based on need which meant that people without defined need would spend a long time waiting on an offer. As landlords operate open and transparent allocation policies, EFFTRA feel that should suffice.
EFFTRA are supportive of the proposal to allow the landlord to take into account whether an applicant owns property.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

EFFTRA welcomes any approach which supports landlords in reducing anti-social behaviour (ASB). There is a worry however; that the problem of ASB will not be removed and local communities will continue to suffer.

Some perpetrators of ASB do and will continue to behave appropriately within the timescale of any SST.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

EFFTRA are supportive of this proposal as long as there is the fall back of civil court review.

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This makes sense for tenants and landlords. It is the EFFTRA belief that the new First-tier Tribunal will deal with non-criminal cases. Is there the possibility to widen scope of current Private Rented Sector Panel to deal with disputes?

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?
EFFTRA welcome the adjustments to private rented housing legislation, however are unclear how local authorities will be in a position to exercise these discretionary powers to tackle poor conditions in the private rented sector without there being a drain or pressure on existing resources.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

EFFTRA is concerned that local authority statutory repairs will raise community expectations. For some Councils Power the exists already through charging orders.

Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

EFFTRA are in favour of a mandatory register of letting agents in Scotland. The challenge will be ensuring that letting agents register and follow an agreed practice standard. EFFTRA feel that there are practice failings in the Private Landlord Register and these need to be addressed also.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

EFFTRA feel unable to comment as we would like to know more about the proposed mechanism.

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. Do you have any views on the proposed new licensing scheme?

EFFTRA support the proposed new licensing scheme. We are concerned that he lack of affordable housing may force people of all ages into mobile
home sites. Our worry is that some are poorly managed and there are no minimum standards.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

EFFTRA are concerned that the tenants will bear the brunt of any associated costs. Although this is acceptable if standards and services on sites remain high.

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenement properties?

This is long overdue and welcomed by EFFTRA. However we would like to stress that we have concerns about how the Local Authority will allocate resources if any to these provisions.

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

No comment

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

No comment
The Infrastructure and Capital Investment Committee is seeking views on the general principles of the Housing(Scotland) Bill. A copy of the Bill and the accompanying documents can be found at—

**Part 1: Right to Buy**

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

**Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?**

ELTRP in full agreement that right to buy should be abolished to protect social housing for future generations and recognises that a majority of tenants groups and landlords support this proposal.

**Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?**

ELTRP discussed this with some favouring 3 years as suitable timescale and others feel that one year is a suitable timescale.

**Part 2: Social Housing**

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

**Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?**

ELTRP agrees with the adding of under occupation as a category for reasonable preference to assist landlords to mitigate the effects of the ‘bedroom tax’. However ELTRP would like more information on how this would apply in allocations practice. For example, how would this change be applied to existing tenants who are classed as under occupying their properties. Would they be asked to transfer to a smaller property regardless of whether they were in receipt of housing benefit of paying full rent through their own means? If two tenants were on the transfer list and both were classed as under occupying and one was...
in receipt of housing benefit and the other paying full rent who would be given priority? Or would other reasonable preference criteria be used as well?

ELTRP agrees with provision that landlords must involve and consult tenants about any changes to priority groups in allocations policies. This is a vital principle to effective and successful tenant participation practice and links to practice being developed through tenant scrutiny and tenant involvement in monitoring landlords performance to Scottish Social Housing Charter.

ELTRP discussed the introduction of probationary tenancies for all new tenants although the proposal has been dropped by the Scottish Government. ELTRP generally agrees that these types of tenancies should not be introduced although some members felt it would be a useful tool for landlords to manage housing. ELTRP is unsure what the impact of this would have on housing management and how it would apply if a tenant of say 10 years obtained a tenancy from another landlord.

ELTRP supports the introduction of taking age into consideration when allocating properties although care must be taken to ensure that applicants are not discriminated against on age grounds under the Equality Act 2010. This can be useful for designating certain types of general needs housing for people over 50 or for people with families and children.

ELTRP supports the introduction of property ownership being taken into account when allocating social housing.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

ELTRP is in agreement with move to 12 months qualifying period for succession, assignation and sub letting but guidance must be issued to landlords to use discretion on a case by case basis as 6 months can be a suitable timescale in individual cases involving care and death in families. ELTRP agrees with principles that this should be guided by those in housing need but landlords must use care and attention to consider individual family circumstances. ELTRP recognises that landlords will have to inform existing tenants of these new requirements and will work to assist with communication.

ELTRP agrees with general principles for landlords to have the power to make secure tenancies short tenancies only in cases where there is clear evidence of anti social behaviour. This is a positive step with landlords being frustrated by drawn out legal processes to act to address anti social behaviour. Although ELTRP recognises that cases of ASB are split about 50-50 between the private
and social sector and perhaps more powers are also needed to deal with ASB in the private sector.

ELTRP supports this proposal to extend short tenancies to 12 and 18 months with appropriate protection and appeal for tenants.

ELTRP supports the proposal for new mandatory eviction when a tenant has been found guilty of using a house for illegal purposes outlined in tenancy agreement. ELTRP is more hesitant to support a mandatory eviction for 12 months imprisonment but recognises the aim but this should only be approved on a case by case basis where it is supported by other evidence.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

ELTRP supports the proposals to protect tenants on short tenancies as often and for different circumstances these people are vulnerable in society.

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

ELTRP sees this as a good idea in principle but management and organisation will fall to local authorities and in tough financial climate is this feasible? This needs a clear commitment from local authorities. ELTRP recognises the work of the Tenants Information Service to develop owners associations and this is an area that needs some development work in bringing together owners, tenants and local authorities to develop potential in this area. ELTRP also recognises the need for owners to adequately insure buildings. What will the cost to council be to manage and implement these proposals? ELTRP would suggest that certain enforcement orders need to be classified as different types of works. There are many examples of mixed tenure areas and privately rented areas that would benefit from this approach.
Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

ELTRP supports this idea in principle and sees the regulation of the private rented sector as an area for further development and a lot can be learned from the many years of work between social housing tenants and tenant participation structures across Scotland.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterized by poor conditions in the private rented sector?

ELTRP in general agreement but again who pays and it will help areas with high levels of poor housing and slums. Scottish Government financial assistance? Who pays? What is enforcement action? Links to regeneration?

Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

ELTRP support. Yes in line with housing industry.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Yes. ELTRP fully supports this idea.

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. Do you have any views on the proposed new licensing scheme?
Yes. ELTRP supports this idea and brings into line with housing sector.

**Q13.** *What implications might this new scheme have for both mobile home site operators and permanent residents of sites?*

Training, information, enforcement and possible development of resident’s mobile homes residents associations for Scotland.

**Part 6: Private Housing Conditions**

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

**Q14.** *Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?*

ELTRP supports this principle.

**Part 7: Miscellaneous**

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

**Q16.** *Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?*

ELTRP is concerned about giving SHR powers to dispose of HRA assets without consulting with tenants as this goes against the principles of tenant participation and community engagement. However, ELTRP recognises that the SHR should always be protecting the interests of tenants. In exceptional financial circumstances when there is a clear threat to the interests of tenants from insolvency and loss of assets then ELTRP would support with a strict criteria that was agreed with tenants before this power is conferred on the SHR. In other words if this is included in the Housing Bill there must be a provision to agree the criteria and process with tenants after the bill becomes law.
ELTRP does not support the removal of the duty to obtain valuations on HRA assets as this must be done in agreement with tenants as a key stakeholder in any asset transfers.

**Other Issues**

**Q17.** Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

**Q18.** Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

_East Lothian Tenants and Residents Panel_  
27 February 2014
EDINBURGH UNIVERSITY STUDENTS’ ASSOCIATION
WRITTEN SUBMISSION

Introduction
Edinburgh University Students’ Association (EUSA) welcomes the opportunity to respond to the Infrastructure and Capital Investment Committee’s call for evidence on the Housing (Scotland) Bill. In particular we strongly support provisions in the Bill which would improve the experience of tenants in private rented housing.

The Advice Place at EUSA often provides guidance to student tenants who have problems with their rented accommodation. It is one of the most common issues with which students visit The Advice Place for guidance. Too often students have problems with their letting agent or landlord and there is considerable dissatisfaction with current procedures for dealing with housing disputes.

We believe that creating a private rented sector tribunal and a regulatory framework for letting agents as well as new powers for local authorities to tackle poor conditions could greatly benefit tenants in the private rented sector.

However, we believe that the Bill could be strengthened to provide further protection for tenants in relation to electrical and carbon monoxide safety. We also think that the Bill could address rental costs and include measures to improve the energy efficiency of private rented accommodation.

Part 3 – Private rented housing
Tribunal
EUSA strongly supports the creation of a new housing panel to replace the court as the main forum for resolving housing disputes. Many tenants are currently reluctant to take forward cases to court, fearing repercussions from their landlord. A tribunal would be less formal than the court making it less daunting for tenants to access. It should also speed up the process of dealing with disputes.

Crucially the housing panel should be free to access and simple to use. To ensure that the housing panel operates in an equitable way free legal advice should be available to parties involved and resources must be available to ensure that there is enough provision for this. There may be an increase in the amount of usage of the system as tenants feel more empowered to take action. There should be no requirement for legal representation unless this is provided free of charge.

It is important that tenants feel confident in accessing the service. It must be clear to them that there would be no risk to their tenancy and no other negative implications should their claim be upheld or not. Many students are new to renting and are therefore unfamiliar with their rights as tenants. There
are over 11,000 international students at the University of Edinburgh who can find navigating the private rented sector difficult. They may have concerns, however unfounded, about potential negative effects of taking forward claims.

**Repairing standard**
EUSA supports the provision in the bill to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector. We hope that this would improve standards by tackling landlords who fail to maintain their property and carry out repairs.

Too often tenants find themselves struggling to make their landlord attend to repairs. This is an issue that student tenants raise often at the EUSA Advice Place. We know that some tenants are unwilling to take action to enforce the repairing standard because they are concerned that it could have a negative impact on the tenancy.

**Enhanced enforcement areas**
EUSA supports provisions to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor standards and landlord practice in the private rented sector.

The high demand for student rented accommodation in the city of Edinburgh together with the fact that many student tenants are unfamiliar with their rights and responsibilities can mean that student tenants are vulnerable to rogue landlords and letting agents. Rogue letting agents and landlords may have various properties across the city, not just in one area. The provision for enhanced enforcement areas should allow for the local authority to take this into consideration and be able to deal with properties across several areas associated with one letting agency/landlord.

**Part 4: Letting agents**
EUSA strongly welcomes provision to create a mandatory register of letting agents and a statutory code of practice. The introduction of a regulatory framework for letting agents could lead to fewer tenants having negative renting experiences but only if the legislation is enforced effectively.

Whilst many letting agents provide a fair and satisfactory service to tenants, the Advice Place at EUSA talks to many students who have problems with their letting agent in Edinburgh. These problems can range from agents refusing or being slow to attend to repairs, charging arbitrary fees, being difficult to contact or refusing to pass over contact details of landlords.

It is crucial that the consequences for breaching a statutory code of practice or failing to meet requirements for registration are clear and are acted upon. Resources must be available to ensure that the regulation is enforced.

Furthermore, tenants must be informed about the dispute resolution process and how to use it. It must be free to access and simple to use.
Further proposals

Electrical and carbon monoxide safety
EUSA would encourage an addition to the Bill which would improve electrical and carbon monoxide safety in private rented accommodation. We believe that regular electrical safety checks in all private rented properties should be mandatory as well as a carbon monoxide monitor and alarm.

Energy efficiency
We would welcome a requirement for landlords to update their properties to perform at a minimum energy efficiency level by 2015. Poor energy efficiency performance in rented housing increases costs for tenants, increases the chance of fuel poverty and is harmful to the environment.

Rent costs
Rental costs have increased considerably along with the demand for private rented accommodation. For some tenants who are on low incomes, for example students, their rent takes up a large part of their income. We believe that the Scottish Government could explore options to reduce rental costs, for example limiting the level of rent increase that a landlord can introduce to tenants who continue to stay in the property.

Edinburgh University Students' Association
27 February 2014
1. Overview

1.1. The Electrical Safety Council (ESC) welcomes the invitation to submit written evidence to the Infrastructure and Capital Investment Committee inquiry into the Housing (Scotland) Bill.

1.2. As the UK’s only charity committed to reducing electrical fires and electrical-related injuries at home and at work, our remit is to promote and encourage public awareness of issues surrounding electrical safety.

1.3. The Private Rented Sector (PRS) in Scotland is seeing unprecedented growth and has more than doubled over the last decade, from 115,000 dwellings (5% of all homes) in 1999, to 305,000 (12% of all homes) in 2012.\(^1\) In some parts of Scotland, the proportion of PRS stock is significantly higher. For instance, in Glasgow, the City Council estimates that private rented housing accounted for 19% of all dwellings in 2012.\(^2\)

1.4. As a consequence, the PRS will continue to play an important role in meeting Scotland’s housing need, with increasing numbers of families and vulnerable people renting privately.

1.5. Despite this, tenants often face poor conditions and serious safety hazards. According to government statistics, 69% of all accidental fires in Scottish homes (more than 3,400 annually) are caused by electricity.\(^3\) Independent research also suggests that private tenants are more likely to be at risk of electric shock or fire than owner occupiers.\(^4\)

1.6. Whilst we welcome the principles behind the Housing (Scotland) Bill and the Scottish Government’s continuing efforts to get a better deal for PRS tenants, we are concerned that the Bill as it stands will not create better property standards.

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\(^1\) Housing Statistics for Scotland - Key Information and Summary Tables’ published 26 August 2013, Scottish Government http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSFS/KeyInfoTables

\(^2\) http://www.glasgow.gov.uk/CHttpHandler.ashx?id=14215&p=0

\(^3\) Analysis by the Scottish Government of Fire Datasets: DCLG and Scotland for 2012-13

\(^4\) Research conducted by Ipsos MORI. 25th June-2nd July 2010
1.7. Provisions set out in Part 3 of the Bill (Private Rented Housing), including the introduction of a new First-tier Tribunal to deal with matters relating to private rented housing and creating third party rights in relation to enforcing the Repairing Standard, are a positive step for improving standards in the sector. However, we believe more must be done to reduce risks to private tenants by putting precautionary measures in place to ensure their safety, and that further adjustments to private rented housing legislation are required to do this.

1.8. Our submission focuses on:

- The clear imperative for the introduction of precautionary electrical safety checks for privately rented properties, potentially through an additional amendment to the Repairing Standard.

- The case for improving electrical safety through the inclusion of provisions in the new Code of Practice for Letting Agents (Section 41).

- Our support for Part 6 of the Bill on Private Housing Conditions which includes a number of adjustments which relate to local authority enforcement powers for tackling poor conditions in private housing.

- Wider support for enhanced provisions around inspection and testing of electrical appliances and installations in the PRS, most recently highlighted in a joint letter to the Housing and Welfare Minister Margaret Burgess MSP (See Appendix 1) from 13 businesses, charities and trade associations.

2. Proposals to allow for the introduction of provisions around electrical safety in private rented housing

2.1. The ESC supports proposals in the Bill to help reform the PRS including the new Housing Tribunal which, if approved, will provide landlords and tenants with more efficient and accessible access to justice that will help resolve disputes. In particular, this will help private landlord ensure that their property meets the relatively basic physical criteria of the Repairing Standard.

2.2. However, we believe further provisions should be included in the Bill to improve the safety and condition of private rented homes, and there is
a strong case to introduce measures for mandatory electrical safety checks. This could be achieved by an amendment to the Repairing Standard in the Housing (Scotland) Act 2006. Several amends to the Repairing Standard have already been proposed in Section 23 of the Bill, so the change relates to existing subject matter in the Bill.

2.3. Specifically, we want Government to introduce a requirement for five yearly checks, by a registered electrician, of both fixed electrical installations in all rented property and any electrical appliances supplied with lets.

2.4. At present, private landlords have a responsibility to ensure the homes they let comply with the Repairing Standard, as set out in the Housing (Scotland) Act 2006. Section 13 of the standard states that landlords must ensure the electrical installation and appliances provided as part of any let are in a 'reasonable state of repair and in proper working order at the start of and throughout the tenancy'.

2.5. The process for private landlords to demonstrate that the homes they let meet the electrical safety elements of the Repairing Standard is to carry out checks and tests of the wiring and any appliances supplied with the property. However, private landlords do not currently have to provide documentation proving they have carried out such measures (despite them being required to do so for gas appliances and installations).

2.6. In the context of gas safety requirements, there is a legal duty for private landlords to have any pipework, appliances and chimneys/flues checked by a Gas Safe registered engineer on an annual basis. A recent survey carried out by Shelter and British Gas suggests 90% of private landlords comply with this requirement.5

2.7. We believe there is a dangerous anomaly whereby testing of gas appliances and fittings is legally required but inspection and testing of electrical appliances and installations is not.

2.8. With the majority of domestic fires in Scotland caused by electricity, we once again urge the Scottish Government to introduce mandatory five yearly checks, carried out by a registered electrician, of electrical installations and any electrical appliances supplied with privately rented

5 http://england.shelter.org.uk/news/may_2013/1_in_10_renters_at_risk_from_gas_safety_hazards
homes.

2.9. Our view on these checks was supported by 12 trade associations, businesses and charities in an open letter to the Housing and Welfare Minister Margaret Burgess (sent 07/10/13, see Appendix 1). Supportive signatories included key housing sector organisations such as the Scottish Association of Landlords, Shelter Scotland, RICS Scotland and the Chartered Institute of Housing Scotland.

2.10. Our reasons for recommending a five yearly timeframe are largely due to a desire to strike a balance between the likelihood of risks to tenants from deterioration in the electrical installation/appliances due to wear and tear, faults and tampering, versus costs placed on landlords.

2.11. We recommend in all our literature that full inspections by registered electricians are supplemented by visual checks from the landlord or managing agent at more regular intervals (i.e. yearly or on change of tenancy, whichever comes first). If such a check were to uncover obvious signs of damage to the installation/appliances, we would expect that, as required by the Repairing Standard, landlords would take appropriate remedial action (please see Appendix 2 for an example checklist as carried on the ESC website).

2.12. Improving standards in the PRS will not only benefit private tenants but also help landlords in the sector keep their properties safe from fires and other incidents that could damage their investment.

2.13. Our proposal also supports the Scottish Government’s recent strategy for the PRS – ‘A place to stay, a place to call home’ – which aims to deliver for Scotland’s people by providing high quality homes. Making private renting a better option is crucial to ensuring everyone has a safe, affordable home to live in.

3. Proposals to allow for the introduction of a Code of Practice for Lettings Agents are welcome, and could go further

3.1. The ESC supports proposals to allow Scottish Ministers to introduce a Letting Agent Code of Practice (Section 41). This will ensure consistency of best practice across the industry, and provide a reference point against which to measure poor practice.

3.2. If electrical safety requirements are added to the Bill, we believe that there would be a knock on benefit to the effectiveness of the Letting
Agent Code of Practice, provided it restated the requirements.

3.3. In particular, given widespread evidence indicating the existence of retaliatory eviction for tenants who complain about poor conditions in their homes, information in the Code of Practice on the legal status of electrical checks would provide greater clarity to landlords and greater confidence to tenants.

3.4. If mandatory electrical checks for PRS properties are not introduced, we would encourage the Code to incorporate best practice guidance on how to manage property conditions, including electrical safety.

4. Proposals to amend local authority powers to enforce repairs and maintenance in private homes

4.1. The ESC welcomes the inclusion of provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006 in order to improve private housing conditions.

4.2. Currently, all social housing is required to meet the Scottish Housing Quality Standard (SHQS) by 2015. The standard includes enhanced criteria concerning the condition of accommodation. However, there is no requirement that private sector housing meets this standard. The only requirement for owner occupied housing is that it meets the tolerable standard, which is a minimum condemnatory standard which all housing must meet.

4.3. According to the latest Scottish House Conditions Survey, 72% of private homes suffer some level of basic disrepair and presumably in some cases includes defects to electrical installations.6

4.4. We believe householders should enjoy the same safety standards, irrespective of the tenure of their property, and that extending local authority powers to require that private owners take action to repair or maintain their properties will stop properties falling into dangerous levels of disrepair.

5. About the Electrical Safety Council

5.1. The Electrical Safety Council (ESC) is a charity committed to reducing deaths, injuries and other damage from electricity. As many such

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6 Scottish House Conditions 2012: http://www.scotland.gov.uk/Publications/2013/12/3017/290985
incidents take place within the home, safety in dwellings – particularly the PRS – is a core concern. Poorly maintained homes often have poorly maintained (and therefore dangerous) electrical installations, which can lead to fatal consequences.

5.2. According to government statistics, over half of all accidental fires in GB homes (more than 20,000 annually) are caused by electricity. Further, each year about 70 people die and 350,000 receive a serious injury – including skin burns, temporary blindness, and difficulty breathing - from an electrical accident in the home.7

5.3. Fire statistics also show that Scottish homes are at a disproportionate risk from fires of an electrical origin than the rest of GB. In 2012-13, electrically-related fires accounted for over 69% of all accidental fires in Scotland.8

Electrical Safety Council
26.02.14

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7 ESC Core dataset. Symptoms of ‘serious injury’ obtained via the South West Public Health Observatory.
8 Analysis by the Scottish Government of Fire Datasets: DCLG and Scotland for 2012-13
Dear Ms Burgess,

ELECTRICAL SAFETY IN THE PRIVATE RENTED SECTOR

How we live is changing. The Private Rented Sector (PRS) in Scotland has more than doubled in size over the last decade, with ever more families and vulnerable people renting privately. As a consequence, the PRS will continue to play an important role in meeting housing need. But all too often, private renters face poor conditions and serious safety hazards.

According to government statistics, over two thirds of all accidental fires in Scottish homes (more than 3,000 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.¹

Whilst we welcome the Scottish Government’s efforts to improve conditions in the sector and drive up standards, more must be done to reduce risks to private renters by putting precautionary measures in place to ensure their safety.

We the undersigned believe that housing standards in the PRS can be improved without placing a significant additional burden on landlords, and that improving electrical safety for tenants should be a core part of any new requirements.

Given that a new Housing Bill is due to be considered in Holyrood before the end of this year, we urge you to seriously consider any future regulation that would further improve the PRS, including:

- Mandatory five-yearly safety checks by a competent person of electrical installations and any electrical appliances supplied with lettings
- Mandatory provision of RCD protection in all properties²

Improving standards will not only benefit tenants but also help landlords keep their properties safe from the risk of fire. Making private renting a better option is crucial to ensuring everyone has a safe, affordable home to live in so we hope that you will seek to introduce these much-needed changes and will await your response with great interest.
This Landlords’ Interim Electrical Safety Checklist is designed to help you, the landlord, or your representative, to carry out a regular electrical safety check on a property you let. The checklist supplements formal periodic inspection and testing, and should be used during the interim period (at least annually), to help identify any electrical safety risks that may exist at the property. In addition, if your electrical installation is new, this checklist may be used for the Interim period up to the first formal inspection and test.

As a landlord, you are legally obliged to provide and maintain your rental property in a safe condition. For this reason, the Electrical Safety Council (ESC) recommends that the electrical installation is formally inspected and tested at least once every 5 years, by a competent person, and a report confirming its condition is issued (Electrical Installation Condition Report - EICR). Any remedial work that is required should be undertaken by a registered electrician.

**Conditions of Use:** this checklist should only be used where both of the following conditions have been met:

- A formal inspection and test (EICR) has been carried out on the property (within the last 5 years)
- Actions recorded on the EICR have been addressed

(Tick to confirm)

**Name:** (of person carrying out the electrical safety check)

**Date:** (date carried out)

**Address of property:** (Print the full address of the property being checked)

**Checklist summary:** (Provide details of the electrical safety risk(s) and state the required action)

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<th>Record the risk and its location</th>
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(Where additional risks need to be recorded, attach an additional page to this checklist)

**Comments:** (Insert, as appropriate, any other comments regarding the electrical safety of the premises)
**Electrical Safety Checklist:**

Use the items listed below as a guide for carrying out the electrical safety check. Where a safety risk is identified record the details on the Checklist summary, overleaf. *(Please note: This list is not exhaustive)*

---

**Fusebox (Consumer unit)**

1) All covers are in place and fitted correctly (a damaged cover could lead to a shock or fire risk)
2) Residual Current Device (RCD)* trips when the test (or ‘T’) button is pressed
3) Combustible materials are not stored on or near the Fusebox (e.g. paint, newspapers, cleaning fluids)

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**Sockets and lighting**

1) Sockets, lights and switches are securely fixed and in good condition (e.g. not broken or cracked)
2) Sockets, lights and switches show no signs of overheating (e.g. blackening, scorch marks)
3) Flexible cables are not in a position where they are likely to suffer damage (e.g. under carpets or rugs, passing through door/window openings)
4) Sockets are not overloaded with too many appliances (e.g. inappropriate use of adaptors and/or extension leads)

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**Electrical appliances**

1) Appliances are not subject to a product recall (Visit www.esc.org.uk/recall to check the appliances in your property)
2) All covers are in place and in a satisfactory condition (a damaged casing could lead to a shock or fire risk)
3) Flexible cables are in a satisfactory condition and show no signs of deterioration (e.g. fraying/splitting)
4) Flexible cables are securely attached to the appliance and plug

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**Additional safety checks**

1) Smoke alarm sounds when the test button is operated
2) Carbon monoxide alarm sounds when the test button is operated

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*An RCD is designed to protect against the risks of electrocution and fire caused by earth faults.*

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If you have identified any electrical work that needs to be carried out at the property, you can find a registered electrician by visiting [www.electricalsafetyregister.com](http://www.electricalsafetyregister.com). It contains details for over 34,000 registered contractors based throughout the UK.
DOUGLAS ELLIOTT (INDIVIDUAL)

WRITTEN SUBMISSION

I have given consideration to the various aspects of the proposed changes to site licensing.

My initial concern was that legislation designed to help occupiers could potentially have the opposite effect.

The possibility of leaving a development without a site licence is frightening. The proposed systems to deal with this are either not in place or crude. This legislation is designed to sort out bad site Owners. However, there is a real chance that it will harm more people than it protects.

The residents at Springwood are in the main very content. However, this legislation could devalue their homes by bringing in doubts about the future security of occupation.

Our residents have invested very large sums of money in their homes and this should not be undermined. I would ask that your Committee imagines the position of a park resident where doubts are cast over the framework on which they rely to give them peace of mind and security of occupation. This is crude legislation seriously affects the majority in an attempt to control a very small minority. It is disproportionate.

The legislation has come about as a result of a very small numbers of residents being badly treated by the site Owners. However, a lot of these concerns were addressed in recent changes to The Mobile Homes Act. There is no doubt in my mind that the vast majority of our residents are very unhappy about some of the changes in this Act and the proposed changes in the legislation.

By introducing increased bureaucracy, there is a chance that small park operators will sell their parks on the open market, thus making them available to rogue operators. I believe that there is sufficient legislation to cope with current issues and that these changes are a sledge hammer to crack a nut.

The proposed changes leave far too much to be decided by ministers away from the gaze of parliament at a later date.

At the very least the licensing period should be extended to ten years. The “fit and proper person test” has been abandoned in England as it is unworkable. It should be abandoned in Scotland also.

Douglas Elliott
25.02.14
ENERGY ACTION SCOTLAND
WRITTEN SUBMISSION

Energy Action Scotland (EAS) is the Scottish charity with the remit of ending fuel poverty. EAS has been working with this remit since its inception in 1983 and has campaigned on the issue of fuel poverty and delivered many practical and research projects to tackle the problems of cold, damp homes. EAS works with both the Scottish and the UK Governments on energy efficiency programme design and implementation.

EAS will limit its comments on the Infrastructure and Capital Investment Committees call for evidence on the Housing (Scotland) Bill to those questions relating to energy efficiency and fuel poverty. EAS welcomes the opportunity to respond to this consultation.

Part 1: Right to Buy

EAS is supportive of the abolition of the Right to Buy for social housing tenants. The changes to the make-up of housing tenure over the last 30 years has seen more and more homes moving from the social sector to the private sector. In the 1980’s the social housing sector accounted for around 70% of all homes in Scotland while the private and private rented sector accounted for 30%. This has changed dramatically with the position reversed with 70% of all homes now being in the private or private rented sectors. This is placing a significant amount of pressure on social housing providers who find that demand for housing is outstripping their ability to supply. While at the same time, mixed tenure estates make the provision of energy efficiency works to tackle fuel poverty very difficult when owners fall into the asset rich capital poor category.

During this time of changing housing market, levels of fuel poverty have remained almost static. While significant improvements in the energy efficiency of the social sector have taken place, there is not the same level of improvement in the other sectors. EAS believes this is due to many people who bought their homes under the Right to Buy scheme being asset rich but capital poor. That is they can afford a mortgage but not the costs of repairs or maintenance of their homes. Since 1999 successive Scottish Government fuel poverty and energy efficiency programmes have been targeted at the private and private rented sectors to support those living in energy inefficient homes.

A repeal of the Right to Buy would prevent further homes being taken into the spiral of owners being trapped in having money to pay a mortgage but no money for improvements or maintenance. This may ease the call on funding from Scottish Government fuel poverty programmes in the shorter term and make the introduction of energy efficiency standards in the private and private rented sectors easier.
Part 3: Private Rented Housing

EAS is a member of the Scottish Government's Sustainable Housing Strategy Group and of the Regulation of Energy Efficiency in the Private Sector Working Group (REEPS). EAS believes that ultimately there has to be an energy efficiency standard in force for the private and private rented sectors if we are to achieve the eradication of fuel poverty and meet climate change targets. It is a disgrace that homes with exceptionally poor levels of energy efficiency, poor heating systems, and that are poorly maintained can be offered for rental. This needs to be addressed as a matter of urgency.

EAS is also supportive of the Electrical Safety Council's proposals for the introduction of mandatory electrical safety inspections in private rented housing. It supports the call for the introduction of a requirement for five yearly checks, by a registered electrician, of both fixed electrical installations in all rented property and any electrical appliances supplied with lets.

Part 4: Letting Agents

EAS is supportive of the power to establish a registration system for letting agents. It is important that anybody involved in renting out homes in any sector have a Code of Conduct and a system of redress for those whom it serves when that service is below statutory requirement.

Part 6: Private Housing Conditions

EAS views are stated in reply to the questions in Part 3 of the call for evidence.

Energy Action Scotland
27 February 2014
We are letting agents and property managers and wish to make the following observations on the Housing (Scotland) Bill:

In response to questions submitted earlier we wish to respond accordingly

**Part 3: Private Rented Housing**

**Q7.** *Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?*

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

**Q8.** *Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?*

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

**Q9.** *Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?*

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards. It is essential that the reputation of the industry is improved while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

We believe there should be a new stand-alone Letting Agent Register operated by the Scottish Government.

The Register should include all businesses which let and manage private rented residential property in Scotland. However, we would not support simply replicating the processes and principles established for the Property Factors Register. Whilst it has improved that sector, this system is not robust enough in our opinion for the letting and management sector, and considerable consideration needs to be given to the detail of implementation for our sector.

A strong Code of Practice is needed. Along with the other representative organisations, we welcome the planned consultation in preparing the Code as secondary legislation.

Registration should include:
- an annual renewal (not every 3 years)
- a legally binding commitment each year to possessing:
  - adequate professional indemnity insurance
  - appropriate client money protection
  - a ring-fenced client money bank account
  - an annual audit of client accounts
  - membership of an ombudsman scheme to ensure an easily available redress mechanism for tenants and landlords.

Depending on the registration processes put in place there could be a requirement for the agent to produce annual documentation to confirm the above. It may be more appropriate to consider the registration process to be more the issuing of a licence approving the Letting Agent.

We believe that any Registration process should be Government operated free of any involvement with professional bodies such as the RICS or ARLA and others. Agents should aspire to differentiate themselves in the market place by achieving the standards required to gain membership. Within the code of practice there may be the requirement over a period of time to require owners of an staff employed in an agency to be say 50% qualified to a certain level of professional knowledge and competency.

The impact of these proposals on our industry is to be welcomed. It will however highlight even further the disparity in enforcement that currently exists on compliant letting agents and landlords and those who operate below the required standards.

The passing of legislation and implementation of registration of Letting Agents will create an environment where landlords who are self-managing will perceive the
enforcement of regulation on them to be far less onerous. We recommend that at the same time as these regulations are implemented that the Landlord Registration regulations are enforced more robustly.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

See the above comment about ombudsman services in response to Question 10; under these schemes redress is readily available to customers of such organisations at no cost to the claimant.

**Part 6: Private Housing Conditions**

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

**ESPC**

24.02.14
FACTOTUM
WRITTEN SUBMISSION

Factotum are letting agents and registered Property Factors and wish to make the following observations on the Housing (Scotland) Bill: -

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

We welcome a First-tier Tribunal. If adequately resourced, it could open up to the public much needed recourse to malpractices that discredit the PRS, shows the present enforcement agencies in a poor light and highlights the legal systems’ vagaries and delays.

We would propose that such FTT committees be well represented by as balanced a cross section of the PRS as possible. We would be happy to be involved further in this process.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

This is also welcomed. We would add that part of those discretionary powers might include the mandatory appointment by a miscreant landlord of a registered letting agent or factor for a predetermined period of time to manage that landlord’s property and bring it up to the required standard. This might also mitigate such concerns as the threat of constructive eviction and subliminal intimidation of resident tenants.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This is also welcomed but with a provision that any capital improvements are subsequently sustained by diligent cross section of good management in terms of upkeep and tenancy management to avoid re-ghettoising or dilapidation of such areas.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?
This is welcome and long overdue. We believe it should be embraced and policed as part of the FTT and form:

1. A simple Letting Agents registration readily accessible by the public.
2. A letting Agents Code of Practice binding on Letting Agents that have signed up to it.
3. An enforcement process that is self regulating in as much as it does not nurture overt state bureaucracy or hand over excessive enforcement to local mandarins and panjandrums.
4. A process that empowers the plaintiff and defendant to easy, non-adversarial and timely recourse.
5. A process that is (initially) biased towards financial settlement, rather than pecuniary penalty.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Complaints procedures and mediation should be embraced as part of the letting Agents Code of Practice.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

This is also welcome but we would like to see a greater partnership developed between the Council and agents particularly more cooperation in terms of information on ownership and greater use of statutory notices.

Factotum
24.02.14
FIVE SISTERS AND CAIRN ROCK HOUSING NETWORKS

WRITTEN SUBMISSION

Part 1 – Right to buy
Q1. We agree to the abolition of the Right to Buy as this would ensure a retention of stock for landlords. Also we consider the RTB has become overly complicated with the inclusion of varying criteria and rights for tenants.

Q2. We think the 3 year timetable is adequate as long as this is well advertised and all tenants are advised of change and are well informed throughout.

Part 2 Social Housing
Q3. Reasonable Preference Groups [RPG] would be a fairer way to allocate properties as a percentage would always be let the these RPGs rather than a high percentage of all lets being allocated to homeless as is current practices. However RPG should always reflect local need and this should be selected through meaningful consultation with tenants and applicants as a legislative requirement to ensure this is carried out. We agree with the proposals when considering if an applicant is a home owner, and without good reason, they would not be considered for social housing.

Q4. We had mixed views around SSSTs and SSTs however we agreed landlords would have more powers to combat ASB in communities as they would have the flexibility to introduce SSSTs as this should ensure tenant behaviour is acceptable as displays of ASB would likely happen early on in tenancies. Through closer monitoring in respect of a SSST there may be support issues flagged up to staff and interventions could be offered. However SSSTs should only be used where appropriate i.e. ASB, non-payment of rent or previous/likely breaches of a tenancy agreement, and not widely spread. The use of SSTs means tenants do not have full range of rights as all other tenants will have, no succession rights, no assigning to others or joint tenants and again we would consider these should only be considered where appropriate. Several members views were initial tenancy SST/SSSTs would be a good method of monitoring every new tenant at the onset of their tenancy and again could identify any support they may require whilst allowing the landlord more power and control of their stock.

Q5. Yes
Part 3 Private Rented Sector
Q6. We consider this should make resolutions quicker and easier for tenants and landlords, this could save money as there would be less need for lawyers to be involved. The publishing of decisions would be of benefit as they can be accessed and details would allow a better understanding for tenants and landlords.

We would add if this is good enough for the private sector then why was the same provision for a Housing Panel dropped from the Bill as this would have given tenants easier access to resolutions.

Q7. New legislation would allow councils power to make owners pay for their maintenance, safety and security and this will enhance local communities and put a stop to landlords having to meet these costs from the HRA.

Q8. We would welcome this test but would add there is a need for further discussion and information around a stage 2 provision.

Part 4 Letting Agents
Q9. To regulate in this way through a register would offer good protection to tenants and would be governed by a statutory code of practice, this would be welcomed and letting agents will be more accountable.

Q10. Letting agents should be regulated with proper rules and regulations set and breaches more easily identified and resolved offering tenants a better degree of protection of their rights. If the same level of regulation as is in social sector this would be better as the variances of leases are confusing and are not as open and accountable as in the social sector.

Part 5 Mobile home sites with permanent residents
Q11. The fit and proper person test in relation to management of sites should give more enforcement powers to Local Authorities and would be welcome.

Q12. N/A

Part 6 Private housing conditions
Q13. Though N/A to us as council tenants we would have serious concerns about transfer of assets without appropriate consultation.

Part 7 Miscellaneous
Q14

Other issues
Q16. Yes we consider Housing Panel/Tribunal for Social housing sector should have been included and the introduction of the use of probationary
tenancies, have been too easily dismissed from the Bill and these should have more discussion/debate.

Five Sisters and Cairn Rock Housing Networks
28 February 2014
GLASGOW CITY COUNCIL
WRITTEN SUBMISSION

General Introduction

Glasgow City Council welcomes the introduction of the Bill and the opportunity to comment on the general principles, as well of some of the practical implementation issues of the provisions in the Bill.

Glasgow City Council has previously identified amendments and additions to legislation particularly in relation to the private housing sector, and some of these provisions have been included in this Bill. Many of these provisions are discretionary and are a welcome addition to the toolkit available to local authorities to drive improvement in the private housing sector.

It is acknowledged that the Bill covers a wide range of topics, and is designed to tidy up, clarify or enhance existing legislation. However given the recent review of the operation of the Title Conditions (Scotland) Act 2003 by the Parliament, and the findings of the Glasgow Factoring Commission, the Council believes that there is scope to improve existing legislation in regard to common property and title condition burdens. Examples of this include clarity in law on the purpose and enforcement of the factor’s float, the right to switch factors, the need to address title disparities where major repair works are being undertaken in common blocks, removal of the exemptions to the taking out of common building insurance within the Tenement (Scotland) Act and the definitions of common property in the West of Scotland context, especially where titles are shared between more than one tenement building in the same locus.

A specific additional section which the Council would wish to have considered as a matter of urgency is the introduction of enforced sales powers in terms of empty homes to bring the legislation in line with that currently operating in England and Wales.

In addition, the Council would ask for steps to be taken to provide plain English guidance which pulls together the key common property statutes arising from the all Scottish private housing sector legislation introduced since 1987. Whilst such an undertaking may not in itself be part of the Housing Bill, we would wish the matter of practical understanding and application of legislation brought to the attention of Ministers, given the complex nature of this type of legislation and the plethora of inter-related clauses contained in these various acts of parliament.

Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.
Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

The abolition of the right to buy for social housing is welcome. Although right to buy sales in the city have diminished over a period of years, sales remain in the region of 150 per annum (SHR Landlord Statistics 2012/13) This is in the context of the Housing Need and Demand Assessment for Glasgow which identified a substantial need for socially rented housing, and the continued need, in particular for a supply of settled accommodation for homeless households presenting in the city.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

It is important that tenants have sufficient time to consider whether or not they wish to exercise the right to buy, and it is also important that RSLs have a clear view of their asset base so as to inform their future business plans, particularly given the other uncertainties they face around welfare reform, pensions deficit and reduction in Housing Association Grant levels. A reasonable compromise position would be a 2 year timetable for the provisions to come into force.

Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Social landlords generally have a great deal of flexibility in the allocation of housing so whilst not fundamentally changing the allocations regime for social housing, the clarification and minor amendments in the Bill are welcomed, and a few are particularly worth highlighting. These will allow RSLs to sensitively manage their housing stock and respond more effectively to the pressures and shortages in their communities. When used in specific circumstances, the ability for landlords to take account of the age of tenants in the allocation of housing should assist in the creation of sustainable and settled communities. The extension to the time period for succession to a tenancy, and the ability for the recovery of adapted property, recognises that social housing is a scarce public resource, and as a discretionary power, will allow RSLs to make judgements based on community needs.

The continued reasonable preference given to homeless households is welcome as it is imperative that social landlords have due regard to the level of homelessness in their area when considering waiting list applications. In a stock-transfer local authority such as Glasgow, it is especially important that
the responsibilities of RSLs complement the duties of the local authority in securing access to settled accommodation.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

The proposals may support RSLs to reduce anti-social behaviour by signalling to tenants that sanctions will be imposed on those breaching tenancy agreements. However, the granting of a Short Scottish Secured Tenancy will do little to address problematic behaviour without appropriate support and guidance. Therefore, it is vital that households have access to appropriate levels of support, which will often involve multi-agency responses. This will place additional pressures on resources. The Scottish Government should set out what support should be offered to tenants in order that they are able to sustain their tenancies, and clarify who is responsible for securing that support.

It is important to highlight that if a tenancy is ended due to anti-social behaviour, the local authority may have a duty to accommodate those who have lost their tenancy through homeless legislation, which is particularly likely in cases involving children.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

The amendments set out in the bill will go some way to enhancing the rights of tenants with short SSTs and will particularly benefit tenants who are engaging with services as this will encourage the provision of longer term support to be put in place. It is extremely important that sufficient resources are available to support tenants.

However, there will be tenants who will not engage with services and will not accept support, and for these households, the proposals are likely to lengthen the process for a resolution, which may have a negative impact on neighbouring tenants and the wider community.

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to
the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

**Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?**

Glasgow City Council has lobbied for a considerable time for a ‘housing court’ with specialist housing expertise and which would expedite cases, and therefore, welcomes the move towards a first-tier tribunal in the expectation that the proposed system will prove more efficient and appropriate in addressing disputes between tenant and landlord.

In terms of supporting the expediency of cases through the tribunal system, it is suggested that the new Bill could amend the 2004 Act regarding the right to appeal under section 92. As it currently stands, this section does not restrict the right of appeal to errors in law. If section 92 remains as it currently, then the appeals process is likely to be long and extremely resource intensive. Local authorities will also need to know if expenses can be recovered from a Tribunal.

**Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?**

Glasgow City Council does not have an issue with the generality that private landlord applications over a year old are deemed to be passed as ‘fit and proper’. However, one concern is that the local authority could be waiting on information from the landlord or having difficulties contacting the landlord, and therefore, tacit approval should only be granted at the 12 month point where the local authority has been furnished with all the information it has requested and is therefore, in a position to make an informed decision. Where the applicant refuses to respond to further questions or clarifications concerning application for landlord registration e.g by ignoring written requests or failing to provide a home or business address for correspondence, then the 12 month rule should not apply.

A clause could be added to clarify Clause 85(8) (a) of the 2004 Anti Social Behaviour Act by extending the criteria to include failure to pay for common property repairs.

The Council is strongly of the opinion that the “fit and proper person test” should be enhanced to address the problem of failure by some landlords to pay their share of common repair costs where it has been proven that the debt has not been paid following the issue of a court order. If the landlord refuses to pay for his/her share of common repair costs, then this should be an additional ground for refusal of the application.
The Scottish Government will need to work with local authorities to ensure that the central IT system can furnish reports which are nearing the 12 month deadline.

The amendments to allow third party reporting to the PRHP is welcomed by the Council, and is an issue on which the Council has lobbied. The Council is only likely to report to the PRHP in a limited number of cases, with the most likely circumstance being when the tenant has moved on but there is a value to making a report to the PRHP, particularly in cases where a landlord demonstrates persistent poor management.

There may also be cases where other organisations such as RSLs or universities/colleges may wish to make reports to the PRHP.

In order to defend an appeal against a third party referral made on behalf of a tenant, Glasgow City Council firmly believes that local authorities would require powers of access at the time of the initial notification in order to demonstrate evidence of a breach of the Repairing Standard.

**Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?**

The Enhanced Enforcement Area which the Scottish Government intends to introduce at stage 2 is something which Glasgow City Council have been keen to see developed, so that concerted and targeted enforcement action can be focussed on specific geographical areas which are experiencing a concentration of multiple problems, particularly in relation to poor property condition, and poor management and practice in the private rented sector.

The Scottish Government had indicated that it plans to include both power of entry and mandatory disclosure checks which are powers which will assist in building an evidence base to take enforcement action. This will support vulnerable tenants and owners, and the wider community in these designated areas, and will also make Third Party Reporting more effective.

The Council looks forward to seeing the detailed additional powers and procedures to be applied to make Enhanced Enforcement Areas effective alongside the process for designating such areas.

**Part 4: Letting Agents**

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.
Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

Through various consultation exercises, Glasgow City Council has asked for regulation of letting agents as there are no standards or guidance for practising as a letting agent, and therefore, no sanctions available to tackle poor practice.

Currently private landlord registration units register letting agents as they are acting on behalf of private landlords. Through the Private Landlord Register, around 700 letting agents can be identified as operating in the city from very small to very large operations.

The proposal for a mandatory register of letting agents is useful as it will be linked to a code of conduct and enforcement orders. The content of the code of conduct will be of prime importance and the involvement of key stakeholders to develop a practical, easily understood and enforceable code must be the objective. It is vital that the register is not just an information list, and that enforcement action is taken against poorly performing letting agents with enforcement orders followed up if not complied with.

The key to the success of effective regulation (rather than simply registration) of letting agents is that the fit and proper person test must be sufficiently robust. Experience of the test regarding private landlords is that test criteria is weak, it is often difficult to prove a breach of the test and the penalties for a breach are not sufficient. The fit and proper person test for letting agents must be robust and sanctions sufficient to deter poor practice. This may be best dealt with through the Code of Conduct which must be robust enough to allow effective sanction to be administered.

Results of FT Tribunal rulings should be made available to the relevant local authority. Local authorities must have a mechanism to be able to liaise with Government’s Registration and Regulation staff. This may include information about letting agents which suggest a breach of the fit and proper persons test e.g. the person has a criminal conviction.

It is extremely important that there are clear links and information exchange between local authorities who register private landlords and the Scottish Government who will register letting agents. As a letting agent register was never consulted on, there has been little discussion on how this interconnection will work. However, if a letting agent refused registration or is removed from the national register then this would affect all activity in Scotland irrespective of where the poor practice took place. This could have immediate implications for private landlords in each of the local authorities where the letting agent is registered, as they must be removed from the landlord’s registration when the agent is not deemed ‘fit and proper’ according to s88(8) of the Anti Social Behaviour Act, 2004, whereas the Housing Bill appears to suggest that local authorities may remove the agent under s50(3).
In addition, local authorities must have a mechanism for referring poor practice by a letting agent, as the current drafting suggests that only tenants and landlords can refer letting agents to the tribunal.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Based upon the experience of dispute resolution between factored owners and property factors (referred to the Home Owners Housing Panel) and between private rented tenants and their landlords (referred to the Private Rented Housing Panel), there is a case to be made for extending the role of the PRHP to take referrals from tenants whose complaint is not with the landlord but with the letting agent operating on behalf of the landlord.

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. Do you have any views on the proposed new licensing scheme?

The Council is broadly in support of the proposed licensing scheme, especially in terms of the consolidation of a national scheme which can be applied across all local authorities.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

No comment to make.

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

There are no major changes proposed other than conferring on local authorities a power to pay a share of the costs arising from the Tenement Management Scheme under the Tenements (Scotland) Act 2004. Local 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.
In certain circumstances, the Council will require that owners carry out repair and maintenance to their property, particularly to common parts. 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.

In terms of the key principles of the Bill, these welcome amendments highlight the wider issue of home owners being unable to fund essential repair and maintenance to their homes which is a considerable problem in the city. 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.

Granting of renewable licenses for HMO should take account of the condition of the property. Renewal of licence (regardless of when it is due) should take into account the condition of common elements, with the licence only being granted once a maintenance plan is in place which applies to all proprietors of the (tenement) block.

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

It would be useful to Glasgow City Council to be consulted in the case of any housing association operating in the city which is currently subject to SHR intervention powers and has a current or pipeline scheme with the Council in respect of the receipt or potential for receipt of Transfer of Management Development Funding, Private Sector Housing Grant or other grant provided by the Council.

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

No further comment
Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

There are some other areas within the Bill’s overall policy objectives which could helpfully be included in this Bill.

These include:

- Amending the fit and proper test for private landlord registration to provide local authorities with the ability to conduct further tests in respect of gas safety, building insurance, fire safety, energy performance, plus the information made available to tenants on how to make a complaint to the private rented housing panel or equivalent – also non participation in common repair works, non payment of common repair bills
- Clarification on the ability of a landlord to re-apply for private landlord registration following refusal or removal from the register. Currently, an application need not be accepted within 12 months from the date it was refused or revoked by the local authority, however, it would be clearer if the effective date of any decision was the expiry of an appeal period or following the outcome of any appeal proceedings.
- This Bill requires evidence of letting agent impropriety to be validated by the FTT or Sheriff Court. It would be helpful if similar legislation e.g strengthening of part 8 of the ASB 2004 act or at least the provision of up to date Scottish Government Guidance could reflect this in relation to private landlord registration.
Housing Bill Comments for Committee

My comments are made as a Constituency MP for Edinburgh East, based on issues raised by my constituents and my observations of the area, and also drawing on my experience as Executive Member for Housing on the City of Edinburgh Council between 1999 and 2007.

I made a submission to the Scottish Government consultation, but on this occasion I want to focus on two main areas:

1) Taking Age into Account when Allocating Social Housing

2) Private Landlord contributions to maintaining buildings and their immediate environment.

Taking Age into Account when Allocating Social Housing

I was pleased to see the inclusion of Clause xx of the Bill. In my submission to the Scottish Government’s consultation I raised this issue, and argued for the 2001 Housing Act to be amended.

I noted that Shelter argues in its written evidence to the Committee that 'current allocations framework allows sufficient flexibility for landlords to allocate their homes appropriately and successfully.'

I would argue, however, that is not the case. On several occasions the Housing Regulator has instructed landlords to cease using local lettings policies which set an age limit on the ground that this contravened the Housing Act 2001. This was so even where the landlord could demonstrate that the policy was successful in attracting tenants, had 'turned around' previously problematic blocks, had reduced turnover, and was popular with tenants. Government and regulator have repeatedly stressed the importance of tenant participation but in these cases considered that the terms of the 2001 Act gave them no choice but to override the views of tenants. In Edinburgh an over 35 and no children local lettings policy was used following extensive renovation of two high rise blocks in Leith and 3 in Wester Hailes. After 15 years the investment was
'wearing well' and the lettings policy had helped to protect this expensive capital investment.

For those concerned that such policies would discriminate against homeless applicants, this matter was looked at in depth when the City of Edinburgh's homelessness services were inspected in 2006 (check date) and no evidence was found that this led to lower proportions of people presenting as homelessness receiving allocation in these blocks. However in the subsequent Inspection of Housing Services led to the instructions to desist from such policies, not because they were not working but purely on the legal point that they breached the 2001 Act. Hence the need for an amendment to the 2001 Act.

The age profile of applicants for council and housing association housing demonstrates that there are no lack of applicants in the relatively older age groups so that such policies, properly targeted, will not give rise to lack of demand. In Edinburgh the council and all RSLs operate a common Housing Register called Edindex. In March 2012 the age breakdown of applicants was as follows:

16-17 – 1%
18-24 – 15%
25-25 – 27%
36-59 – 41% (The number here was 10,554 to demonstrate we are dealing with a large number of people)
60+ - 16%

The age breakdown of lets in the year 2011-12 was:

16-17 – 3%
18-24 – 16%
24-35 – 25%
36-59 – 37%
60+ - 19%
This illustrates that the high number of applicants in the two older age bands is broadly matched by lets ie those on the application list were not simply there ‘just in case’ and not actively seeking a property.

(NB these figures appear on the Edindex website and 2011/12 was the latest year given. Previous years were similar so it seems likely that the age profile remains much as shown here)

High rise blocks are not the only example. Properties built as 'pensioner housing' in the past but which are not designated as sheltered housing are not allowed to be allocated with an age restriction. This can give rise to difficult management issues where lifestyles clash, and can lead to other residents moving away. In a local area it is widely perceived as unfair and illogical to let such properties to people whose housing 'need' is not a need for this type of property. Many landlords are keen to offer older tenants the opportunity to downsize if they wish to do so, so freeing up larger family homes which may be in short supply. Older tenants are, rightly, cautious about moving and as well as being keen to remain in an area where they have social links, also wish to feel reasonably safe and secure. Knowing neighbouring properties will be occupied by people of a broadly similar age may make the offered property more acceptable.

One landlord in my constituency is causing tenants, surrounding residents (not tenants. ) and itself ( in terms of increased housing management demands, higher repair costs and higher turnover) problems by being unable to set a minimum age for lettings. The relatively small group of homes, largely 4 flats in a stair over two levels, started life as homes for older ( but not 'old') people who do not require sheltered housing ( for which these properties are unsuitable anyway) . Changes to letting policy driven, it would appear by the 2001 Act, has led to this being a less stable community. Requests to reinstate a minimum age for allocations has been met with the argument that this is not legally possible.

Every area is different and it is very much for a local council and its housing association partners to develop lettings policies which work for them. Removing the current ban on taking age into account could help facilitate the development of such policies.

It had been suggested to me by one housing association in my constituency that the proposed wording in the draft Bill is vague and that they would not feel confident applying a minimum age on the strength of the provision as drafted. I suggested in my submission previously that any
amendment to the 2001 Act should be accompanied by clear criteria. My suggestions was a requirement to demonstrate that:

1) **there is no overall discrimination against younger applicants in the authority generally as a result of such a policy** – ie the authority would have to demonstrate from robust lettings data that young applicants were overall housed proportionately to their numbers among applicants. And that they were not disproportionately being housed in low demand properties. (Ironically these policies have often been introduced to boost demand and apply in what otherwise might be ‘low demand’ properties.)

2) **That there is a sound housing management and sustainability argument for applying such policies.** This could be in terms of previous problems, high repair/housing management costs prior to application of policy and demonstrable reduction, reduced voids/turnover and increased popularity of the properties involved.

3) **That a need is being fulfilled eg a need for suitable homes for older people**

4) **That the policy has tenant support and that there had been adequate consultation before such policies were introduced.**

5) **That homelessness obligations are not being affected by the existence of such policies.**

Such rules, either on the face of the Bill or in regulation or guidance, would I think also answer the concerns of those who worry that such a change be discriminatory against more vulnerable groups.

**Private Landlord contributions to maintaining buildings and their immediate environment.**

In many parts of Scotland the Private Rented Sector has become an increasingly important part of the housing landscape. In Edinburgh the 2011 Census Figures revealed that 22% of households in the city (some 55,000) were living in the sector, more than the council and housing association sector combined. The Private Rented Sector is no longer a ‘niche’ form of housing for students and young people, but is increasingly housing people across all age ranges and incomes. It has also broken out of the more traditional areas (in Edinburgh those were city centre and Leith) into suburban housing areas.

This Housing Bill feels like a missed opportunity to make landlord registration more effective. Landlord Registration was introduced in the Anti Social Behaviour Act. The measure was supported by many MSPs who were seeing the impact of the growth of private letting in terms of poor landlord management standards and lack of action on anti social behaviour
by tenants. In some cases even tracing the landlord had proved difficult, an issue substantially dealt with by registration. However registration has become largely a bureaucratic exercise, and has not dealt with many of the issues. One such issue raised by many of my constituents is the failure of many landlords to play their part in communal repairs and maintenance, and lack of care for garden areas.

Example: one constituent is now the sole owner occupier in a block of flats (12 in number) built in the 1980s. Being the owner occupier she sees the work that needs to be done but finds it extremely difficult to get agreement and/or a payment from landlords when work needs done. Major repairs have previously been dealt with under Statutory Notice but with that service currently suspended except for emergencies, the situation has become even more difficult. Frustratingly even small issues (which really should not become the subject of a statutory notice) are difficult to deal with. For instance at the time of my visit the external front door had a growing ‘hole’ clearly caused by the wood rotting due to water ingress. This can only get worse but landlords do not see this and are disinterested when approached. As my constituent said ‘it's not as if the landlords can't afford it, the one next door for instance has 17 flats in the city.’

This response is echoed widely. Residents see landlords charging relatively high rents, sometimes paid for through the public purse if the tenant receives housing benefit, yet seemingly often unwilling to share the costs of looking after their property, to the detriment of other residents. In several parts of my constituency I can identify the private lets by the overgrown state of the gardens, both communal and private. Overgrown private gardens impinge on others, especially in tenement buildings.

Residents feel that the council should be able to intervene to recover payments from landlords, that a majority of owners should be able to ask for such a payment order to be made. They also consider that failure to co-operate with reasonable requests for such payment/co-operation with communal repairs should be taken into account when landlords apply for registration. It is unlikely that such an issue would be taken into account when applying the ‘fit and proper person’ test for registration, and therefore further legislation would be required.

I would hope that the Committee might discuss and consider proposing amendments to the Housing Bill to cover these issues.

If there needs to be a legal change what safeguards would be required? Probably a requirement to demonstrate that:
6) there is no overall discrimination against younger applicants in
the authority generally as a result of such a policy – ie the authority
would have to demonstrate from robust lettings data that young
applicants were overall housed proportionately to their numbers among
applicants. And that they were not disproportionately being housed in
low demand properties. (Ironically these policies have often been
introduced to boost demand and apply in what otherwise might be ‘low
demand’ properties. )

7) That there is a sound housing management and sustainability
argument for applying such policies. This could be in terms of
previous problems, high repair/housing management costs prior to
application of policy and demonstrable reduction, reduced
voids/turnover and increased popularity of the properties involved.

8) That a need is being fulfilled eg a need for suitable homes for
older people

9) That the policy has tenant support and that there had been
adequate consultation before such policies were introduced.

10) That homelessness obligations are not being affected by the
existence of such policies.

Sheila Gilmore MP, Edinburgh East
19 February 2014
We are letting agents and property managers and wish to make the following observations on the Housing (Scotland) Bill: -

In response to questions submitted earlier we wish to respond accordingly

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?

This is a welcome proposal as it will drive out poor practice and improve standards. It is essential that the reputation of the industry is improved while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

We believe there should be a new stand-alone Letting Agent Register operated by the Scottish Government.

The Register should include all businesses which let and manage private rented residential property in Scotland. However, we would not support simply replicating the processes and principles established for the Property Factors Register. Whilst it has improved that sector, this system is not robust enough in our opinion for the letting and management sector, and considerable consideration needs to be given to the detail of implementation for our sector.

A strong Code of Practice is needed. Along with the other representative organisations, we welcome the planned consultation in preparing the Code as secondary legislation.

Registration should include:

- an annual renewal (not every 3 years)
- a legally binding commitment each year to possessing:
  - adequate professional indemnity insurance
  - appropriate client money protection
  - a ring-fenced client money bank account
  - an annual audit of client accounts
  - membership of an ombudsman scheme to ensure an easily available redress mechanism for tenants and landlords.

Depending on the registration processes put in place there could be a requirement for the agent to produce annual documentation to confirm the above. It may be more appropriate to consider the registration process to be more the issuing of a licence approving the Letting Agent.

We believe that any Registration process should be Government operated free of any involvement with professional bodies such as the RICS or ARLA and others. Agents should aspire to differentiate themselves in the market place by achieving the standards required to gain membership. Within the code of practice there may be the requirement over a period of time to require owners of an staff employed in an
agency to be say 50% qualified to a certain level of professional knowledge and competency.

The impact of these proposals on our industry is to be welcomed. It will however highlight even further the disparity in enforcement that currently exists on compliant letting agents and landlords and those who operate below the required standards. The passing of legislation and implementation of registration of Letting Agents will create an environment where landlords who are self-managing will perceive the enforcement of regulation on them to be far less onerous. We recommend that at the same time as these regulations are implemented that the Landlord Registration regulations are enforced more robustly.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

See the above comment about ombudsman services in response to Question 10; under these schemes redress is readily available to customers of such organisations at no cost to the claimant.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

Glenhalm Property
21.02.14
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The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

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This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?
This is a welcome proposal as it will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

There is the potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered letting agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The proposed mechanism is appropriate in providing a simple and swift method of resolving disputes.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

Gavin Gowans
31 January 2014
Comments to the Infrastructure and Capital Investment Committee

Right to Buy

Advantages and disadvantages:

Tenants who have exercised their RTB
a) The majority have done well i) by selling at a profit ii) renting out the property iii) improving the property, including extensions, to a greater degree than was possible for their landlord at the time
b) Some have suffered i) through changes in circumstances ii) remortgaging up to the market value or taking out home improvement loans beyond their means (including changes in circumstances)
c) Older tenants who were only able to buy through 'gifted money', usually from younger relatives i) security of tenure ii) sustainability of repair costs iii) effects on DWP benefits through deprivation of capital rules

Remaining tenants have suffered
a) At the beginning, RTB receipts went to central government (that has been rectified gradually over the years)
b) There has never been a concomitant reduction in historic debt; fewer tenants are left to service the debts through their rents and the debt on each property has increased
c) RTB led directly to a lack of investment in the housing stock, including modernisation, cyclical repairs and new build
d) However, restrictions on RTB have encouraged modernisation and improvements in existing stock, and new build, even if the extent of the latter does very little to bridge the gap between supply and demand in social housing

Landlords
a) The social sector has done very badly i) stock reduction ii) growing waiting lists iii) for Local Authorities, duties to the homeless iii) changing demographics vs the housing stock, not forgetting the under occupancy charge
b) The private sector has benefited and extended through the reduction in available social housing

RTB was initially proposed by a Labour Government under Jim Callaghan. The further development of that under the Conservative Governments of Margaret Thatcher has been an unmitigated disaster, and resulted in the current housing crisis. RTB should be abolished as soon as is reasonably possible, and the proposed three year notice period is more than adequate, especially regarding older tenants as outlined above.

Moreover, existing legislation already concerning Pressured Area Status, states that tenants prior to PAS retain RTB, and those awarded tonancies thereafter, have no RTB. That will only lead to all Social Landlords applying for their entire housing stock to be under PAS, an excellent solution to retaining housing stock, and the decision is now in the aegis of LAs.

Any property bought under RTB must give due consideration to the value, and the projected lifetime, of improvements carried out by the landlord. The overall effect of that would be an increase in the market value of the property. The value of the property on the open market should be the sole criterion in determining the initial selling price. Currently, properties are undervalued as they have a sitting tenant, and the price is attenuated by TMV (tenanted market value).

The level and type of information to tenants on RTB given by social landlords will depend on guidance from the Scottish Government. Given that, cost could be a major factor if no additional funding is granted.
Allocations

Flexibility is an important feature, but not paramount. Its main role is concerning individual cases. There is also a need to consider local situations within the remit of a landlord who has a broad spectrum of properties and locations.

Age should not be a consideration outwith local letting initiatives that are moving towards specific housing needs. Mixed communities are a stated aim of the Scottish Government.

Each LA, regardless of whether or not they remain landlords, should operate a Common Housing Register. That should become mandatory, with financial assistance if necessary. That would help to standardise letting policies within local areas, if not nationally.

Regarding qualifying periods, it is best dealt with on a case by case basis. However, assignments and sub-lettings can be seen as a way to circumvent housing lists. The situation with carers can be more complex, especially if the carer has given up their own home (rented or owned). It is important to give due consideration to circumstances.

Antisocial behaviour

There are problems in legislating within this area. Each LA has its own Antisocial Behaviour policy (compulsory). However, those can vary widely, especially when it comes to applying to raise court proceedings. As a result, there is a risk that histories of ASB could be regarded as circumstantial evidence unless there is corroboration.

There are also instances where the ASB is not by the tenant/applicant, but by a minor, allegedly under their control, or by a previous associate they have been trying to avoid.

In any event, the proposed changes are minor and will have little effect. The only good point is the greater level of protection for complainants, especially third parties.

Private Sector

Tribunals are a good idea in general; they can provide more timely solutions in a less formal atmosphere, adjudicated by a panel, including housing experts, and not by a Sheriff of indeterminate knowledge of the rented sector. However, the substantial majority of heritable cases presenting at Sheriff Courts Civil are in the public sector. Extending tribunals to cover such cases would be advantageous, not the least in reducing the pressure on civil courts.

It is high time that letting agents were regulated. Not only would that lead to a reduction in sham contracts, but also a greater uptake in landlord registration.

Increasing LA powers to pay missing shares misses the point. If the landlord cannot be found or, more importantly, identified, the tenancy should be rent-free, as covered by existing legislation.

I trust that you find my comments helpful.
**Introduction**

Homeless Action Scotland is the national membership body in Scotland for organisations and individuals tackling homelessness. Our members include voluntary sector providers, housing associations, local authorities, academics and other professionals involved in homelessness prevention and alleviation.

We support the general objectives of the legislation but we have a number of concerns regarding the specific proposals in the Bill, specifically that they may lead inadvertently to an erosion of tenants’ right. Our concerns are highlighted in the answers to the set questions.

**Answers to set questions**

**Part 1: Right to Buy**

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

Homeless Action Scotland supports the proposals to end the right to buy.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

We feel strongly that the abolition of right to buy should happen sooner than proposed in the Bill. The abolition of right to buy has been trailed for some time and therefore the proposed change of policy should come as little surprise to those people wishing to exercise their rights.

**Part 2: Social Housing**

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing allow them to make best use of social housing?

**Section 3 - Reasonable Preference**

We are concerned that clause 1ZB undermines the role of social housing. Firstly, the clause defines housing needs as those ‘which are not capable of being met by housing options which are available.’ The implication appears to be that a social housing let should be considered only as a last resort when all other options have been exhausted. This reduces the role of social housing to that of residual welfare housing rather than as potentially the best option to meet the housing needs of the individual, considered equally among all options. It represents a further step towards the model adopted in England which regards social housing as residual. Scotland has a strong tradition of considering social housing as having a broad role in meeting housing needs, and in very many cases
providing the best option for successful outcomes for people in need, providing stability, affordability and security. Although accommodation may well be an option in other sectors, the essence of good quality housing options is to assess what provides the best long term opportunity for successful housing and inclusion in society. In our view, the term ‘not capable of being met’ should be reviewed and replaced with a term such as ‘more appropriately met’.

Our second concern is that the whole issue of reasonable preference appears to rest with the decision of each social landlord as to whether or not someone’s housing needs could have been met elsewhere. It remains vague and subjective as to how this assessment would be made, at what point in the process the assessment would be made, and what the objective factors might be against which a social landlord would be held to account if it was felt they were not giving appropriate priority to allocating properties to persons in housing need. We also seek further information on what measures would be in place to ensure that staff are sufficiently trained and equipped to make such an assessment. If Ministers wish social housing to remain accessible to all it is vital that these issues are fully explored.

In our view (and a view endorsed in research\(^1\) commissioned by the Scottish Government into this issue) the existing reasonable preference legislation does not cause any problems that has been well respected by social landlords and been beneficial to those assisted by them. The question is whether the revised version will lead to different decisions by landlords and whether those different decisions will be in the interests of the most vulnerable groups. Under the current framework most landlords make appropriate decisions and there appears to be no objective evidence to demonstrate that the existing legislation constrains them. Therefore there is no clear case for change.

We propose that there be no change to the current ‘reasonable preference’ framework.

Section 5 - Age

Homeless Action Scotland strongly opposes the provision to allow social landlords to consider age as a factor when allocating housing.

We view the proposal as introducing a power to discriminate on grounds of age. Age discrimination was outlawed for good reasons, and we would expect the Scottish Government to endorse both the spirit and letter of the equalities legislation enthusiastically. We are extremely disappointed that this proposal appears on the face of the Bill. We welcome the extension of the protections under the Equality Act to apply to 16 and 17 year olds, but cannot support the introduction of age as a factor that may be taken into account in housing allocations.

Age *per se* is not a housing need. Sometimes it can be a factor in exacerbating a need but this is not necessarily the case. People have different levels of capability and competence at the same age. It is therefore an arbitrary factor with no direct relationship to need.

Our 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. Young people already

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\(^1\) *Reasonable Preference in Scottish Social Housing*’ Bretherton and Pleace 2011
face the biggest barriers in accessing accommodation and have been placed at a further
disadvantage by some of the recent welfare reforms.

Homeless Action Scotland’s Youth Homelessness Survey 2013\(^2\) showed that around 38% of
homeless young people moved into the social rented sector, only 7.5% moved into the
private rented sector, and 55% had not moved on. The social rented sector therefore
plays a crucial role in helping young people end their homelessness, and the introduction
of the flexibility to discriminate on grounds of age is likely to lead to further barriers to
young homeless people. We recognise that it may be argued that the measure could
permit specific action in favour of young people. Our experience tells us that in practice it
is likely to result in the reverse.

Existing guidance\(^3\) permits social landlords to undertake local lettings initiatives where
there is a specific issue that needs to be addressed, and in some of these circumstances
age has been used legitimately as a factor to help create balance in a particular localised
area where a severe imbalance has emerged. The new legislation duplicates existing
provision but extends it significantly by allowing age specifically to be taken into account in
housing allocations. This erodes the protection that prospective tenants currently have
against age discrimination.

We strongly recommend that the provision to allow social landlords to consider age as a
factor when allocating housing is removed from the Bill.

Section 6 – Ownership

Homeless Action Scotland is broadly supportive of the proposals in Section 6, which
permit ownership of property to be taken into consideration. We support the circumstances
identified in 6(1)(2) where ownership of property would not be taken into account. There
are, however, further circumstances that should be considered. For example, where 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 would neither be sensible for them to sell
the property or to continue to live in it since it would quickly result in homelessness and
substantial debt. There may also be cases where a household has to move to take up
employment but is unable to sell their existing accommodation due to negative equity, and
there can also be situations where the condition of the property is such that it would be
unreasonable for a person to continue to occupy it. There are further, more general,
issues around affordability, such as where a person becomes unemployed or experiences
other unforeseen changes in their circumstances. These issues may be exacerbated over
the coming years given the likelihood of a mortgage rate increase in the medium term and
a slow recovery of house values.

We therefore support section 6 but propose a further circumstance be added to take
account of situations where it would be unreasonable for the person to continue to occupy
the property.


\(^3\) Social Housing Allocations: a Practice Guide, Scottish Government
Section 7 - ‘Freezing’ of applications

We recognise that this section is largely designed to formalise practices that have been undertaken by many social landlords for some time. However, three of the provisions in our view are too broad and may require some adjustment.

The first is 20B(5)(b)(ii). Offences punishable by imprisonment cover a broad range of circumstances. We understand that the main intention is to cover issues such as anti-social behaviour and drug dealing. However, an accumulation of unpaid fines can lead to imprisonment, and there are other relatively minor offences not related to a person’s behaviour or concerning their tenancy that might be covered. In order to protect tenants from an unfair imposition of a freeze we recommend that this provision is refined.

The second is 20B(5)(c). If not amended, this erodes the rights of prospective tenants quite unreasonably, and puts tenants in the private sector particularly at risk. For example, any Short Assured Tenancy that is ended in the private rented sector may be via an order for recovery of possession. A person wishing to enter the social rented sector who was previously renting in the private sector, and whose Short Assured Tenancy has come to an end through no fault of theirs, would therefore be open to having their application frozen at the whim of the social landlord. (Without being an expert on English or Northern Irish legislation we suspect the same may be true of those jurisdictions). In our view the balance here is tilted too far towards the social landlord at the expense of tenants’ interests and rights. Consideration should also be given to how this clause in the Bill may affect joint tenants. In circumstances where a joint tenant is unable to prevent an eviction action but is not personally at fault, what rights will they have?

The third element is section 20B(5)(d) (abandonment). People abandon tenancies for a number of reasons including domestic abuse, external violence or harassment or simply to avoid court action. (In cases where there has been antisocial behaviour the matter is covered elsewhere in this section of the Bill.)

In all of the above cases there may be a perverse incentive for a person to make a homelessness application, and there is a risk that they may remain homeless during the period of their application being frozen. It would be a disappointing unintended consequence if the widespread freezing of applications were to lead directly to an increase in the homelessness statistics.

We therefore propose that 20B(5)(b)(ii), 20B(5)(c) and 20B(5)(d) be amended to restrict the circumstances in which they can be used.

As a further matter we share the concerns of the Legal Services Agency regarding the appeal procedure in Section 7 of the Bill, which risks a further erosion of tenants’ rights.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?
Section 11 - Extension of term of SSST

We support the intention of this section. It is wise to have a provision where, in exceptional circumstances, when the landlord would otherwise repossess the tenancy, it may be beneficial to have a longer period to ascertain whether there is a genuine pattern of behavioural change. We have concerns, however, that as drafted the extension may simply be used as the norm rather than in exceptional circumstances. We would seek further conditions on its use, perhaps included in guidance issued by Ministers following the passing of the Act.

It is not clear how a tenant of a SSST that is subject to a 6 month extension could appeal against the landlord’s decision. The tenant may believe it is unreasonable to extend for a further 6 months since he or she has complied with the requirements of the SSST and wish it to be converted after 12 months to a full SST, as originally intended.

Greater clarity on what does and does not constitute a valid reason for extension of a SSST is required, as well as a right for the affected tenant to appeal.

Section 14 - Succession

We are concerned that the changes proposed in this section could lead to increased levels of preventable homelessness. The imposition of a 12 month residency rule in order to qualify may well lead to family members being made homeless from the family home. It is a perfectly predictable scenario that a family member will give up secure accommodation to care for another family member who is ill. In this situation, if the person holding the tenancy dies within 12 months of their family member moving in to provide care, not only would the family member who has moved in face the loss of their loved one but also the uncertainty of where they might live.

A further circumstance that can be envisaged is where a new tenant has been allocated a house and the tenant dies within 6 months. In this case, how would succession rights affect family members who had been living with the tenant for less than 12 months? Under the current legislation there is a 6 month qualifying period for co-habitees. In our view 6 months would be more reasonable than 12 months for automatic succession.

Whilst we can accept that there may have been some cases where people have succeeded to a tenancy after staying at a property for a short time, there appears to be no objective evidence that there is a problem with existing succession rights. We therefore find no justification in the proposal, which would erode tenants’ existing rights, and we propose that Schedule 3 of the Housing (Scotland) Act remains unchanged in this regard.

Section 15 – Eviction

We share the concerns of the Legal Services Agency regarding the removal of the test of ‘reasonableness’ and would consider this a fundamental erosion of tenants’ rights.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

We refer to the above answer.
**Part 3: Private Rented Housing**

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

We generally support these proposals. We are extremely concerned, however, that this would reduce the right of a tenant under threat of eviction to have their case adjudicated by a sheriff. Furthermore, under the reforms that will be effected by the Tribunals (Scotland) Bill it is unclear to what extent legal representation will be encouraged or permitted, or what financial aid to obtain legal representation will be available for cases heard by tribunal, without both of which the balance will be tipped unfairly in favour of landlords. This is an important matter of human rights and needs to be addressed before any decision to permit evictions to be heard by a tribunal. In our view the above matters risk an erosion of tenants’ rights. The loss of a home is a far more significant decision than many of the others being referred to a tribunal (e.g. disputes between tenant and landlord). The right to housing is a fundamental human right and removal of a home should therefore only be able to be decided by a senior legal figure (in Scotland’s case, a sheriff). By clearing the sheriff courts of some of the less significant issues there should be space for eviction actions to be heard more quickly, whilst protecting tenants’ rights to legal representation.

We note that tribunals can be presided over by a sheriff, but is not clear if that would be the case in every instance with regard to the proposals in the Bill. Allowing a sheriff to preside over a tribunal - for example in cases relating to evictions - would ameliorate some of our concerns.

We propose that amendments be made to this part guaranteeing access to legal representation, and either specifically excluding eviction hearings from the tribunal system or making a provision that eviction cases must be heard by a Sheriff under the tribunal system, and that consequential adjustments are made to Schedule 1.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

We are in favour of making it easier for tenants to enforce the repairing standard and we support the intention behind the provisions in the Bill. However, until greater security of tenure exists in the private rented sector it will remain unrealistic for tenants to exercise their rights without the risk of retaliatory eviction. This will remain the case regardless of whether access to the private rented housing panel is made by the tenant or by a third party, since in both cases the landlord may still end a tenancy following an initial six month term without giving any reason. We are working with Government and stakeholders through the Private Rented Sector Tenancy Review Group to address this issue, and we hope that the work of the group will lead to reform of the private rented sector so that tenants can enforce their rights without compromising the security of their tenancy.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?
Again, whilst we support the intention behind these provisions, the fundamental issues of lack of security for tenants and the risk of retaliatory evictions will only be addressed through reform of the private rented sector.

**Part 4: Letting Agents**

**Q10.** Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?

There is a need to streamline the various registration and licensing procedures and we welcome the proposed establishment of a register of letting agents. However, we believe such a register would sit more logically together with the register of landlords and licences for houses in multiple occupation. Under the current proposals the former will rest with the Scottish Government and the latter with local government. This risks creating confusion for tenants about who is responsible for regulating the management of their property. The proposal for a register held by Scottish Ministers appears to be an expedient but *ad hoc* approach.

It is noted that section 49 permits Ministers to delegate functions relating to the register to other bodies. It is to be hoped that this anticipates the streamlining referred to above, and would in theory enable a quick transfer of this function to local authorities.

We seek clarification that it is the Government’s intention to streamline the regulatory framework for the private rented sector, and urge the Government to consider transferring the proposed register of letting agents to local government.

We have a broader concern regarding the definition of letting agency work in section 51. There are likely to be quite varied situations in the private rented sector where, for example, a family member helps out the official landlord in dealing with/managing a property. In such a circumstance would this family member require to be registered as a letting agent? Where is the line drawn? There is the opposite extreme where organised crime is involved in the ownership and management of property through ‘legitimate’ landlords or agents. It does not appear that the current proposals would in any way address these problems.

**Q11.** Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

We have no particular views on these provisions. There remains the greater issue of lack of security for tenants in the private rented sector, and we refer to reader to the concerns highlighted in our answer to Q8.

**Part 5: Mobile Home Sites with Permanent Residents**

**Q12.** Do you have any views on the proposed new licensing scheme?

No comment.

**Q13.** What implications might this new scheme have for both mobile home site operators and permanent residents of sites?
No comment.

**Part 6: Private Housing Conditions**

**Q14.** Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

No comment.

**Part 7: Miscellaneous**

**Q16.** Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

No comment.

**Other Issues**

**Q17.** Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

No comment.

**Q18.** Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

No comment.

*Homeless Action Scotland is happy to elaborate on any of the points raised and for the content of this response to be made publicly available.*

**Homeless Action Scotland**

26 February 2014
HOMES FOR SCOTLAND

WRITTEN SUBMISSION

Homes for Scotland is the voice of the home building industry.

With a membership of some 180 organisations together providing 95% of new homes built for sale in Scotland each year as well as a significant proportion of affordable housing, we are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people want to live.

Homes for Scotland makes policy submissions on National and Local Government policy issues affecting the industry, and its views are endorsed by the relevant local committees and advisory groups consisting of key representatives drawn from our members.

We are pleased to respond to the Infrastructure and Capital Investment Committee’s request for written submissions on the general principles of the Housing (Scotland) Bill. (Please note: in January 2014, Homes for Scotland submitted a short response to the Finance Committee’s call for views on the financial impact of the proposals. Overall we had no issue with the costs reported).

The Housing (Scotland) Bill aims to make a variety of legislative changes relating to the social and private sector housing sectors. Our response reflects the diverse membership base of HFS and whilst our focus is on the proposals that have the potential to impact on the future development of new homes, we have also provided comment from members on areas where the proposals will impact the housing system overall and may have a bearing on the housing markets across all tenures (namely housing allocations and the Right to Buy).

Part 1: Right to Buy (RTB)

This part of the Bill abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

It could be argued that a reduction in capital receipts through RTB sales would have an impact on a landlord’s funds to invest in building new homes, however we note from the consultation that the decline in sales in recent years has already done that. We are also aware that there is no obligation on a landlord to invest capital receipts into new supply. We note with interest the estimate that abolishing the RTB could mean that 15,500 houses could be...
kept in the social sector over a ten year period. We hope that the absence of a RTB will give additional landlords the incentive to build more new homes, without the fear of losing good stock through sale in the future. Indeed we hope that the retained asset base will assist landlords in accessing additional private finance to support new build.

**Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?**

Our members have questioned the need to wait for 3 years before the change and have suggested that the Right to Buy should be abolished with immediate effect.

**Part 2: Social Housing**

*This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.*

**Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?**

Homes for Scotland represents a wide and diverse membership base including many of the most significant Registered Social Housing organisations in Scotland. Our consultation responses to the issues in this section reflect this context. Notwithstanding the direct interests of our RSL members, the supply, location, management and approach to allocation of Social Housing is a key influencer on the Housing System overall and impacts Housing Markets across all tenures.

With this in mind we are in favour of the principle of giving RSLs more flexibility with regard to allocations but would suggest that clear guidance is created (by Scottish Government or perhaps by the Scottish Housing Regulator) to accompany the provisions. Members for example, have expressed concerns with regard to age bars and how they relate to equality legislation; the need to consult with tenants on the new provisions; and how the new provisions relate to housing options.

**Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?**

Our members largely welcome the proposals however some members have expressed concern with the Bill as drafted in relation to the potential costs of additional housing support. Again our members have suggested that robust guidance to accompany the provisions would be helpful. Areas to be covered include the determinants of behaviour change; flexibility on suspensions; and how converting an SST to a SSST works with or without court.
Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

Some members have suggested that whilst this part of the Bill has the potential to provide further protection for tenants, they have suggested that tenants in SSSTs already enjoy significant rights and protections under the current arrangements both for SSTs and SSSTs.

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

In the period since 1999, the Private Rented sector in Scotland has more than doubled its share of the total housing stock, rising from 5% to 11%. Research carried out by the Building and Social Housing Foundation (BSHF) in 2010 indicated that if recent tenure trends continue, 20% of all households across the UK could be private renters by the year 2020.

If the private sector is to become a significant tenure of choice within the Scottish Housing system then HFS is supportive of standards being driven higher.

The nature of the private rented sector in Scotland make that challenging. According to the 2010 Private Landlords Survey, just 1% of landlords across the UK own more than ten properties. Recent evidence found that just over 4 in 5 (84%) of Private Rented dwellings were owned by ‘individuals, a couple or a family’, while 14% were ‘owned by a company, partnership or property trust’, and 2% owned by an institution. Many of these landlords, in particular
those entering the sector in recent years, might be described as ‘reluctant’ or ‘accidental’ landlords who are renting out a property they have been unable to sell. There are also a significant number of ‘Buy-to-Let’ landlords in the sector, who invested in the sector during the housing boom years and were a significant driver in the expansion of the sector.

HFS, supported by Scottish Government and Construction Scotland, has recently undertaken a research project exploring ways in which new, professionally managed homes could be delivered at scale to support strategic growth in the private rented sector, adding to the total number of new homes being built in Scotland (please see full ‘Building the Rented Sector in Scotland’ report here). This would involve attracting large scale institutional investors into the residential sector. The reputation of the Scottish private rented sector will therefore be very important to this. Badly managed stock, of poor condition could blinker views on the tenure and has the potential to dis-incentivise political will for growing the number of units available for private rent. HFS is therefore supportive of sensible proposals to a) consider ways in which the legal system could be made more effective in private rented housing disputes, introducing a housing tribunal and b) implementing a stronger role for Local Authorities to enforce improvements on poor standards on private rented homes within their area.

However, HFS would caution the Scottish Government on regulatory changes that could reduce the competitiveness or dis-incentivise Scotland’s residential sector compared to other areas, particularly England. Institutional Investors will compare the yields that can be achieved in different sectors across different countries. They will also take account of potential risks to these yields. Traditionally the concern has been around the potential re-introduction of rent controls and increased security of tenure.

Recommendation 20 of the HFS Building the Rented Sector in Scotland report states that:

One of the most important messages from this research has been the need for stability in the policy, taxation and regulatory environments. Although there is enthusiasm and considerable activity, there is also fragility. We therefore recommend that the Scottish Government should ensure that all parties are fully aware of the very positive approaches taken in legislation with respect to the twenty-year rules and the introduction of Land and Buildings Transaction Tax in April 2015 (the successor to Stamp Duty Land Tax). There also needs to be a clear commitment to ensure that the tax and regulatory environment does not negatively differentiate Scotland from the rest of the UK. The value of continued commitment to maintaining a predictable transparent regulatory environment cannot be overstated.

Therefore in efforts to increase standards across the Private Rented Sector, we would like to see proportionate and targeted regulation. Our members preference would in actual fact be to see Local Authorities use existing powers to ensure enforcement at local level.
**Part 4: Letting Agents**

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

**Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?**

HFS’s interests here are again in relation to the delivery of new, professionally managed homes to grow the private rented sector in Scotland.

We note and support the policy objectives of this section of the Bill as “to promote high standards of service and levels of professionalism across the country” and “to provide landlords and tenants with easy access to a mechanism that will help to resolve disputes where these arise”.

We see no reason why legitimate Lettings businesses would be against a registration scheme if the cost impact to them is low. However, coming from an industry where an effective voluntary Consumer Code is in place, we favour and remain supportive of schemes that offer consumer protection without going down the legislative route. We are also of the view that regulation on the lettings industry will face similar challenges to the introduction of regulation on private landlords. We imagine that the ‘Bad’ or ‘Rouge’ agents are the ones that would avoid registering or complying with any statutory practice, with the ones already offering a quality service facing additional bureaucracy and costs as a result. It is more important that effort and resources are focused on enforcing any current powers to pursue organisations that do not comply with any current rules or standards of practice.

Again, we offer caution against introducing regularity changes that could create unnecessary burdens and have a negative impact on the competitiveness of the Scottish lettings market.

**Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?**

The home building industry operates its own Consumer Code and offers new build customers an approach to redress outside of the courts (please see [here](#)). HFS would be happy to share further details of this approach to the Committee.

The proposals for tenants or landlords to apply to a First Tier Tribunal after the letting agent has been given the chance to resolve the issue seems sensible and proportionate.
Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. *Do you have any views on the proposed new licensing scheme?*

Q13. *What implications might this new scheme have for both mobile home site operators and permanent residents of sites?*

HFS has no comment to make on the proposals on Mobile Home Sites with Permanent Residents.

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. *Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?*

HFS has no comment to make on the proposals relating to Private Housing Conditions. However we would urge the Scottish Government to ensure any proposals for this link appropriately to the current review of Home Reports, given that any outstanding enforcements/shared costs may have an impact on the future sale of private homes.

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q16. *Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?*

Right to Redeem a Security After 20 Years (20 Year Lease Rule)

In response to the change to the 20 year rule proposed in the Bill, to allow existing and any future shared equity schemes to fit within the mortgage market review, we give our absolute support.
We applaud the initiative shown by the Scottish Government in proposing this change to allow Help to Buy (Scotland) to be launched for home buyers in Scotland, with the minimum amount of delay. We appreciate that the Scottish Government were unable to consult fully on this proposal but are supportive of the approach that they took in engaging with key stakeholders whilst the Help to Buy (Scotland) scheme was being developed. HFS was party to this engagement and offers the Scottish Government our continued support.

However, in submitting written evidence on this ‘miscellaneous provision’ we feel it appropriate to draw the Committee’s attention to our concern about the 20 year rule and its ability to act as a barrier (whether real or perceived) to any innovative housing funding models again in the future.

We understand that the Land Tenure Reform (Scotland) Act 1974 introduced 20 year limits around long residential leases and related standard securities as part of ending feudal tenure in Scotland. Whilst this rule may have served a purpose in the past, HFS find it hard to understand what it serves to do today. We are aware that a comparable rule does not apply in England, but note that the fact that there is a more established market of long residential leases in England and Wales means there is also a body of case law to govern relationships between landlords and tenants who enter into such arrangements. The fact that we do not have case law to refer to may to some extent justify an ongoing role for the 20 year lease rule, however if it is to be retained it must be fit for purpose and not inadvertently restrict the operation of the housing sector.

We understand that two recent legislative changes have occurred to increase flexibility within the rule: first in the Housing (Scotland) Act 2010 and then second in the Private Rented Housing (Scotland) Act 2011. The 2010 Act amended the 1974 Act so that social landlords, their connected bodies (i.e. subsidiaries) and rural housing bodies are exempt from the 20 year limit on residential leases. The 2011 Housing Act also amended the 1974 Act in order to assist other landlords, meaning there are now powers for Scottish Ministers to prescribe other bodies so that they are exempted from the rule as well. This requires the laying of a Statutory Instrument before the Scottish Parliament.

The combined effect of these changes is that leases between and amongst housing associations, local authorities and private landlords could now be possible. This means that long residential leases and innovative lease-back funding models have the potential to work in Scotland, in the same way they can work in England and other countries. However, research undertaken by the Cambridge Centre for Housing and Planning and the London School of Economics through the HFS ‘Building the Rented Sector in Scotland’ project found that some investors were unclear of the implications of the rule (and/or recent changes to the rule) and still considered it a continuing problem. Hence the reference to the 20 year lease rule in Recommendation 20 of the Building the Rented Sector report copied above.
What is absolutely clear is that the 20-year rule is perceived to be confusing to those inside and outside the housing sector. If there is even a remote possibility that the delivery of housing in Scotland is being affected by this restriction, the rule must be fundamentally reviewed. Given that the Bill is proposing yet further change to the rule, we would suggest that the Scottish Government review it fully proactively rather than propose new changes on a reactive basis each time a Housing Bill is passed.

Scottish Housing Regulator: Transfer of Assets following inquiries

HFS has no comment to make on this miscellaneous provision.

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

HFS has no further comment to make.

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

HFS has no other issues to raise.

Homes for Scotland
28 February 2014
DONALD HOUSTON (INDIVIDUAL)
WRITTEN SUBMISSION

Q1 - The right to buy should not be abolished for those that have the right to buy at present.

a - Remove the right to buy from all new tenancies, otherwise this smacks of the Highland Clearances -

Q2 - Timetable should not be approved until after Indendepence for Scotland has been finalised.

Q3 - All landlords should have flexible tenancies available to those that move around the country and relocate for work.

Q4 - Re anti social behaviour - Problem Tenants should not be re housed within a 100 mile radius of the area where the anti social behaviour occurred, Remove to a new area, & Monitor Behaviour give offenders a chance for a new start, Rather than moving the problem to a local Housing association.

Q5 Rights for tenants need to be reviewed and updated - Hiding behind the "Phrase tolerable standards " is detrimental to well being and the health of the younger generations growing up in properties built in the 60's.

Q6 - This would be another tier of costs to be subsidised by Councils, Trusts, passed back to rent payers - Or costs passed back to DWP, Better enforcement is required rather than more administration.

Q7 - Discretionary ? See answer to Q6 - A slum is a slum, properties infested with rats & other vermin should be flattened, maybe then the Landlords would tend to the repairs that are required. Enforcement and Penalties are required.

Q8 - Enforcement should be actioned, rather than discretionary?

Q9 - A register of all Landlords should be in place to protect Tenants.

Q10 - All issues should be referred to the signed tenancy agreement,

Q11 - There should be more Caravan Sites, Licenced & fit for purpose available for long term residence, Workers and for health reasons etc.

Q 12 - Various .

Q 13 Better management of maintenance teams, & Housing management.

Q14 no

Q 15 - The Bill should be fit for purpose.
Q 16 - Better management of empty properties.

Donald Houston
28 February 2014
Dear Maureen Watt

I recently contacted Elaine Murray MSP regarding the new regulations that came into force in England on the 4 Feb. 2014 which laid down certain rules that could not be used on mobile park home sites, please find a copy of the park rules that cannot be used enclosed.

Elaine sent me a copy of “Part Five – Mobile Home Sites With Permanent Residents” which is contained in the Scottish Governments Housing Bill, she also advised me to contact you directly.

Unfortunately after reading the above Part Five section it appears that park home residents in Scotland will not have the same protection from unscrupulous park owners therefore is it possible at this stage to submit to the “Infrastructure and Investment Committee” a provision to include a similar set of regulations that have been adopted in England and will shortly be in force in Wales.

While Part Five of the Housing Bill goes a long way in protecting park home residents from rogue park owners I hope the Scottish Government will be able to formulate a set of park rules that will be able to protect all Scottish park home residents, if there are any Park Rules already formulated or suggested, any information you can give me will be greatly appreciated.

Yours Sincerely

[REDACTED]
IMPORTANT INFORMATION
FOR ALL PARK HOME RESIDENTS

Mobile Homes Site rules (regulations) The Mobile Homes (Site rules) (England) Regulations 2014 (SI 2014/5) was published today (13/1/14) and comes into force on 4 February written statement. The SI can also be downloaded from:


Please note that regulation 18 requires changes to be made to the 2011 written statement regulations.

9th January 2014

Proposed Changes to Park Home Rules in England

The Department for Communities & Local Government has recently issued a discussion paper on proposed regulations governing future park home rules following the passing of the Mobile Homes Act 2013. The paper outlined 14 specific matters which in future may NOT be included in park rules as follows:

1. A rule requiring a tenant to sell the home to the site owner
2. Rules requiring a resident to market the home for sale through the
   park owner
3. Rules preventing a resident marketing the home through an estate
   agent
4. Rules preventing a resident from using a solicitor or notary public in
   a sale transaction
5. Rules preventing the display of a 'For Sale' advertising board on
   the pitch
6. Rules preventing sales posters being displayed on the inside of a
   window
In addition the paper also discusses how long parks should be allowed to make replacement rules after the regulations come into force, whether residents should have a right to receive a copy of the consultation responses made to the park free of charge and whether discretionary rules that apply to certain classes of person should be banned immediately the regulations come into force.

It is anticipated that the regulations will be laid before the year end (2014), allowing parks a maximum of 12 months to draft any replacement rules, consult with residents and deposit rules with the Local Authority.

6th December 2013

Petition for the Abolition of Commission on the sale of park homes in Wales

In Wales, I believe that you only need 10 people to present a petition and our friends across the border have just presented their petition (which is set out below) to the Secretary of State for Commission on the private sale of park homes.

This is presented by Bob Mountford Chairman of Garvan Park Residents Association which is a qualified association and represents over 100 homes.

Garvan Park

Bodmin Woods

Parks

WE CALL UPON THE NATIONAL ASSEMBLY FOR WALES TO URGE THE WELSH GOVERNMENT TO REMOVE FROM REGULATION THE SALE OF PARK HOMES AND TO REVOKE COMMISSION ON THE PRIVATE SALE OF PARK HOMES AS THEY ARE NO LONGER REQUIRED BY THE 2006 REGULATIONS.

I am informed that they were well received and their petition will be discussed at a meeting on the 16th December which can be viewed live online at 9:30am on the Welsh Government website - and I am sure that every member of our Justice Campaign will watch them well.

Our friends in Wales have also added us well to our 10% Commission Charge Petition which has certainly gathered momentum and has now been signed by many many thousands of park homes

Alan Huyton

18 February 2014
INCLUSION SCOTLAND
WRITTEN SUBMISSION

1. Introduction

1.1 Inclusion Scotland (IS) is a network of disabled peoples’ organisations and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and to encourage a wider understanding of those issues throughout Scotland. Inclusion Scotland is part of the disabled people’s Independent Living Movement.

1.2 Inclusion Scotland are concerned that many disabled people are in housing that does not meet their needs, and this restricts their ability to enjoy the same freedom, choice, dignity and control as other citizens.

1.3 The Scottish Household Conditions Survey\(^1\) estimates that there are 836,000 households in Scotland where there is someone with a long term condition (LTC) or disability. Of these, 212,000 are defined as family households, 398,000 as pensioner households and 226,000 as “other”, presumably single people and couples without children.

1.4 The SHCS estimates that there are 493,000 homes that have been adapted for people with LTC or disability, which is 21% of the housing stock. 32% of social housing is adapted, and 17% of private sector housing (owner occupied or private rented).

1.5 However, the survey also highlights that there are 129,000 households with a person with a LTC or disability that are in need of being adapted. This is 5% of the total housing stock.

1.6 “Mind The Step : An estimation of housing need among wheelchair users in Scotland”\(^2\), published in 2012 by Horizon Housing Association and the Chartered Institute of Housing, estimated that there is a shortfall of 17,042 barrier free houses, affecting 14% of wheelchair users.

1.7 In addition, disabled people have been disproportionally affected by the bedroom tax. Disabled people may be “under-occupying” as they require additional space to store equipment, or because their partner cannot sleep in the same room, or because there was no other housing available that was adapted to meet the requirements of their impairment.


1.8 Inclusion Scotland’s response to the Housing (Scotland) Bill is made in this context.

2 Right to Buy

2.1 Given the shortage of suitable adapted property to meet the needs of disabled people, Inclusion Scotland welcomes steps that will help to preserve the stock of social housing, particularly as a higher proportion of social housing is adapted.

2.2 However, it is important to recognise that preventing the sale of social housing to existing tenants will not in itself increase the availability of suitable social housing, as long-standing tenants may chose to remain even without the right to buy. There may also be a surge in RTB sales during the three year period between enactment and abolition of RTB.

2.3 In order to increase the availability of barrier free housing that is suitable for disabled people, there needs to be increased investment in new social housing, including housing that is readily adaptable and fully wheelchair accessible.

3 Social Housing

3.1 We welcome the assurance in the policy memorandum to the Bill 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 unsuitable housing. We would be interested to know how the Scottish Government intends to monitor the effectiveness of this.

3.2 We would also ask that disabled people and their representative organisations are included in the groups to be consulted by social landlords when considering their rules on priority of allocation under section 4 of the Bill.

3.3 It is important that when allocating housing that is considered suitable to meet the needs of disabled people, social landlords take account of how they define rooms, so that disabled people are not punished because they require an additional room as a result of their disability.

3.4 We support the proposals to give powers to social landlords to repossess adapted or specially constructed properties where there is no-one occupying it who has special needs, but it is required by someone who has special needs.

3.5 Disabled People are often the victims of anti-social behaviour as a result of harassment related to their disability. We therefore welcome further powers to social landlords to deal more effectively with anti-social behaviour.
4 Private Sector Housing

4.1 We welcome the proposal to transfer challenges to refusal by a landlord to allow adaptations for disabled tenants to the new Private Rented Sector Tribunal. This should make it easier for disabled people to challenge such refusals.

4.2 The policy memorandum does, however, recognise that some private tenants may be reluctant to take issues to the tribunal because of fear of reprisals by landlords; that there will need to be exemptions to any tribunal fees for those who cannot afford to pay; and that certain people with protected characteristics, including disabled people, may need support to participate effectively in proceedings.

4.3 We look forward to seeing more detailed proposals from the Scottish Government, and the Scottish Legal Aid Board, on how these issues will be addressed.

5 Private Housing Conditions

5.1 We note from the policy memorandum that “the enforcement powers are intended to improve house conditions 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.”

5.2 However, 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.

Inclusion Scotland
28 February 2014
RICKY LAIRD (INDIVIDUAL)

WRITTEN SUBMISSION

As a landlord with rental property in Scotland I would like to make the following comments in relation to the Housing (Scotland) Bill:

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.

It is unfair to expect a landlord to become the keeper of their tenant (eg. Unsocial behaviour). If a private house owner’s behaviour is regarded as unsocial then either the local authority or Police become involved. Why should this be different just because the person living in the house rents it and doesn’t own it? It is inappropriate
for the landlord to intervene as at that stage there is no proof of the unsocial behaviour!

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

There is the potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered letting agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

In addition to registers for Letting Agents and Private Landlords I would welcome the creation of a Register for Tenants. This register, while not mandatory, would provide some level of confidence for Private Landlords that the tenant they are considering taking on has at least provided some verified history. Maybe this could be run by the same companies who operate the Tenancy Deposit Schemes? Landlords could pay a small fee to get any information that the potential tenant has on file. If a tenant did not want to be part of the scheme it would not preclude them from gaining a tenancy but merely increase their chances and provide some confidence for landlords. While I agree that it is important to reduce/eliminate bad landlords and conditions, it is equally important that landlords can expect some level of protection from poor tenants.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The proposed mechanism is appropriate in providing a simple and swift method of resolving disputes.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

Ricky Laird
31 January 2014
As a landlord with rental property in Scotland I would like to make the following comments in relation to the proposed Housing (Scotland) Bill: -

**Part 3: Private Rented Housing**

**Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?**

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

**Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?**

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

**Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?**

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

There is the potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered letting agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The proposed mechanism is appropriate in providing a simple and swift method of resolving disputes.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

I welcome any measures that will force owners of tenements to contribute towards the repairs and maintenance of common areas. I have seen too many buildings were the actions of a small minority of owners have prevented buildings being repaired. This inevitably leads to much greater costs at a later time.

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can't be identified or are unable or unwilling to contribute. 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.

Neil Livingstone
31 January 2014
Call for views on the Housing (Scotland) Bill

The Infrastructure and Capital Investment Committee is seeking views on the general principles of the Housing (Scotland) Bill. A copy of the Bill and the accompanying documents can be found on the Scottish Parliaments website.

The Bill was introduced in the Scottish Parliament on 21 November 2013. The Infrastructure and Capital Investment Committee has been designated as the lead committee for Stage 1 consideration of the Bill.

Aims of the Bill

The Bill aims to make a variety of legislative changes relating to the social and private sector housing sectors.

Committee consideration at Stage 1

The Infrastructure and Capital Investment Committee expects to consider written submissions and to take oral evidence from mid-January to mid-March 2014, before reporting on the Bill’s general principles in early April 2014.

The Committee therefore invites all interested organisations and individuals to submit written evidence on the Bill and its likely impact. In particular, the Committee would like to receive responses to a number of key questions that are set out below under each of the Bill’s main headings.

Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

The abolition of the Right To Buy may seem draconian, but there is simply not enough social housing available. The problem with an across-the-board approach is that it does not put the emphasis on where the greatest need is, and so there may not be any real short-term solutions. In short the abolition of the Right To Buy must be supported by house building.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

This is simply too long. I go for 6 months, although a year may be more acceptable. But if the Scottish Government are confident about getting the Housing Bill through Parliament, then a date should be announced such as January 1st, 2015, which will give people almost a year's warning from now.
Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q3. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocation housing, allow them to make best use of social housing?

It is felt that with the anti-discrimination laws, there is enough flexibility already. A responsible Council will seek to ensure that the housing stock available is allocated according to the composition of the demand. Perhaps much of the blame lies with Councils not being more "self-disciplined" in respect of it's allocation policies, for it is difficult to see how any further legislation will help in some cases.

Q4. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

Provisions are already in place, it is just that some landlords appear to "reluctant" to go down that road, opting for warnings and mediation instead. Evictions tend to be a last resort, mainly because the tenant(s) have to be rehoused, and to accommodate them in Bed & Breakfast establishments may cost more, and with Councils being forced to reduce it's homelessness by 2015, any evictions are likely to be "ineffective" in that they may be placed as a "priority". Listing anti-social tenants are making themselves "intentionally homeless" may not have the desired effect if there are pressures to accommodate everyone in mainstream housing as soon as possible. But it remains a problem as to just what are the most "effective" measures.

Q5. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

There may be a problem in that if SSTs have too many rights, then it may not be an "incentive" to change their behavioural patterns. There has to be some kind of stick with discretionary powers to act as necessary. Any move away from SSTs has to be done with care. However if this is an "initial tenancy", then the same rights as ordinary tenants is not out of order, with there being monitoring of the situation.
Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q6. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to new First-tier Tribunal?

The problem with some of the members of First-tier Tribunals is that they may not have a grasp of problems relating to tenants, and there may be a question about their impartiality. Concerns are also expressed about compelling witnesses to attend. Given that there are no "sanctions" for failing to do so, then this may reduce the impact of what the Tribunal is trying to achieve. Returning to the first point, I would like to see more tenant members on the Tribunal.

Q7. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

I cannot speak for outside Perth & Kinross, but there may be a view that the local authorities should not intervene if it is seen that it's own house is not in order. Thus double-standards may be the result. It may be better if an independent "regulator" is appointed with the consent of all the relevant parties.

Q8. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

I refer to my comments to Question 7, with the "regulator" having full powers to compel private landlords to improve their stock conditions, and to impose financial penalties for failing to comply with any action requested by the "regulator".
Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q9. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

There should be a mandatory register, with there being a statutory code of practice backed up by severe financial penalties for failing to comply. This code of practice should include any fees and who is responsible for paying them and at what point in the letting process, not offering a house to another until a refusal is in place, and outlawing statements such as "We have a lot of people interested" just to "force" an interested person into accepting the house, giving the prospective tenant time to inspect the house, and to allow them to see any surveyor’s report with there being a provision for verification by the prospective tenant.

Q10. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Again I refer to the answer to Question 7 relating to the independence of the Tribunal members, also who will pay for the Tribunal. This financial factor should extend to the right of any legal representation which the tenant(s) may wish. Another problem is this may be a 3-way dispute and so somewhat complex, and so should this be reduced to separate 2-way processes? It may be difficult to reach a resolution if one of the three parties does not agree. More work and playing “Devil’s Advocate” may be necessary.

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q11. Do you have any views on the proposed new licensing scheme?

I am in favour of this, although the problem with the concept of a mobile home is that it is precisely that and so any stays may be short-term. Nevertheless, those living in such a home should expect certain standards from their site owner. There is also a need to clearly define just what is a mobile home and not just some kind of “holiday caravan”.

33
Q12. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

There could be cost implications for the site operators which could then be passed on to owners of mobile homes making the site "unattractive". However there should be certain standards, and here the appointment of site inspectors may be a possibility.

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act of 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q13. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work particularly in tenemental properties?

This should be more rigorously enforced. However there is also a question as to whether or not local authorities should pay, for where does this money come from? As for the Housing Revenue Account, that is tenant's money, and the General Fund is paid by everyone regardless of their domicile status. If, as many tenements are, of mixed tenure, then the owners of private houses should pay their own costs, and any any costs met by a local authority should be subject, where possible to a recharge. This is a complex issue, especially where a tenement, or groups of them, may have quite a number of different private landlords contained within them.

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 if the Land Tenure Reform (Scotland) Act 1974, the conferral of power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator's powers and a repeal of certain enactments relating to defective designation.
Q14. Do you have any comments in relation to the range of miscellaneous housing provisions set out in this part of the Bill?

I regret that I am not knowledgeable about this subject.

Other Issues

Q15. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

There must be more clarity on just when the Right To Buy will cease, for various meetings I have been at have differing views by those attending. The problem is that this aspect is likely to be drawn down party lines, with it ranging from complete abolition quickly to a that of the proposed time-scale, and not forgetting those who are opposed to the abolition of the Right To Buy anyway.

Q16. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Although this is not part of the Bill, it is felt that there should be some kind of "Rent Capping" Policy, for the above inflation increases cannot be allowed to continue.

Gerald P Low
(Individual)
As a landlord with rental property in Scotland I would like to make the following comments in relation to the Housing (Scotland) Bill: -

My reply below marked “red”.

**Part 3: Private Rented Housing**

**Q7.** Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

I say NO to this. I don’t think we require First-tier Tribunal. Nothing wrong with Sheriff Court. It is the legislation, or the law that requires changing. Eviction should be done within 7-15 days, not 30 or 40 days after serving the NTQ.

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

**Q8.** Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

I say NO to this. This is supposed to be the work of the PRPH. Why create more and more offices and work force to do the same job, and waste more of the tax payers money.

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This
will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

**Q9.** Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

I say NO to this. We don’t need the local authorities to do this job. PRPH should be responsible to do this job. This organisation was created in the first place for the benefit of tenants and for them to report a landlord who keeps a property in poor conditions.

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.

**Part 4: Letting Agents**

**Q10.** Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

I certainly say YES to this and it is about time, too. Un-professional letting agents and landlords do a lot of damage to the professional letting agents. There must be a law to require any individual who wish to run a letting agency, or landlord who wish to be in the lettings business to have a licence, not just register. It should be a compulsory that one MUST be qualified, with a certificate that he/she passed the Housing Scotland Act legal training courses set by ARLA, NAEA, etc. Without this qualification, one should NOT be allowed to run a letting
agency, or let a property. OFT must check every letting agency office if the person running a letting agency is qualified, or not. OFT must have the powers to shut an office if found out violating this law. All letting agencies MUST at least register to any lettings organisations, i.e. SAL, CLA, LAS, ARLA, NALS, RICS, NLA, UKALA, etc. After all, no one will not hand their car keys to someone to fix it, if the person is not a qualified car mechanic? The same logic applies to renting. Why do people trust a landlord or agent who has no qualifications, no training whatsoever to rent a property and who knows nothing about the housing legislation? Or just ignore the housing legislation. PRS is highly legislated in this part of the world and one MUST be compliant before even contemplating to do this business. The main problem really is; the government is too soft that anyone can just go into this type of business without any problem.

This is a welcome proposal as it will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

There is the potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered letting agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Not required. We already have The Property Ombudsman to deal with agent/landlord/tenant disputes. We also have the TDS who deals with deposit dispute. The gov’t should make it a compulsory to all letting agents to join the TPO and have a proper complaint procedure. Without TPO membership, they should NOT be granted a licence to run a lettings business.
The proposed mechanism is appropriate in providing a simple and swift method of resolving disputes.

**Part 6: Private Housing Conditions**

**Q14.** Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

I say YES to this to raise a higher standard of the condition of tenemental rental properties.

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

**MARTIN & CO**
18 February 2014
MARYHILL HOUSING ASSOCIATION
WRITTEN SUBMISSION

Introduction

Maryhill Housing Association welcomes the opportunity to respond to the Scottish Governments consultation regarding the Housing Scotland Bill 2013

Maryhill Housing Association manages over 2971 properties and acts as a property factor for 722 homeowners, throughout Maryhill and Ruchill, Glasgow.

Over the course of the last two months we have carried out consultation sessions with staff from the association ranging from the Chief Executive, Director of Housing Services, Housing Services Manager, Senior Housing Officers and the Customer Engagement Manager and Officer. We also consulted with 7 residents associations for their views on the bill; including items which they think should be removed, amended or items which could be included.

The Residents associations we consulted with were:

- Burgh Hall Village Residents Association,
- Cumlodden Residents Association,
- Eastpark Residents Association,
- Glenavon Residents Association,
- Mini Multis Residents Association,
- Parkhill Residents Association,
- Lochburn Residents Association

During the consultation session we discussed some of the key issues which would mainly be faced by the tenants of the housing association.

1. Abolition of right to buy

Staff and local residents agreed that the Right to Buy should be abolished. However, it was felt that 3 years was too long and considered an excessive period of time. One year was suggested as a fair period of time for tenants to buy their homes. Unscrupulous businesses may use such a lengthy timeframe, such as 3 years to take advantage of vulnerable tenants by purchasing their homes, using their discount and then letting them remain there as tenants paying extremely high rents or worse still, evicting them.

Within the three year period, there may be a surge in people applying to buy their home. This may result in a substantial loss of local authority and housing association stock if people were to exercise their Right to Buy. Pressurised status should remain, as if this was removed local authorities and RSL’s may lose housing stock in areas where there is already a high demand and low supply of affordable
social housing. Some tenants were concerned that if the RTB was not abolished, existing waiting list applicants may have to wait several years to secure an offer of accommodation from RSLs or Local Authorities.

One residents association had mixed views with some members in particular who felt that those who had lived in their properties for ten years or more should still have a Right to Buy. Another suggestion put forward was that tenants should continue to have the Right to Buy, however remove the discount or lower the discount applied.

2. Allocations

Part two of the bill appears to introduce more powers for landlords in relation to allocations within social housing which was met with enthusiasm by staff.

Section 3 amends section 20 of the 1987 Act which states that “For the purposes of subsection (1ZA), persons have unmet housing needs where the social landlord considers the persons to have housing needs which are not capable of being met by housing options which are available.” The definition requires clarification as is vague is to what unmet housing needs would be.

Not every housing association or council offers a housing options interview. An individual may have several issues with their current housing situation and that’s why they are approaching a LA or RSL for housing. Although RSL and LA staff are fully aware of the lets and turnover available within their own stock, they may not be able to explore all the options available to someone, such as the availability of private lets in the area, other RSL stock turnover, affordability issues or prevention of homelessness. This may also include exploring someone’s financial situation to assess whether or not they can afford to reside where they are. This may take housing staff more time to process applications as a result in order to appraise an individual’s housing need. Funding may be required for local authorities/RSLs to recruit more housing options staff/prevention of homelessness/money advisers to determine those applicants who have unmet housing need.

There would be a requirement for the association to carry out a review of the existing allocations policy, which will require consultation sessions with tenants and residents. This will obviously require a vast amount of staff time and resources in order to revise the existing allocations policy.

Tenants felt that introducing an age restriction through allocations would be particularly useful for those areas populated by elderly people, families and those residents who live in sheltered accommodation. Staff felt it was important to ensure that MHA continued to comply with Part 2 of the Equality Act 2010. This may also improve tenancy sustainment as individuals may be offered properties appropriate to their needs. Careful consideration will be required as concerns were raised that this would be creating pockets of housing which certain individuals may be excluded from.
Staff felt that they should continue to have flexibility in accepting an application where the applicant or their family owns property. Homeowners should still be able to make housing applications and their applications should be assessed according to their individual needs.

Section 7 amends section 20 and inserts new section 20B in the 1987 Act to allow social landlords to impose a minimum period before the applicant is eligible for the allocation of housing, if certain circumstances apply. A minimum period requirement cannot be placed on homeless applicants to whom the local authority has a duty to provide settled accommodation. Staff felt that this requirement should also apply to section 5 referrals made from a local authority.

With this amendment of this section there may be an improvement in tenants’ behaviour as they may then act more responsibly within their tenancy if they are looking for a transfer of property.

Staff and residents were disappointed that the proposal to include probationary tenancies within the bill has been removed. Tenants felt that landlords would have more control in ending tenancies, where it has been identified by housing staff, that a tenant is not adhering to the terms of their contract eg is acting in anti-social manner or has accrued rent arrears.

Anti-social behaviour: Many residents in Maryhill have ongoing issues with anti-social neighbours and the association receives several complaints relating to the behaviour of some of the tenants. Staff members and tenants felt that it was important that landlords have more powers with relation to anti-social behaviour and welcomed the proposed change of extending the initial period of a SSST from 6 months to 12 months. Staff had concerns that the right of appeal may be used as a stalling tactic for tenants, proving timeous and costly for landlords. Tenants also welcomed the proposals for landlords to have greater flexibility in creating SSSTs or converting existing SSTs to SSSTs. A currently theme from tenants during the consultations sessions were frustrations of the

Paragraph 4(b) of schedule 3 is amended to provide that a carer providing, or who has provided, care for the tenant or a member of the tenant’s family where the house was the carer’s only or principal home throughout the period of 12 months ending with the tenant’s death is a qualifying person. This is a change to the existing requirement that such a carer is a qualifying person where the house was the carer’s only or principal home at the time of the tenant’s death and the carer had given up a previous only or principal home.

3. Private tenants

Section 3 of the new bill looks to introduce a tribunal for tenants within the private sector. This was a welcomed proposal during consultations and was felt that this was a positive change for private tenants and a huge benefit for those tenants who cannot afford to appoint a solicitor. A tribunal panel may have the added benefit of
having in depth specialist housing knowledge, which may then deliver consistent outcomes for both landlords and tenants.

It was felt that the introduction of local authorities having the option to make a complaint to the private rented housing panel on behalf of a tenant was also helpful and may give tenants more support when there is a significant issue with disrepair. Although, some concerns were raised, that local authorities may use this as a gatekeeping tool when private tenants present as homeless and require temporary accommodation. Many private tenants are living in substandard accommodation whereby the property doesn’t meet the repairing standard and it is uninhabitable. Some tenants can be left without heating or hot water for weeks at a time and need somewhere to stay. Making an application to the PRHP can be a lengthy process, taking weeks if not months; whilst this is ongoing tenants would have to remain in uninhabitable properties. Rather than taking homeless applications and providing temporary accommodation, the local authority may take the approach of making an application to the PRHP instead. Meanwhile the tenant would then be forced to reside in accommodation which is uninhabitable and doesn’t meet the repairing standard until their PRHP application is considered.

Another solution may be for local authorities to enforce the existing rights they already have under Sections 89 and 94 of the Anti-Social Behaviour Act 2004 and deregister a landlord where the property does not meet the repairing standing; the landlord would not meet the criteria of a “fit and proper person”. Local authorities can issue a rent penalty notice, ensuring that the landlord cannot collect rent. A landlord in this situation may be more inclined to carry out repairs if they are unable to collect rent and it is a local authority is enforcing this.

It is appreciated that the aim of this provision is to stop landlords from evicting tenants rather than carry out a repair. However, even if a 3rd party make an application to the PRHP, a landlord in this position can still end a tenancy in some circumstances by issuing a section 33 notice if the tenant is a short assured tenant. Another possible solution is to make a notice to quit invalid if a tenant has reported disrepair to their landlord, the local authority and the PRHP. This procedure is currently used in England when a landlord has not registered a deposit with a protection scheme.

Through consultations the group felt that carers should be eligible to succeed the tenancy without a given timescale and RSLs and LA’s should be given a degree of autonomy and decide on a case by case basis. With regards to the 12 month basis

4. SHR – Transfer of assets

The provisions amend section 67(4) of the Housing (Scotland) Act 2010 (—the 2010 ActII) to give the SHR the power to direct a transfer of all or part of a RSL’s assets without a duty to consult where the RSL’s viability is in jeopardy for financial reasons, there is a risk of imminent insolvency, the proposed transfer of assets would remove
the risk of insolvency and the need to direct the transfer is so urgent that it would not be possible to comply with the consultation duty.

Every resident group and staff member felt that this should not be introduced as tenants should always have the right to be consulted before assets are transferred to another landlord. It was felt that there would always be time to have consultation and information about the proposals for any new landlord, should be put to tenants beforehand. Tenants were deeply concerned that this might not happen if the new regulations provide for this. Residents felt uncomfortable at the thought that they could potentially have a new landlord with absolutely no say in the matter.

Maryhill Housing Association
28 February 2014
The MECOPP Gypsy/Traveller Carer’s Project is disappointed to find there is no specific mention of the accommodation needs of Gypsy/Travellers in the Bill.

1. Where Gypsy/Travellers Live

In 2013 the Scottish Parliament Equal Opportunities Committee published the findings of their ‘Where Gypsy/Travellers Live’ inquiry (http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/49027.aspx)

This report clearly highlights the urgent need to address the accommodation needs of Gypsy/Travellers across Scotland. During the inquiry Committee members heard evidence about the absence of tenancy rights and the high rents being charged on sites run by local authorities and Registered Social Landlords (RSL), they also saw for themselves the appalling living conditions experienced by many families on these sites.

Unfortunately, there was little in the Scottish Government’s response to this report to inspire hope that these conditions and needs will be addressed in a robust and timely manner. The response is especially weak on actions and timescales and we remain unclear as to exactly how and when the widespread, and well-documented, inequalities faced by Gypsy/Traveller families will be tackled and addressed.

2. The need for a legal framework

Like any other community, Gypsy/Travellers have a variety of accommodation needs which require a range of responses, rather than the wholly inadequate approach that has been taken to date. Despite the popular misconception, Gypsy/Travellers are not asking for ‘special treatment’ rather accommodation which meets their cultural needs and parity with other local authority/RSL tenants.

Over the last forty years local authorities have been reluctant providers of sites and it is clear from community members themselves, agencies working directly with Gypsy/Travellers and the findings of the ‘Where Gypsy/Travellers Live’ inquiry that current provision does not meet either existing or future needs. Council/RSL site provision across Scotland is remarkably uniform in terms of both design and management, the need for serious consideration,
and resourcing, of alternative ways of meeting the varying accommodation needs of Gypsy/Travellers is long overdue.

Arguably, the lack of a statutory framework for Gypsy/Traveller accommodation in Scotland has denied occupiers of public provision access to a reasonable mechanism for complaint/redress outwith internal complaints processes, where they exist. Gypsy/Travellers are effectively debarred from questioning or disputing decisions of local government in the field of accommodation services except by Judicial Review. We view the absence of a clear statutory framework as a serious omission that has severely disadvantaged families from finding a suitable place to stop or stay. This approach is open to abuse and contrary to the ethos underpinning equalities legislation and the proposed Housing Bill.

Currently, tenancy agreements on local authority/RSL sites vary from area to area. Some tenants feel the agreements are heavily weighted towards the council and others argue, when there is a potential breach, the tenancy agreement is in reality unenforceable. As noted above, where there are disagreements or disputes, many Gypsy/Travellers face great difficulties in accessing legal advice in order to challenge the disputed issues. Wherever possible, tenants on local authority and RSL sites should have the same rights as other social housing tenants. The Housing (Scotland) Bill presents an opportunity to address this inequality.

3. Conclusion

As for other sectors of society, MECOPP would like to see the development of a diverse and comprehensive accommodation strategy but, in the case of Gypsy/Travellers, this must also be linked to a wider anti-racist strategy to counter discriminatory decision-making and stereotypical attitudes.

The Housing (Scotland) Bill covers a wide range of issues with the overall objectives of, “…safeguarding the interests of consumers, supporting improved quality and delivering better outcomes for communities.” We urge members of the Infrastructure and Capital Investment Committee to take this opportunity to ensure that better outcomes can also be delivered for Scotland’s Gypsy/Travellers.

MECOPP
27 February 2014
JOHN METHVEN (INDIVIDUAL)

WRITTEN SUBMISSION

As a landlord with rental property in Scotland I would like to make the following comments in relation to the Housing (Scotland) Bill:

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?
I approve of this proposal as it would speed up and simplify the process. In addition it would be most useful in speeding up the eviction process where tenant’s play the system knowing that the process is long and protracted and at the landlord’s expense.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?
Provided that these discretionary powers are not abused by the local authority and skewed unfairly in favour of the tenant then in principle this is a good idea. Where a tenant is paying a low rent for basic accommodation, then this power should not be used by the tenant to get the property upgraded beyond that for which they are paying. The powers should only be used to tackle sub standard accommodation and who decides what substandard is??Upgraded property should be reflected by a rent review.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?
No comment

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?
I agree that there should be a register of letting agents. There are still poor letting agents who fail to provide a service both for the tenant and the landlord. This would help protect both parties and improve standards.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?
No comment
Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For some time individuals and landlords have deliberately avoided paying their share of repairs leaving the other good owners to pay more than their share of repairs. Legislation is required to enforce payment of common repairs at the time an invoice is raised and assets seized where there is failure to comply.

John Methven
31 January 2014
MAXWELLTON COURT TENANTS ASSOCIATION  
(Renfrewshire Council)  
WRITTEN SUBMISSION

Introduction

Maxwellton Court Tenants Association is one of the Registered Tenants and Residents Associations (TARA’s) and is in the local authority area of Renfrewshire.

We are a committee of 8, elected annually, and generally represent the views of our tenant’s at Council Events, Consultations (Local & Nationally)

We welcome being involved in the extensive consultations held on many of the proposals included in the Bill and we particularly welcome the proposals to abolish the Right to Buy and the provisions on social sector allocations and tenancies

However, we are disappointed that the proposal to create a Housing Tribunal for the social rented sector and the introduction of Probationary Tenancies are not included in the Bill.

Our comments are as follows on the provisions in the Housing (Scotland) Bill are:

Part 1 – Right to Buy

- The Right to Buy (RTB) should now be abolished in order to safeguard and protect the limited social housing resource that we currently have in Scotland.

- The timetable for abolishing the RTB should be 2 years. We consider that Tenants who currently have the RTB, had this right for a significant number of years and have not exercised it, so are now unlikely to do so.

Part 2 – Social Housing

a) Allocations

We agree with this measure as it removes an unhelpful barrier to landlords wanting to allocate to particular groups in specific situations and believe the
Bill makes it explicit that removing this age bar does not mean that landlords can discriminate against particular age groups or that it contravenes the Equality Act 2010.

However we consider that landlords should be enabled to allocate housing in a “common sense approach” in order to sustain tenancies, protect the interests of existing tenants in terms of their right to live in a safe and secure environment and allocate tenancies in a sensitive manner with regard to the demographic of other people living in neighbouring properties, with particular regard to areas or property types that are more suitable for or already have older people living in them.

Landlords should be able to take an applicant’s previous Antisocial Behaviour (ASB) into account when considering whether or not to offer them a house; should also include homeless applicants.

Landlords must consult tenants and tenants’ organisations on any proposals to change allocations policies and procedures. (Quite a lot of Social Landlords do not do this at this time)

b) Probationary Tenancies (Initial tenancies)

The outcome of the Governments consultation concluded that the majority of the sector, including tenant responses, were in favour of introducing Probationary tenancies (or Initial Tenancies) and we are all disappointed that it was dropped for this Housing Bill.

We strongly support the introduction of initial tenancies and support the introduction of probationary tenancies for all social housing tenants and believe that the benefits of introducing this outweigh any negativity especially when it has the real potential to help deal with tenancy problems, such as anti-social behaviour, much sooner.

c) Short Scottish Secure Tenancies (SSSTs)

We consider that:

- Short Scottish Secure Tenancies should remain as 6 months
- Under no circumstances should people be allocated a social rented house and have or keep their own home elsewhere.
• Landlords should be able to allocate Short Scottish Secure Tenancies (for a 6 month period) to allow them to work with people who have previous history of ASB.

d) Antisocial Behaviour - SSSTs

We consider that:

• Landlords should be able to give all new tenants Short Scottish Secure Tenancies where there has been previous ASB.

• Landlords **must** be able to convert full Scottish Secure Tenancies to Short tenancies when they are dealing with tenants ASB to allow them to work with the tenants to try to improve the behaviour or stop the tenancy where the ASB continues.

• Landlords should continue to provide tenancy support whilst tenants have a Short Scottish Secure Tenancy, powers need to be given to Landlords which makes sure that ASB can be addressed or the tenancy **will be** terminated.

Part 3 – Private Rented Housing

In terms of the private rented sector, we do not have any private tenants in our block of flats, and feel we have no right to make comments in relation to this section.

a) The Tribunal

We agree that the introduction of the private sector housing tribunal is positive **HOWEVER** it should be noted that we are disappointed that this has not been included in the Bill for the social rented sector as per our response to the Dispute Resolution Consultation in 2013. In addition it should be noted that:

• Further information and clarification is required on the operation and enforcement powers of the Tribunal and that the Tribunal needs to **have clout and teeth** or it will not be worth the bother

• The Tribunal needs to be able to **streamline** the disputes process and make it easier and quicker than the current operation via the Sheriff Court system.
b) Private Rented Housing Panel

We agree that:

- Local Authorities **must** have increased powers to enforce the repairing standard.

- Evidence in relation to private landlords not meeting the standard **must** not just come from tenants and that neighbours, police, fire and rescue services, and the local authority itself should be able to provide this evidence.

- Where appeals are made by the private landlord; the funding required from the Local Authority to defend their position / action **must not** come from Housing Revenue Accounts (HRA's)

- The Private Rented Housing Panel **must** make the process simpler and more streamlined, the Panel **must** have “teeth” and be a less onerous process than using the Sheriff Court system.

- Local Authorities **must** have enforcement powers to ensure repairs and maintenance work is carried out.

- **All** PrivateLets should meet the repairing standard and Local authorities **must** have increased powers to enforce this.

Part 4 – Letting Agents

We consider that:

- Letting Agents **must** be subject to a robust and effective registration scheme

- Local Authorities **must** have additional enforcement powers in areas where there are issues with management of all stock owned by this landlord

- Local Authorities **must** have increased powers to deal with private landlords where there are issues in relation to:
  - The behaviour of the tenant living in their property
  - The lack of repairs and maintenance of the property and any common areas, especially where there are social housing tenants and / or properties
Letting Agents **must** be required to meet and sign up to a Code of Conduct

Guidelines **must** be developed

Letting Agent Registration and Code of Conduct “needs to have teeth”

Disputes between agent and landlord should be addressed by Trading Standards

The Bill and the Scottish Government **must** look at “beeﬁng up” existing systems to ensure Local Authorities and other’s involved **implement the full powers already available rather than adding new things**

**Part 6 – Private Housing Condition**

We agree that Local Authorities **must** have powers to enforce private landlords to carry out repairs and improvement to their properties. In addition properties where social landlords own some of the properties, social landlords **must** have additional powers to enforce repairs and easier mechanisms to **make private landlords pay their share of improvement works required.**

Where resources are to be utilised in this area, monies should come from the **General Fund not the HRA.**

Consideration **must** be given to developing a private rented housing standard, similar to the Scottish Housing Quality Standard.

**Maxwellton Court Tenants Association (Renfrewshire Council)**

27 February 2014
I recently had the misfortune of being 1 day late on 01/10/13. My license expired on 30/09. Being a bank holiday that day I went back to the office on 01/10 to be informed that I would have to pay an extra fee of near £1000.

Despite letters to my councillors, MSP, leader of Glasgow City council and the Housing minster they have all come back to me with the same guff, basically saying tough you had 6 months to apply.

To levy such an excess charge is absolutely hideous, I feel as a honest person of society, paying my taxes on time and in this current economic climate asking anyone to pay this amount is totally unfair and I have been badly let down by my council and system and I feel that this should be reviewed for inclusion for debate and change made to the legislation and each case reviewed on a case to case basis depending on the circumstances.

Donald Macdonald
6 January 2014
McLEAN FORTH PROPERTIES LIMITED

WRITTEN SUBMISSION

We are letting agents and property managers and wish to make the following observations on the Housing (Scotland) Bill:

In response to questions submitted earlier we wish to respond accordingly,

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards. It is essential that the reputation of the industry is improved while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

We believe there should be a new stand-alone Letting Agent Register operated by the Scottish Government.

The Register should include all businesses which let and manage private rented residential property in Scotland. However, we would not support simply replicating the processes and principles established for the Property Factors Register. Whilst it has improved that sector, this system is not robust enough in our opinion for the letting and management sector, and considerable consideration needs to be given to the detail of implementation for our sector.

A strong Code of Practice is needed. Along with the other representative organisations, we welcome the planned consultation in preparing the Code as secondary legislation.

Registration should include:

- an annual renewal (not every 3 years)
- a legally binding commitment each year to possessing:
  - adequate professional indemnity insurance
  - appropriate client money protection
  - a ring-fenced client money bank account
  - an annual audit of client accounts
  - membership of an ombudsman scheme to ensure an easily available redress mechanism for tenants and landlords.

Depending on the registration processes put in place there could be a requirement for the agent to produce annual documentation to confirm the above. It may be more appropriate to consider the registration process to be more the issuing of a licence approving the Letting Agent.

We believe that any Registration process should be Government operated free of any involvement with professional bodies such as the RICS or ARLA and others. Agents should aspire to differentiate themselves in the market place by achieving the standards required to gain membership. Within the code of practice there may be the requirement over a period of time to require owners of an staff employed in an agency to be say 50% qualified to a certain level of professional knowledge and competency.

The impact of these proposals on our industry is to be welcomed. It will however highlight even further the disparity in enforcement that currently exists on compliant letting agents and landlords and those who operate below the required standards. The passing of legislation and implementation of registration of Letting Agents will create an environment where landlords who
are self-managing will perceive the enforcement of regulation on them to be far less onerous. We recommend that at the same time as these regulations are implemented that the Landlord Registration regulations are enforced more robustly.

Q11. *Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?*

See the above comment about ombudsman services in response to Question 10; under these schemes redress is readily available to customers of such organisations at no cost to the claimant.

**Part 6: Private Housing Conditions**

Q14. *Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?*

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

**McLean Forth Properties Limited**  
21.02.14
MERRYLEE RESIDENTS AND TENANTS ORGANISATION

WRITTEN SUBMISSION

Our residents’ group represents tenants and residents living in the Merrylee area of Glasgow. Our landlord is Govanhill Housing Association and our tenemental owners are factored by either the Housing Association or Your Place. We wish to make the following brief comments as our response to the Housing Bill consultation.

Right to Buy

Generally we are in agreement with the proposed three year timetable for abolishing the Right to Buy. We understand the desire to avoid a sudden spike in sales. We also appreciate that it can take tenants some time to plan their finances to make it possible for them to buy their property, so three years seems fair.

Allocations

While we welcome the proposed increase in flexibility for landlords when allocating housing, we believe that properties need to be allocated to households of the appropriate size, especially if people are in receipt of benefits. We accept that housing one young person up a close of senior citizens might not be a recipe for success, but creating balanced communities with a range of ages and family types should be our aim.

Assignation / succession

Our concern with the change to 12 months notification regarding succession rights mainly relates to the situation of carers. If an individual has given up a tenancy or home to care for an elderly parent, it hardly seems fair that if the parent dies suddenly within those 12 months, the carer could become homeless. Is there any protection that could be offered to people in such a position?

Anti-social behaviour

We believe that dealing with anti-social behaviour through the introduction of SSSTs does introduce another tool for RSLs to use to try to influence peoples’ behaviour. The current cost of an ASBO is prohibitive, and it may still seem like a badge of honour for some folk. Do there still remain issues for how landlords can respond when the anti-social behaviour is exhibited by children within a household?
We would be very much in favour of the regulation of private letting agents. Our neighbourhood is seeing more and more private sector lets, in properties bought under RTB, and, especially in tenements, the transient nature of these lets can cause local problems. In our experience however, regulation is only useful if there is effective enforcement.

We would welcome increased powers for the council to improve housing conditions and enforce maintenance in the private sector in our area as this will by default help protect social rented sector tenants in tenements as well. The only issue remaining may still be affordability for some owners.

Merrylee Residents and Tenants Organisation
24.02.14
I saw the article in the Times regarding this bill. Firstly, if as you say in your article that you would like to hear from the public regarding this bill, it would help if you included a contact address or email. Regarding the bill over the past few months, I have been contacted by my local Council regarding Factoring. The Council are of the opinion that the bill affects property owners and is a way for the Council to raise funds. After reading the bill, I pointed out to the Council that the definition of a "Home Owner" was anyone that owned a property that is used for housing, i.e., this is the Council so if they were to impose a fee on property owner they would have to pay the fee themselves. Likewise, "Housing Bill Scotland" should make it perfectly clear that any legislation applies equally to property owners whether they are Council or private and cannot be used as a money-making exercise by any Council. To give you an example, in Paisley, they have introduced a policy of cyclical maintenance and are applying this to all Council owned housing. The affect of this is that where private owners are in the same building they are hit by charges for maintenance that is not necessary but because it is on the list it has to be done. Who gains while the property is maintained? The winners are the Council Direct Labour Force who are guaranteed years of work.

I hope you take my comments into consideration.

Robert Mould
13 January 2014
NORTH AYRSHIRE COUNCIL
WRITTEN SUBMISSION

Part 1: Right to Buy
This part of the Bill abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

North Ayrshire Council (NAC) supports the abolition of the right to buy. This proposal is in line with our Local Housing Strategy and increasing the supply of affordable social housing. NAC is committed to this through our council house building programme with which we aim to build 500 new homes over 10 years. From 2011 to 2013 we have completed a programme which produced 83 new homes; however, we lost 112 houses through the RTB Scheme in the same timescale. Three current projects will deliver 134 new homes with further projects identified for completion before 2015. This substantial investment in our housing programme goes some way to alleviate the pressure on the authority due to the lack of affordable housing in the area.

Our authority has also invested in the Mortgage to Rent Scheme which has seen demand for this increase over the last few years and resulted in further increases in capital budget to try and accommodate this demand. In 2011/12 we purchased 16 houses through the scheme, however, we found that demand was very high and as a result, we increased the capital budget for 2012/13. We also purchased 12 ex local authority properties from the open market in 2012/13 and we currently have funding to ‘buy back’ a further five properties.

Since the Scheme started in 1980, 46% of the housing stock has been lost to the Council and as evidenced above, we are trying to add to our current stock of housing however, schemes such as Right to Buy negate this good work. Demand for social housing is high and the Council would wish to protect these homes for future generations and as such we have made significant investment in several areas.

In addition to the above we have estate management issues with mixed tenure blocks. A great deal of investment is planned to ensure we meet the targets set for minimum housing standards, however, mixed tenure properties can be very problematic for our standard delivery plan. Ending Right to Buy would help to reduce such instances.
Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

With publicity surrounding the changes preceding royal assent, a short notice period of between 6 months and one year would have been sufficient as tenants have already had a long period to exercise their right but for whatever reason, they have chosen not to do so. The modernised entitlement is less attractive due to the smaller discount offered and with the lack of mortgages available, the likelihood of there being a surge from this group, is fairly low. There is little chance of an upsurge in the economy over the next year; therefore the affordability of Right to Buy will probably not change much during this time.

A three year lead-in period is too long.

Part 2: Social Housing
This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Part 2 of the Bill does marginally increase the flexibility that landlords already have when allocating housing and has the potential to allow them to make best use of their stock.

See comment on each section below:

Section 3 – It is noted that under-occupying is now included in the legal preference groups. This flexibility already exists and the North Ayrshire Housing Allocation Policy gives points to applicants that NAC and our partner RSL’s consider to be under-occupying.

We also note that a duty to give reasonable preference to overcrowding applicants has been removed. The criterion used to calculate over-crowding and under-occupation is clearly linked and in North Ayrshire is calculated on an agreed occupancy standard.

In North Ayrshire there are almost twice as many applicants registered with overcrowding points than there are with under-occupation points.

The flexibility to include overcrowding will exist but some landlords may choose not to as there is no legal requirement that they should. Should landlords choose not to include overcrowding within their allocation polices this has the potential to have a negative impact on younger people and those with children who wish to live independently from their parents.

The benefits of this section appear limited and the likelihood of significant impact on flexibility is unclear.

Sections 5 – Taking applicants’ age into account when allocating is a welcome amendment of some significance and will allow landlords to make better use of stock in certain
circumstances. Guidance would be welcome to ensure landlords do not breach Equality legislation on grounds of age discrimination.

Section 6 - Taking property ownership into account is likely to be complex to administer but we do acknowledge that the public perception is that current rules are unfair when owners access social housing.

However, it is likely to have the 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”.

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. Flexibility cannot be used on a case by case basis but needs to be incorporated into a robust policy statement.

This flexibility is likely to create complexities in implementation that need to be carefully considered.

Section 7 – Allows landlords to impose a minimum period before an applicant is eligible for the allocation of housing. This amendment is welcome and legislates for the practice of suspending an applicant from receiving offers in specified circumstances. This will have little impact in North Ayrshire as we already operate a suspension policy.

Section 13 & 14 - Introduces a qualifying period before persons qualify for joint tenancy, assignation, sublet and other changes around succession. These changes are welcome and will minimise the potential for abuse. Flexibility exists to allow approval of applications where refusal appears harsh.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

We agree that, under the current legislation, very few cases meet the criteria for granting SSSTs for antisocial behaviour. Our normal approach (in line with the national antisocial behaviour framework ‘Promoting Positive Outcomes’) is to only use enforcement action, such as ASBOs and evictions, after other interventions – including other partners’ powers to act – have been unsuccessful. However, where we have been able to use SSSTs, our experience is that they have been an effective incentive for some (but not all) tenants to engage with the support offered and address their antisocial behaviour.

With regard to the proposal to allow social landlords to grant new tenants a SSST on antisocial behaviour grounds when they consider it reasonable, it is worth noting that the power already exists to establish any new tenancy as a SSST on support grounds. We have
used this option, with the offer of intensive support, in a small number of cases where there have been reasonable concerns about the sustainability of the tenancy, based on the applicant’s history of antisocial behaviour, but where no court order has been obtained for either recovery of possession or an ASBO.

The ability to impose a SSST on an existing tenant at an earlier stage could assist with cases where the antisocial behaviour persists despite warnings, and the legal process is likely to be drawn out e.g. where the case is being defended and an application has been made for legal aid.

We broadly support the proposal to bring forward the use of SSSTs to address antisocial behaviour to an earlier stage than is currently prescribed. The legislation does, however, need to be clear on the definition of ‘antisocial manner’ and ‘in or near their home’.

There have been discussions in the Antisocial Behaviour Officers Forum (ASBOF) regarding this being the procurement of an Interim Antisocial Behaviour Order. Using the Interim ASBO in this case may have an impact on the number granted by Sheriffs, given they will consider the impact it will have on a person’s tenancy. This could potentially damage a useful and quick method of protecting tenants if the Interim ASBO becomes more difficult to obtain. Consideration also needs to be given to implications of the term ‘antisocial behaviour’ being defined as lesser than the offender having a related conviction. Unless allegations against a person have been tested in court, there may be human rights challenges in reducing a person’s tenancy without adequate evidence of their behaviour.

We have some concerns about the suggestion that housing law on antisocial behaviour might be extended beyond behaviour which occurs in and around a tenant’s property. Our concerns are primarily about reasonableness and the impact that this might have on household members – including the tenant – who are unconnected to or have no control over the behaviour in the wider community. Courts tend to have a narrow view of a locus where a crime is committed. A definition is required to clarify whether ‘in or near their home’ is the street in which they live, neighbourhood, town, or wider. How this is described will influence whether this will allow more use of the SSST.

Representatives of North Ayrshire Tenants & Residents Network generally supported the proposal to allow more SSSTs for antisocial behaviour, but they had mixed views on the suggestion that housing law might focus more widely than solely in and around the tenancy – some supported this while others felt it would be unreasonable.

We support the opportunity to extend SSSTs for a further 6 months after the initial 12 months. This will be useful in allowing additional time to monitor the situation, as in some cases reports of antisocial behaviour can recur after the 12 month period.

In terms of a more streamlined eviction process, it would be helpful in some Ground 2 cases where there has been a conviction for dealing drugs, particularly where it is the tenant who has been convicted, to allow decree for eviction without having to demonstrate that it is reasonable to do so. This would help to speed up the process and lessen the impact on
neighbours who have been affected by the drug-dealing activity over a long time.

ASBOF also suggest that this could be useful where someone is convicted of breach of an ASBO that is tenancy related – this could provide a quicker resolution than converting the tenancy to a SSST and then ending the SSST after a further 6 months.

Representatives of North Ayrshire Tenants & Residents Network unanimously supported this proposal as a means of speeding up the lengthy court processes.

It is, however, important to clarify what is considered to be both 'illegal activity' and 'in or around the property', to avoid unreasonable expectations from members of the public that landlords will act on criminal activity out with that linked to the tenancy.

Expectations could be raised about the type of criminal or antisocial behaviour which would trigger an ‘automatic’ eviction. Clarity would be required on issues such as behaviour committed ‘in the locality of the house’ e.g. would this include a tenant’s son convicted of assault in the street where she lives? It would also be relevant to consider whether neighbours were aware of and affected or harmed by the criminal activity.

The courts are likely to be wary of the proposal to enable conflated decisions, where a decision in a criminal case could lead directly to a tenant losing their home. Sheriffs may view this as punishing a person twice for the same crime without being able to consider the reasonableness of the civil action to evict. For example, they would not have the opportunity to consider issues such as the tenant’s knowledge of drug-related offences committed at their house by another household member or visitor. Our experience is that Sheriffs are not inclined to grant decree in such circumstances unless they are satisfied that the tenant would have known that dealing was taking place.

Decisions on intentional homelessness may be affected if there is no opportunity to consider whether it is reasonable to evict the tenant.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

In terms of the extension of the SSST from 6 to 12 months, this will provide more protection for the tenant. It will allow more time for any supports in place to work on offending behaviour, with a view to sustaining the tenancy. Conversely, extending the period of the SSST may impact on the victims of antisocial behaviour, by effectively elongating the period that person has to endure their neighbour acting in an antisocial manner, in cases where supports provided are not successful in addressing the offenders' behaviour. Although there is the possibility of proceeding with eviction for a tenant in a SSST, this is a lengthy legal process and may not be quicker than ending the SSST.

5
We support the introduction of compulsion for social landlords to give reasons why they are recovering possession of a SSST, and NAC currently as a matter of course, provide this information to the court. The legislation does however need to be clear on the level of proof required to end the tenancy. Clarification is required on whether further reported incidents (as a reason for terminating the SSST) need to be corroborated, and if there is a minimum number of incidents that would define further offending behaviour. Without this clarification, there is a risk that ‘the neighbour continues to report antisocial behaviour’ could be brought into question as a reason to end a tenancy, and corroborated evidence requested.

Allowing SSST tenants to request a review prior to landlords seeking recovery of possession in cases where the tenancy will not be converted to an SST does provide further protection for tenants, but clarification should be given to the review process. Would there be an expectation that this review would be carried out by someone other than who made the decision not to convert the SSST? This could affect the current decision making process. Again, it is essential that clear definitions of antisocial behaviour and locus of offences are provided in the legislation, to provide transparency in the decision making process.

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

North Ayrshire Council welcomes the new private rented sector tribunal which will help resolve landlord/tenant disputes and which we see as an improvement to the current system. This new tribunal will free up sheriffs time to deal with other cases and help to bring consistency to housing enforcement matters. Not all Sheriffs are equipped with specialist housing knowledge whereas members of future tribunals will be chosen for their specific knowledge and experience in the private housing sector.

An additional benefit might be that it may free up more time in the Sheriff Court allowing local authority housing matters to be dealt with more quickly. This assumes that there will be the same resources remaining at the Sheriff Court to deal with the cases. As it is a new system it is hard to judge the effect that it will have. If a different approach is adopted to the Sheriff Court (either more lenient or stricter) this may have a corresponding effect on the local authority’s homelessness duties.
Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The changes are minor and do not go far enough in terms of allowing local authorities to combat the problems of disrepair in the private sector. The powers are also discretionary and as such their use will be directly related to resources available and priorities within individual local authorities.

We would like to see additional or amended powers in terms of Local Authorities reclaiming costs associated with paying missing shares or undertaking works (e.g. resulting from a works notice), as the current methods leave too much risk of money being unrecovered. Although there are existing powers to reclaim money, they have long repayment periods i.e. 30yrs. A system where the owners and Council can agree terms for repayment, such as over a 5 year or 10 year repayment plan, tied to the property title would give local authorities more confidence to pay missing shares and undertake work through a work notice.

Additional or increased enforcement, such as mandatory revocation of a landlord’s licence for properties below the tolerable standard (where the landlord has not brought them up to standard within a reasonable time) would also be welcome to give local authorities powers to combat disrepair in the private rented sector.

The discretionary powers to allow local authorities to make a Private Rented Housing Panel (PRHP) referral on behalf of a private tenant are welcomed and we expect this would be beneficial in cases where tenants are frightened or unwilling to make the application themselves for fear of reprisals from the landlord. If the referrals came directly from a local authority the tenant would then have no involvement in the process and this could mitigate the risk of a tenant being harassed by an aggressive landlord.

Currently if a private tenant makes an application to the PRHP and leaves the tenancy before the matter is settled this effectively withdraws the application. In future, if the application is made by a third party, e.g. Local Authority, then this would allow the case to progress to conclusion.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

NAC welcome any additional powers that would enable local authorities to tackle disrepair in areas of poor quality housing in the private rented and owner occupied sector. However, resource issues will have a bearing on whether or not local authorities are able to prioritise them.
Many local authorities do not utilise current powers available to them within the Housing (Scotland) Act 2006. The 2006 act introduced the Housing Renewal Area designation (HRA) that could be used where local authorities identify a high proportion of properties deemed to be in disrepair. The local authority can then serve work and demolition notices that would allow them to implement the work required. These powers are not widely used and we look forward to the introduction of new powers that will make this process easier for councils.

**Part 4: Letting Agents**

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

**Q10.** Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

Creating a register of letting agents and a fit and proper test to be a letting agent should help to protect tenants. A statutory code of practice should help to maintain a consistent level of service for tenants and landlords that use the services of a letting agency. Only allowing tenants or landlords to apply to the First-tier Tribunal may limit the effectiveness of this code. Many tenants may be unwilling or feel unable to take a case to the tribunal for fear of being evicted or other repercussion from the letting agent.

**Q11.** Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Tenants may well have to be supported through the tribunal application process. Many more vulnerable tenants may not be able to negotiate the tribunal process themselves.

Should the letting agent fail to comply with a notice from a tribunal then it would need to be taken back to the tribunal. Should the tribunal agree, they may notify the Scottish Ministers of the failure (presumably questioning the fit and proper test). There is no redress for landlords or tenants for failure to comply. The Letting agent may be deemed to be unfit but this would not assist the landlord or tenant at that point.

The requirement to go back to the tribunal to establish a breach, and have them determine it is a breach before the matter becomes a criminal offence seems a long and drawn out process. Also, if a decision by the Tribunal that a failure to comply with the code of practice does not create a presumption that the letting agent has failed to comply then the same facts will have to be established twice before different courts. This seems a duplication and
unnecessarily lengthy.

Perhaps a decision regarding a failure to comply should establish a presumption with the onus then falling on the letting agent to prove that it was not a failure/offence. This does not seem unreasonable given that a judicial body will have already established a failure to comply.

**Part 5: Mobile Home Sites with Permanent Residents**

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

**Q12. Do you have any views on the proposed new licensing scheme?**

**Generally**

1. Consideration should be given to the question, whether or not the proposed scheme for licensing caravan sites is within the legislative competence of the Scottish Parliament. It authorises Councils to remove rights which licence-holders might have held for years, and it might be argued that this offends the European Convention on Human Rights 1950.

**ECHR, Protocol 1, Article 1 (Protection of property):**

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Bill proposes a major change to the existing legislation:

a) At present, Site Licences are perpetual and free of charge (they do not require to be renewed, and there is no Annual Fee such as is found in more modern licensing legislation). With one exception from 2007, all the NAC Sites which are currently licensed obtained their licences many years ago (from the District Council or the County Council), when the sole issue was whether or not the owner had Planning Permission. There was no vetting of licence-holders, and no means of a Council intervening if, for example, it was alleged that the licence-holder was treating residents badly;

b) The Bill proposes to replace these with new Licences, charging fees, and to introduce a 3-year renewable licence, with a “fit and proper person” test.
Supposing that a person has operated a Caravan Site for years but is now refused the grant or renewal of the Licence (he will apply for his first new-style Licence before the 2-year Transitional Period provided for in Cl. 71 expires). Does the Site have to close? Are the residents to be evicted? Will the Council face an appeal argument that it has breached the owner's Human Rights?

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

1. Site operators have to pay a fee every three years, and have to incur the costs associated with repeated applications (e.g. staff time, fees of solicitors and architects), whereas previously the licence was free and perpetual. If there are Hearings (below) then the legal fees for representation would increase.

2. The Bill does not propose to change the existing law: the old-style licence conditions cannot be enforced by the Council (e.g. suspending the licence), and can be enforced only by prosecution by the Procurator Fiscal (contrast other licensing legislation, e.g. Civic Government (S) Act 1982, Sch. 1, Para. 11 & 12; and Licensing (S) Act 2005, ss. 36-39). Perhaps the Crown might be asked to advise how many prosecutions have been taken under the 1960 Act.

Instead the Bill's scheme is:

(a) Penalty Notices can be served after the Council has served an Improvement Notice (new sec. 32X(1)(b)),

(b) The licence-holder's failures might be taken into account by the Council when considering whether or not

   (i) to renew the licence after 3 years, or

   (ii) to revoke the licence.

This is a cumbersome procedure which may disadvantage residents who have Site Owners who breach the expected standards since it is slow. The case would call at 2 separate meetings.

1. The Council has to decide whether or not to make an 'Improvement Notice'. If it does, the case is continued to the next meeting, to allow the Site Owner time to comply;

2. At the second hearing, the Committee must decide whether or not the 'Improvement Notice' has been complied with. If it varies the Notice, e.g. extending the time for
compliance, the case is continued again. If it is not continued, the Committee has to decide whether or not to revoke.

NAC's Licensing Committee only has 6 meetings annually

In contrast, the procedures for Suspension or Review in other licensing systems require only one hearing: assuming that the Licensing Authority decides, after hearing the licence-holder, that the complaint is justified, it can proceed immediately to impose a sanction (such as suspension of the Licence). It might choose to continue the case to a later hearing to allow the licence-holder to remedy the defect, or it might impose the sanction immediately and leave it to the licence-holder to seek recall of the Suspension if he later thinks that he has done what was required (as in Civic Government (S) Act 1982, Sch. 1, Para. 11(6) and Licensing (S) Act 2005, sec. 40), but under the Bill's system it would have no option but to hold two separate hearings.

Part 6: Private Housing Conditions
This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

The proposal and amendments clearly set out the intended process for progressing scenarios where owners cannot pay, refuse to pay or cannot be found and this will assist with progressing communal repair issues. However, the Bill states under Part 6, Tenement Management Scheme (4) that “before making payment under this section, the local authority must notify the owner who has failed to pay a share of any scheme costs.” Additional clarification on how to notify owners who cannot be found would be appreciated i.e. is it sufficient to serve notification on the property?

Part 7: Miscellaneous
This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.
Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

 exempt certain securities from the right to redeem after 20 years

This will allow lenders to participate in the Help to Buy (Scotland) Scheme and ensure that the Scottish Government is not exposed to the financial risks of the 20 year security rule i.e. that borrowers would be able to redeem their loan come year 20 at its original value by reference to pounds and pence, rather than by reference to property value.

Other Issues
Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

N/A

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

N/A

North Ayrshire Council
3 March 2014
NORTH LANARKSHIRE FEDERATION OF TENANTS AND RESIDENTS ASSOCIATION
WRITTEN SUBMISSION

Introduction
In order to respond to the Scottish Government’s Housing (Scotland) Bill; North Lanarkshire Federation of Tenants and Residents Association organised an open meeting for members of local tenants and residents groups to discuss the content of the Bill and to feedback comments.

The following report details the comments and feedback from the session.

Part 1: Right to Buy
We agree that the Right to Buy should be abolished.

Those who were in agreement, felt that the Right to Buy had resulted in a lack of choice of available houses for tenants and felt that the ‘good housing’ had gone.

However, some people are a bit unsure of this proposal and feel that it seems unfair that new tenants, particularly young people; wouldn’t have the same choice as other tenants to buy their own home.

Therefore we feel it’s important to add that we feel there is a need to look at helping people to be able to buy their home and there needs to be a good choice of options in terms of social housing.

It was agreed that three years seems too long a timeframe; however it is difficult to agree on an alternative timescale. Most people felt one year was suitable others didn’t, and a compromise was perhaps a two year timeframe and that 3 years was the maximum timescale that should be applied.

Part 2: Social Housing
We agree that landlords should have more flexibility when allocating houses, in line with the proposal that landlords must consult with tenants and tenants groups when deciding on the preference categories.

We agree that in some categories there is perhaps a need to deal with cases on a ‘case by case’ basis.

We understand that homelessness comes under different legislation and that landlords must apply legislation to respond to homeless applicants however we feel that the system needs to be robust.
We strongly agree that landlords should be able to take in an applicant’s previous anti-social behavior into account when allocating a house and would add that this is particularly relevant and important if and when people who have been anti-social are moved from one area to another. We feel this should also be the case with homeless applicants as well.

We agree with the proposal that landlords must consult with tenants and tenants groups regarding any proposals to change allocation policies and procedures.

We support the introduction of taking age in account; however we also feel that there needs to be sensitivity around lets particularly to young people.

**Succession, Joint Tenancies, Assignations and Sub Letting**

We feel more information is required in the bill on these situations; however we have given some response to this section as noted below.

We agree with the proposal that people should live in a house (as their only home) for 12 months instead of six months. We feel it’s also important that people can’t ‘queue jump’ and therefore the system needs to be robust but sensitive.

We agree that people should only be able to take over a tenancy if they would have normally been allocated the house in terms of size and type.

**Short Scottish Secure Tenancies (SSST’s)**

We agree that SSST’s should be increased from 6 months to 12 months. This was a difficult one to agree on particularly in relation to ASB; but overall we agree with the proposal.

In terms of who should be given an SSST we agree that this should be the case for the examples given in the Bill, but with the exception of owners – we really feel we need more info on the situation referring to owners.

**Anti-Social Behavior – SSST’s**

We agree that SSST’s should be increased from 6 to 12 months where there has been previous ASB. We also agree that this will help landlords manage tenancies more effectively.

We feel that more information is required in relation to SSST’s and ASB so that tenants can have more understanding of this.

**Part 3: Private Rented Sector**

We agree that there should be increased powers to deal with the PRS. We think this will help to speed up the process of dealing with disputes etc. We feel this is necessary to protect the rights of tenants living in the private sector as
fundamentally we feel that all tenants regardless of where they live or whether
they are local authority, RSL or private tenants they should have rights and
recourse.

With regards the proposal of a new first tier tribunal to deal with disputes in the
PRS, we agree with this proposal.

We feel that this will perhaps make the process of dealing with disputes quicker;
however we’re not sure that this has been demonstrated.

We would add that that the tribunal would need to have ‘clout & teeth’ to ensure it
would have enforceable powers. We feel it’s important to stress that the tribunal
can’t just be a ‘talking shop’.

We feel more information is required about the tribunal, and would suggest that
perhaps a trial/pilot period would be useful to see how this would work, and to
see how successful the tribunal process would be.

We also feel we need more information on how this will be funded and
resourced.

We are a bit disappointed that this is only being proposed within the private
sector and not within the social housing sector.

We agree that local authorities should have more power to tackle poor housing
conditions in the PRS but it’s not just about power it’s about ensuring that
decisions made by LA’s are enforceable.

We also agree that other agencies should also be able to have more power in
these situations.

We would also add that there needs to be a register of who landlords are and
information on what a landlord’s powers are.

**Part 4: Letting Agents**

We agree that there should be mandatory registration letting agents, as we feel
it’s important to protect all tenants regardless of who their landlord is.

We feel it’s crucial that letting agents must be required to meet set standards
such as a Code of Conduct, and a set of rules and regulations. We also suggest
that it’s important that it’s not just about registration - there needs to be checks in
place to ensure landlords meet their obligations.

We feel that there are situations where people let out their homes but don’t see
themselves as landlords, and this must be addressed both for the tenant and the
person letting their home.
More information on this and how it will be carried out, as well as and what the point and purpose of registration is required.

**Part 5 Mobile Homes and Parks Sites**

We agree with the introduction of a new license system and that all mobile homes and park sites should be licensed and operated by fit and proper persons. In our opinion it is important to ensure that tenants are protected and that landlords are responsible.

We agree that Local Authorities should have powers to grant and evoke licenses.

We agree that Local Authorities should have powers to ensure sites are managed, maintained and repaired effectively; however we need more information on how this and the enforcement of license powers will be funded, and would add this shouldn't affect tenants.

**Part 6: Private Housing Conditions**

We support the idea that Local Authorities should have powers to enforce private landlords to carry out repairs and maintenance on their properties. We would suggest that there is a set standard similar to the Scottish Quality Housing Standard.

**Part 7: Miscellaneous**

**Transferring Registered Social Landlord Assets**

We have some concerns regarding the proposal to introduce additional powers for the SHR with regards the transfer of assets. We feel we need more information and clarification of the circumstances when this would be used.

We realise that it is proposed that this would only be used in extreme circumstances and we see that it is there to protect tenants, however we feel it is really important to stress this needs to be used only in very extreme circumstances and therefore shouldn't be in place on a regular basis. We feel that if this type of situation is likely then it should be picked up by the regulator before it gets to this stage through SHR’s existing checks and systems.

North Lanarkshire Federation of Tenants and Residents Association
27 February 2014
Introduction

Given the continued increase in tenants living in the private rented sector, NUS Scotland is keen to see legislation introduced which results in empowered tenants, better landlords and increased housing quality.

The issue of disrepair in the private rented sector, and the inability of tenants to act upon it through lack of knowledge, or fear of eviction, is a significant problem. We feel that in order to drive up quality in the private rented sector, students, and indeed all tenants, should have easy access to information about their rights, and how they can act upon them without fear of sanction.

Furthermore, NUS Scotland is keen to see legislation which would improve the safety and energy efficiency standards of accommodation, as this would make private rented sector housing safer and more affordable.

We also recognise that while housing quality is important to student tenants, many students struggle with rising rental costs. We encourage the Scottish Government to act to reduce rental costs in areas where they have risen to an unreasonable level.

Areas of support

NUS Scotland particularly supports three of the bill’s main provisions, namely:

1. Introduction of a private rented sector tribunal
2. Introduction of mandatory letting agent registration
3. New powers for local authorities to tackle poor conditions in the private rented sector

Areas for improvement

Although we believe each of these new provisions will empower tenants, there are a number of areas where we believe the Bill falls short of its goal to “safeguard consumer interests, support improved quality and deliver better outcomes for communities.”

We believe that amendments should be made to the Bill at Stage 2 that will deliver the following outcomes:

1. Reduced rental costs
2. Extension of powers to challenge rogue landlords
3. Improved energy efficiency electrical safety in Private Sector Housing
Private rented sector tribunal

NUS Scotland supports the provision in the Bill that would back the creation of a new tribunal that would have the power to resolve civil disputes within the private rented sector.

As highlighted in previous consultation responses, tenants rarely assert their statutory rights in court, as many are reluctant to take action for fear of repercussions from their landlords, and a lack of successful prosecutions for illegal eviction, charging premium fees and acting as an unregistered landlord.

We believe this new provision to transfer the Sheriff Court’s existing jurisdiction to deal with matters relating to private rented housing to a new Private Rented Sector Tribunal will empower tenants to take action; it will be less formal and more accessible to tenants, as they will not need legal representation to challenge an unfair act by their landlord.

The Bill provides scope to charge a fee for parties to bring a case before the tribunal. However, the tribunal would require an exemptions policy for those who could not afford to pay. Free legal assistance should also be provided to vulnerable tenants and those on a low-income. This would ensure that everyone is able to navigate and understand the new dispute resolution process.

Furthermore, efforts should be made to engage tenants in the work of the panel. We believe that this engagement could encourage tenants to assert their rights in the future.

Letting agent registration

NUS Scotland welcomes the introduction of regulation for letting agents, and the establishment of a dispute resolution process for landlords, tenants and agents, and the requirement for all letting agents to register and adhere to a statutory code of practice.

NUS Scotland is supportive of this approach, as it has the potential to reduce elements of poor practice among letting agents in Scotland, such as illegal ‘premium’ fees, the failure to register and failure to carry out safety checks.

It is crucial, however, that the new regulation be implemented in a meaningful way. The code of practice, which will be developed in consultation with stakeholders, must set a high standard for letting agents. We believe that the code should be clear on what constitutes a breach of good practice, and on what actions tenants who have suffered from poor conduct on the part of letting agents can take.

Furthermore, NUS Scotland encourages the Scottish Government to ensure that tenants are informed of this new dispute resolution process and that the information is easily accessible.

It is also crucial that the process is free for vulnerable tenants and those who are on a low income. This is particularly important considering cases where a tenant has suffered financial loss due to the poor conduct of a letting agent.
New powers for local authorities

NUS Scotland supports the proposal in the Bill that will allow third party reporting to the Private Rented Housing Panel (PRHP) on disputes concerning repairing standards.

However, we believe the process could be strengthened by expanding the number of third parties involved, and by taking action beyond the reporting process in order to improve security of tenure in the Private Housing Sector.

Currently, in order to enforce repair standards, a tenant must report their landlord to the PRHP themselves. Evidence suggests that some tenants are unwilling to take enforcement action, as this may put their tenant/landlord relationship, and their tenancy, at risk.

NUS Scotland supports the provision in the Bill that enables local authorities to report on behalf of tenants, which could help protect tenants from eviction, or conflict with their landlord.

However, we believe that enabling a broader spectrum of third parties to report on behalf of tenants would improve the accessibility of this new process. We believe these third parties could include local housing associations, other not-for-profit organisations working in the housing sector on behalf of tenants, and even students’ associations.

In order to further protect tenants, NUS Scotland would urge the Government to ensure that the reporting process is implemented in a manner that does not create conflict between landlords and tenants, and that tenants are fully informed of the implications of third-party reporting.

Furthermore, we would like to see the Scottish Government take action to improve security of tenure for tenants in the private rented sector, beyond the proposed provisions.

Energy efficiency and electrical safety

The Bill goes some way to enabling tenants to better enforce statutory standards in private rented accommodation. However, NUS Scotland believes that further regulations to protect tenants from poor quality private sector housing are required.

Despite previous Government efforts, many rented flats and houses in Scotland are expensive and difficult to heat. Poor energy efficiency performance not only has financial and health implications for tenants, it is also harmful for the environment.

As many tenants in private rented housing are on short-term leases, they do not have the opportunity to invest in improving the energy efficiency of their rented accommodation.

Currently, landlords have to produce an Energy Ratings Certificate for the accommodation they are letting. The next possible step we would like to see
is a requirement for landlords to update their properties to perform at a minimum energy efficiency level prior to any lease being signed.

While NUS Scotland recognises that the Scottish Government is supportive of the idea of a minimum energy efficiency standard for all private rented accommodation providers, we are concerned about the timeframe proposed for implementing the standards, and would like to see the Government introduce a minimum energy rating by 2015.

Furthermore, NUS Scotland urges the Scottish Government to consider further electrical safety standards in the private rented sector. The majority of accidental domestic fires in Scotland are caused by electricity, and research from Ipsos MORI suggests that private tenants are more at risk from electrical fires than owner-occupiers.

We believe that the above mentioned risks could be mitigated by legislating for mandatory electrical safety checks in all private rented sector housing, as well as to require the provision of RCD protection in all properties1.

Reduction rental costs

NUS Scotland believes that housing is first and foremost a vital right which must be accessible and affordable for all.

In some parts of Scotland, rental costs of private sector housing have risen to an unreasonably high level. For example, Aberdeen has seen a 10% to 15% annual increase in rent in recent years.

High rents can also have severe implications for tenants in private sector housing that are living on a low income or are otherwise vulnerable. Rent levels have a significant impact on the student population in particular, as for many, rental costs take up a large part of their income.

NUS Scotland believes that unaffordable rent levels should be addressed in the Bill, and urges the Scottish Government to introduce measures in the Bill to reduce high rental costs.

Measures to address high rental costs, such as rent controls, have been successfully used in countries such as Germany, Sweden and the Netherlands. Rent controls could, for example, take the form of ‘tenancy rent control’, whereby a limit is set on the amount of rent increase that a landlord can introduce.

We believe that local authorities could be given the power to implement rent controls in order to ensure that they are tailored to local housing needs.

NUS Scotland recognises concerns that measures such as rent controls could potentially reduce the supply of private rented sector housing by discouraging developers from building new housing stock and landlords from letting out accommodation.

1 An RCD is a life-saving device which is designed to prevent you from getting a fatal electric shock if you touch something live, such as a bare wire. It provides a level of protection that ordinary fuses or circuit-breakers cannot provide.
We believe that these potential negative consequences could be mitigated, however, by introducing vacancy control on vacant housing stock and by making newly built housing stock exempt from rent controls.

**Conclusion**

NUS Scotland believes that the Housing (Scotland) Bill will go a long way in empowering tenants, including students, to be able to better assert their rights and access dispute resolution mechanisms. We feel that by acting to regulate electrical safety, energy efficiency and rental costs, the Scottish Government would further ensure that student in Scotland have access to safe and affordable housing.

**NUS Scotland**

20.02.14
Call for views on the Housing (Scotland) Bill

The Infrastructure and Capital Investment Committee is seeking views on the general principles of the Housing (Scotland) Bill. A copy of the Bill and the accompanying documents can be found on the Scottish Parliament's website.

The Bill was introduced in the Scottish Parliament on 21 November 2013. The Infrastructure and Capital Investment Committee has been designated as the lead committee for Stage 1 consideration of the Bill.

**Aims of the Bill**

The Bill aims to make a variety of legislative changes relating to the social and private sector housing sectors.

**Committee consideration at Stage 1**

The Infrastructure and Capital Investment Committee expects to consider written submissions and to take oral evidence from mid-January to mid-March 2014, before reporting on the Bill's general principles in early April 2014.

The Committee therefore invites all interested organisations and individuals to submit written evidence on the Bill and its likely impact. In particular, the Committee would like to receive responses to a number of key questions that are set out below under each of the Bill's main headings.

**Part 1: Right to Buy**

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

**Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?**

My view is that Right to Buy should be abolished as soon as possible to preserve as much social housing as possible. Tenants are still buying their homes in Pior I know of it recently.

**Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?**

Yes, my view is that 3 years is far too long. That means in Scotland have already had plenty of time to get informed. Reduce the time to 2 or even 1 year.

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LYNNE PALMER (INDIVIDUAL)
WRITTEN SUBMISSION
Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q3. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocation housing, allow them to make best use of social housing?

I agree with most of it - the parts I understand anyway.

My view is that every tenant should be under an initial tenancy for a period of time after signing for a house or flat.

Prospective tenants should provide a CV to LAS or RSLs or should have a variety of references.

My view is that property owners should not have any opportunity to get a house or flat in the Social Rental Sector, not even temporarily.

Q4. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

As far as I can tell, the new proposals to help deal with ASB are good. Only one I don't agree with is the proposed right to appeal. Giving clear reasons to the ASR team as to why the property is being reported so that he/she learns a hard lesson, only them will stop them being anti-social.

A tough stance is needed so no right of appeal. The ASB tenant will spin things out as much as they can, causing continual problems for neighbours & delays in use of flat or house.

Q5. Will this part of the Bill meet the Scottish Government's objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

As said above the new proposals are good, but re ASB no tenant who is doing ASB should be given too much room to move. (The change from 6 months to 12 months is OK).

Scott. Govt. wouldn't want to strengthen the rights of tenants who commit ASB whilst that tenant's neighbours & the wider community are made to suffer. This Scottish Bill must have worked!!
Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q6. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to new First-tier Tribunal?

I think this is a very good proposal, especially because it will be empowering in private sector bounds. The Tribunal should remove the fear of going to court. Also, ‘student’ accommodation will be better protected and landlords will learn not to take advantage of students as others.

Q7. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

As a student, I think it’s important for them to stand up to unscrupulous landlords; this is what is needed. More legislation is needed across the board to protect tenants in the private rented sector. Tenants who are not students need just as much support as they are often at the mercy of private landlords.

Q8. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

I believe this will be a good move by Scot. Gov. If it doesn’t happen, whole blocks or flats/terraced houses will fall into disrepair. No-one will look after buildings. Poor landlord practices need to be prevented by new legislation. Can legislation be included for people living in bed accommodation, room, flat, house.
Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q9. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

All of this will be very good and should protect the tenant from unsuitable practices done by letting agents.

The new registration system will be the start of improvement in the private sector along with registration of private landlords. But will next become statutory law.

Q10. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

I believe we need more legislation or regulation in the private rented sector so as to create order or remove the free-for-all practices which sometimes go on.

The proposed Tribunals Bill should provide such a mechanism.

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q11. Do you have any views on the proposed new licensing scheme?

New laws will bring better practices to these sites. Mandatory registration of industry standard will both be legal—this is excellent. Codes of Practice are usually just guidelines, so this is problematic—needs to be stronger than just codes. Dispute resolution could be in its new Tribunals Bill.
Q12. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

There will be more controls on site operators – more order for residents – this is a good thing.

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act of 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q13. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work particularly in tenemental properties?

Is this to do with people who have bought their home under Part 2, or refuse to pay their share of costs? Anything that can be done to improve the problem of owner-occupied refusing to pay their share of maintenance work in tenement multi-storey buildings will be much appreciated by tenants and council housing services. If all the occupiers are owners the cost should not come out of the HRA.

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 if the Land Tenure Reform (Scotland) Act 1974, the conferral of power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.
Q14. Do you have any comments in relation to the range of miscellaneous housing provisions set out in this part of the Bill?

Other Issues

Q15. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

I may be confused re. owner-occupier. If a tenant has owner-occupied property, the LA or RSL needs help to get an owner-occupier to pay their share of maintenance works. Their share would go into the HRA, or RSL finance. If all the properties are owner-occupied or sub-let, the LA or RSL should not be concerning themselves at all with the property, not in any sense.

Q16. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Did you consult on the use of the HRA in LA’s or the finance of RSL’s regarding tenements, multi-storey or people who refuse to pay their share of works or maintenance?

HRAs or finance of RSL’s should not be used for private owner-occupier or sub-letting.

Submitting your views to the Committee

The committee invites views from all individuals and organisations who have an interest in the issues covered by the Bill.

You may only have a view on certain provisions contained in the Bill, so please do not feel that you have to respond to all of the questions that are set out above. In addition, if you wish to provide comments on issues relating to the Bill that are not covered by the specific questions then the Committee invites you to submit these.

Before making a submission, please read the Parliament’s policy on treatment of written evidence by subject and mandatory committees, which can be found on the Scottish Parliament’s website (http://www.scottish.parliament.uk/).

Lynne Palmer

11 February 2014
Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

In 2012 our Association submitted our response to the Government consultation on the Future of Right to Buy. At that time we indicated that we support the proposal to end the RTB altogether and that view remains the same. However we are aware that some tenants with the RTB consider that although they do not want to use it, they do not want to lose it and others may have aspirations to purchase in the future.

Whilst being sympathetic to this view, it is the position of the Association that our response must focus on the strategic position relating to the supply of social rented housing and the business needs of the Association.

Our Association has lost 270 properties through the Preserved Right to Buy (PRTB) since we were established through an initial stock transfer in 1998. This stock has mainly been cottage type accommodation in sought after locations. We feel that this drain on social rented housing should come to an end to prevent the loss of any more housing through the right to buy when increasingly the demand for housing outstrips supply.

It is our view that a number of developments indicate that the RTB as a policy for diversifying tenure to create more mixed communities has now run its course and should now be scrapped. We would offer the following argument to support this case.

There is an increase in home owners making applications under the Mortgage to Rent Scheme run by the Scottish Government to have their home bought by the council or a housing association. We have acquired a significant number of properties through this route and a number of these have been former RTB properties. We have also been approached by owners who have purchased their homes through the Right to Buy and now can no longer afford to retain these or wish to move on and find it difficult to sell the property. This is leading to an increase in empty owner occupied properties in estates where there is a demand for social rent.

Some owners are being left behind in terms of investment in the fabric of the properties as social landlords bring their properties up to the Scottish Housing Quality Standard. As owners are not required to reach these same standards
this is leading to some poor quality housing among owners struggling in the current economic climate.

Our Association faces many problems in flatted tenements where there is owner occupation trying to get owners to agree to participate in work to common areas especially if they do not live in the building and rent out the property. If sales continue, we feel this problem will only increase in buildings in blocks/estates where there is multiple ownership making it harder to reach targets set by the Scottish Government to improve social housing.

In addition the ending of the Right to Buy would bring more certainty in forward business planning.

**Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?**

In our response to the Government consultation we indicated that instead of the proposed 3 year timetable before these provisions come into force we support giving tenants a maximum of two years notice. This would allow tenants who wish to exercise their right to buy the opportunity to do so. Extending the period beyond 2 years will only create continuing uncertainty around planning assumptions and there would be ongoing administrative burdens around areas such as the maintenance of right to buy registers, staff training in the various right to buy schemes etc.

We would also urge that the notice period should be clear in its intent – is it a period of years to complete the purchase or intimate the intention to exercise the right to buy? Uncertainty around this will cause confusion.

**Part 2: Social Housing**

**Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?**

**Replacement of Reasonable Preference Categories**

The replacement of the previous reasonable preference categories with broader definitions will continue to give us flexibility when allocating housing especially the inclusion of existing tenants who are under-occupying. These tenants require reasonable preference to downsize by doing this it frees up properties suitable for larger families who require them.

**Taking Property Ownership into Account**

We welcome the proposal to allow us to take property ownership into account
especially if the owner has suitable property available for them to use. However, it may be difficult to establish if an applicant does own other accommodation. We also have concerns that existing tenants in the social rented sector who are adequately housed are not barred from applying for alternative house therefore, homeowners could claim it is discriminatory for them to be barred.

**Taking Age into account**
We appreciate being given flexibility on allocations by age range as it would be helpful in trying to establish balanced communities. However there will need to be clarity how this will operate in terms of the equalities legislation.

**Assignations, successions and joint tenancies**
We support the proposed amendment for assignations to replace the current six-month qualifying period and extend it to 12-months before a tenant can apply for a joint tenancy or to assign the tenancy to another person. With the increased pressure on the demand for the scarce resource of social housing it is appropriate to impose a longer timescale. However, for succession and joint tenancies we feel that there should be some discretion built into the 12-month rule. We feel that this would be the case for successions where a person has given up their only principal home to become a carer and then find that on the death of the tenant they could find they fall short of the 12-month period by a matter of a few weeks.

**Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?**

We would like to see greater clarity on the process to be undertaken for the statutory right of review required before court action is taken for tenants whose SSST is not going to convert to a full SST.

**Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?**

**Part 3: Private Rented Housing**

**Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?**

We welcome the transfer of certain private rented sector cases to the new First-tier Tribunal as it is felt this will free up valuable court time to handle other cases.
Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

We can see the merit for enhancing the local authority powers and agree with the proposals.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

We support any proposal to allow local authorities to target specific areas for enforcement action where deemed necessary.

Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

We agree with the proposal to create regulation of letting agents. This legislation will prevent inappropriate people setting themselves up as a lettings agent.

The creation of a mandatory register with associated “fit and proper person test” and statutory code of practice is consistent with the model already set up for Factors in Scotland.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

We feel that by giving the First Tier Tribunal a range of enforcement orders available to use for a dispute resolution system it will allow the Tribunal to work in the same way as the Homeowner Housing Panel for Factoring.
Part 5: Mobile Home Sites with Permanent Residents

Q12. Do you have any views on the proposed new licensing scheme?

This is not an area in which our Association is involved and no comments have been made.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

As above

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

The right to buy has changed the ownership of tenemental properties in social rented housing schemes from single to multiple-ownership. We have experience of owners where we have difficulty tracing them or they are unable, unwilling to participate in repair or maintenance work for which they are legally obliged to pay a share of the cost. We therefore welcome this power which will help to tackle the issue of poor maintenance in tenemental properties. By allowing local authorities to pay a missing share when the majority of owners in a tenement have agreed to carry out work it relieves the other owners from the burden of being liable for the costs of the another owner.

We also agree with the proposal that the local authority should be allowed to recover costs of the missing share and any associated administrative expenses from the owner on whose behalf it was paid.

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?
The Bill’s provisions to amend Section 67 of the Housing (Scotland) Act 2010 would allow the SHR in certain circumstances in a potential insolvency situation to transfer the assets of an RSL without consulting tenants or secured creditors. Whilst we appreciate that consulting with tenants can be time consuming when there is a need to move quickly in a potential insolvency situation we do not agree that it should be removed entirely. This goes against all the principles of the Scottish Social Housing Charter. It is our opinion that consultation should take place, where viable, taking into account the need for urgent action.

We cannot understand why the obligation to consult with the lender(s) as secured creditors is being removed. It is our view that in any rescue situations it needs all parties to work together – the SHR, the landlord in trouble, the new landlord and the lenders of both landlords. The receiving landlord will need to consult with its lender if it is borrowing to ensure that they are happy for that RSL to take on additional obligations and that their loan covenants are not being breached.

We cannot see how a partial transfer could be structured in the absence of an indication of the value applying to the stock to be transferred. This would mean the SHR could transfer stock at a nominal value and could be subject to allegations of fraud.

We feel that giving this power in its current form could make lenders nervous of financing registered social landlords in Scotland.

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Paragon Housing Association
28 February 2014
PARTICK UNITED RESIDENTS GROUP
WRITTEN SUBMISSION

Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

The Right to Buy should be abolished due to the ever increasing pressure on social housing stock

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

Too long. 18 months would be enough

Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q3. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Yes, RSL’s require more flexibility

Q4. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

Reservations about short Scottish Secure tenancies:

- People may behave impeccably for 6 months then revert to type
- Other tenants may feel insecure due to uncertainty of tenancy
Q5. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

Right to appeal does strengthen tenants rights to a degree, but not convinced. This requires further consultation

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q6. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

Situations can be resolved quickly which will help minimize stress to tenants

Q7. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

Any legislation which helps improve and maintain the fabric of buildings and living conditions for tenants must be good

Q8. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

Enforcement action, if carried out, will have a significant impact on private rented housing issues, however, will LA’s have the resources to implement such actions?

Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the
existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

**Q9.** Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

Essential to have a code of conduct – this will give a reference point to both sides

**Q10.** Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Tribunal process should help resolve disputes fairly

**Part 5: Mobile Home Sites with Permanent Residents**

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

**Q11.** Do you have any views on the proposed new licensing scheme?

No

**Q13.** What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

N/A

**Part 6: Private Housing Conditions**

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

**Q13.** Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

These enforcement powers are vital to the upkeep and continued maintenance of tenemental property
Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q14. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

None

Other Issues

Q15. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

None

Q16. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

None

Partrick United Residents Group
21.02.14
As a landlord with rental property in Scotland I would like to make the following comments in relation to the Housing (Scotland) Bill:

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user-friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

There is the potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered letting agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The proposed mechanism is appropriate in providing a simple and swift method of resolving disputes.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

S & D Properties Group
04 February 2014
MR & MRS A SCHOFIELD (INDIVIDUAL)

WRITTEN SUBMISSION

My husband and I took great care and a long time to view many caravan sites before deciding that Cairnsmill would be our best choice. My Husband was quite poorly when we first moved from Lancashire, and this site was such a quiet, calming site but also within easy reach of our only child and her family.

Q12. The Bill as we see it seems to be designed for the lowest category of sites owners at the expense of the good ones.

Q13. The implications are numerous!!! We have a good working relationship with the owners of the site who look after it's residents perfectly well. We have a contract with the owner which we went over carefully (re-loopholes) which could cause us a problem in the future at our age & retirement.

Now with this new Bill it has thrown this into confusion and brought unnecessary uncertainty & worries. What happens If the owner loses the licence and we are then unable to live here as a Resident??????

Who pays for the financial implications involved????

This has really unsettled us and made us very uneasy about our future!!!!!!

We feel the rules should only be applied to those sites with certain bad reputations and complaints.

Far more checking and possible fines etc; to those sites are applicable. Do not penalise those sites who work hard to make them a successes and have such consideration for its residents.

Many thanks for taking the time to read and act on this letter.

Mr & Mrs A Schofield
27 February 2014
SCOTTISH BORDERS TENANTS ORGANISATION

WRITTEN SUBMISSION

Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

The Scottish Borders Tenants Organisation supports the proposal to abolish the RTB for social housing tenants in Scotland.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

Agree in principle that 3 years gives sufficient time to prepare for the withdrawal of the RTB, and for Social Landlords to review their Business Plans, however, a shorter period could stop much needed social housing being reduced.

Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Agree.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

In its present format the protection to tenants will not be made by the Bill unless clear guidance and definitions of all the terms are made.
Q6. *Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?*

Yes, feel it will give tenants more rights.

**Part 3: Private Rented Housing**

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. *Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?*

This would be a positive move forward and make quicker resolutions.

Q8. *Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?*

Support any improvements to better housing stock and living conditions in the private sector, may be a need for better engagement processes with private landlords and tenants. Possible improvement grants/loans for consideration to assist with type/category of improvements.

Q9. *Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?*

Support provisions being brought forward that will enhance improvements to housing stock,

**Part 4: Letting Agents**

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent
enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

Approve and welcome the proposal as it will bring in new levels of standards.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Support the proposals in principle.

Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. Do you have any views on the proposed new licensing scheme?

Support the proposals, feel there is a greater need for control and development of people managing sites and people living on sites.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

Investment to better how they are managed and regulated, but it is hoped it would improve the use of sites for all parties.

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?
In support of legislation that improves poor maintenance and safety to benefit living conditions.

Scottish Borders Tenants Organisation
27 February 2014
I welcome the opportunity to comment on the Housing (Scotland) Bill. As Scotland’s Commissioner for Children and Young People, my role is to promote and safeguard the rights of children and young people in Scotland. In so doing I have a duty to keep under review law, policy and practice relating to the rights of children and young people.¹

I have limited my comments to the sections of the Bill which I believe are of most relevance to children and young people. When mentioning the impact of a proposal on children and young people, I am referring to both the dependents of tenants and young people who are tenants in their own right.

I would urge the Committee to carry out a Children’s Rights Impact Assessment² on the Bill in order to fully assess the potential impact of this legislation on children, young people and families.

Section 3 - Reasonable preference in allocation of social housing

I note the Bill’s intention to alter the reasonable preference provisions in section 20 (1) of the Housing (Scotland) Act 1987. Whilst this will offer increased flexibility for social landlords in how they allocate their housing stock, I am concerned that an unintended consequence of this may be that some families, in particular those living in poor quality and/or overcrowded homes, could find it more difficult to access better housing. As a result, children living in conditions that are impacting negatively on their health and well-being may continue to do so for much longer than would currently be the case.

Whilst the order-making power proposed in Section 4(2) has the potential to mitigate this, there is a danger that social landlords will still be free to set their priorities in a way that ensures that, whilst not completely excluded, these vulnerable groups will be given a lower priority when housing is being allocated.

Section 5 – Factors which may be considered in allocation: age

Section 5 of the draft Bill proposes to amend the 1987 Act and allow social landlords to take the age of a prospective tenant into account when considering how to allocate their housing stock.

¹ Section 4(2)(b), Commissioner for Children and Young People (Scotland) Act 2003
Whilst the intention is to increase flexibility for landlords, there are significant risks in operating such a policy. It is very likely that in prioritising one age group, then another group of tenants will be disadvantaged. If, for example, a social landlord were to designate the majority of ground-floor flats in their housing stock as primarily suitable for older people, then young disabled people and the families of disabled children would find it more difficult to access suitable housing. Where such housing is already scarce, it is important that this should continue to be allocated on the basis of need.

The requirement that social landlords must act in the spirit of the Equality Act 2010 when allocating housing to tenants under the age of 18 is well-intentioned. However, it remains unclear how an individual young person could seek to challenge any perceived unfairness on the part of the social landlord.

I would also seek reassurance that this policy would not inadvertently lead to some younger tenants, including young care leavers, being placed in less desirable areas at the expense of other age groups, a concern that has previously been expressed by young people and those advocating for them.

Sections 8, 10, 11 and 12 – Short Scottish Secure Tenancy/Anti-Social Behaviour

Proposals in Sections 8, 10, 11 and 12 of the Bill seek to relax the circumstances in which social landlords can impose a short SST or seek to convert an existing SST to a short SST.

Where previously there was a requirement for the tenant to have been subject to court action related to their anti-social behaviour, the Bill proposes that an existing tenancy could be converted to a short SST where the social landlord believes that the tenant or someone living with the tenant has behaved anti-socially in the past 3 years.

As drafted, the decision to convert an existing SST to a short SST appears to rely almost entirely on the social landlord’s perception of what constitutes anti-social behaviour. Whilst the tenant would have the right to appeal this decision to the court, I am concerned that repeated complaints from neighbours could be taken as evidence of anti-social behaviour, without these being objectively examined until a very late stage in proceedings.

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3 Quarriers Condemned Campaign, 2009, see http://www.youtube.com/watch?v=hnE5yi8-2Bc
4 Financial Memorandum, para 67
5 Scottish Government 2013e, Shelter (Scotland) response
This proposal also has the potential to target some children and young people unfairly, e.g. families where there are children/young people with certain types of disability (whose behaviour might be perceived to be anti-social, when in fact it is related to their disability), families where there is a history of domestic abuse and young care leavers attempting to sustain their first tenancy.

I would also be concerned if families that had sustained a tenancy successfully for a number of years found themselves at increased risk of becoming homeless, as a result of a social landlord’s decision to convert them to a short SST.

The Committee may also wish to consider how the present proposals would ‘fit’ with the wider approach to tackling anti-social behaviour, which in recent years has rightly become more focused on holistically considering the needs and challenges presented by those considered to be behaving anti-socially.

Scotland’s Commissioner for Children & Young People
28 February 2014
About us

The Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers to equality and the promotion of independent living for people affected by disability.

We are a membership organisation, representing individuals affected by disability, and organisations and groups who share our values. Our aim is to ensure that the voices of people affected by disability are heard and heeded within their own communities and at a national and political level.

Our views on the Bill

SDEF is supportive of the principles and aims of the Bill. We would like to give our specific backing to three provisions:

1. Part 2: Social Housing - Allocation of social housing
   S3 Reasonable preference in allocation of social housing

   We welcome the retention of ‘reasonable preference’ in the allocation of social housing for those who are ‘living under unsatisfactory housing conditions, and have unmet housing needs’.

   The Scottish Government’s research in 2011 highlighted that those with a housing need linked to a longstanding illness or disability are widely regarded as falling within unsatisfactory housing conditions.

   One in five disabled people who require housing adaptations live in a home that is not very, or not at all, suitable for them according to the 2012 Scottish House Condition Survey. The Scottish Household Survey 2012 highlights that more than half of households in the social rented sector contain someone with a long standing limiting illness, health problem or disability.

   It is vital that this change to housing legislation is included to ensure disabled people’s needs remain a priority for social housing providers. In addition, we ask that the Committee to consider a recommendation that a more direct statement of the need to meet disabled people’s needs should be made in any related Scottish Government guidance.

2. Part 2: Social Housing - Scottish secure tenancy
   S16 Recovery of possession of properties designed for special needs

   We welcome the clarification of the law regarding the right to recover an accessible property from a tenant not requiring such a home. Research
published by Horizon Housing and the Chartered Institute for Housing in 2012 highlighted a shortfall of 17,000 wheelchair accessible homes.

Building more accessible homes is the only way to resolve this significant issue. However, making it easier to re-allocate those that are available to those in real need is a logical move that could be a real help to many disabled people.

3. Part 3: Private Rented Housing - Transfer of sheriff’s jurisdiction to First-tier Tribunal
   S19 Right to adapt rented houses

We welcome the proposal to allow appeals to be made to the First-tier Tribunal against a landlord’s decision to refuse permission for an adaptation to suit a disabled person. Scottish Government research\(^1\) highlights that disabled people are more likely to experience civil legal problems than non-disabled people (31% as opposed to 26% in 2010/2011). Providing a tribunal route should prove simpler and less intimidating for those affected.

Scottish Disability Equality Forum
28 February 2014

\(^1\) Scottish Crime and Justice Survey 2010-11
SCOTTISH GAS

WRITTEN SUBMISSION

Summary

Scottish Gas supports the Scottish Government in bringing forward legislation to improve standards in the private rented sector in Scotland through the introduction of its Housing Bill. We entirely support the aim of the Bill “to support improved quality across all rented housing sectors, but with a particular emphasis on the private rented sector.”

In particular we welcome the provision in the Bill to create a new specialist Private Rented Sector tribunal. We believe that this will provide better, quicker and more expert dispute resolution across all housing and landlord/tenant issues. We also welcome the proposed new and enhanced Local Authority powers to intervene to improve standards in the private rented sector. It is the view of Scottish Gas that these provisions, if passed, will make a considerable contribution to improving standards in this sector, and to begin to address the problems which exist within it.

However, as set out below, Scottish Gas also considers that the Scottish Government might have gone further to improve safety and energy efficiency.

Introduction

1. Scottish Gas is one of the leading energy and home service suppliers in the country with over 1.5 million residential customer accounts across Scotland. As part of British Gas our engineers visit 50,000 homes each day across the UK. We supply gas and electricity to more than one million homes in Scotland, and we employ around 900 engineers to carry out service and repair work.

2. In October 2012, Scottish Gas and Shelter Scotland joined forces to help tackle the problem of poor quality private rented homes. As part of a broader partnership with Shelter and as part of British Gas we aim to improve the conditions of one million privately rented homes across the UK over the five years of the partnership. Key themes of this
partnership are to improve the safety and warmth of tenants in the private sector as well as providing help and advice to landlords and tenants.

3. We believe the problem of poor standards in the private rented sector is made more acute by the fact that the PRS is an important source of housing for many vulnerable groups and also households with children make up an ever increasing proportion of its residents.

4. We support action to reduce the number of homes which fail to meet the repairing standard as set out in the Housing (Scotland) Act of 2006.

5. On safety, carbon monoxide (CO) gas is known as the 'silent killer' because it is invisible and has no smell. CO can be emitted by any faulty appliance which burns a carbon based fuel such as gas, petrol, oil, coal and wood, and as little as 2% in the air can kill within one to three minutes. Children, elderly people, pregnant women and people with respiratory problems are particularly at risk from carbon monoxide poisoning.

6. 69% of all accidental fires in Scottish homes are caused by electrical problems – amounting to 3,400 incidents annually. Scottish Gas supports the Electrical Safety Council’s call for mandatory 5 yearly checks of electrical installations and appliances; and the introduction of RCD protection in all properties.

Improving safety, warmth and well-being

Scottish Gas believes that safety and well-being in the PRS could be improved through simple steps and would recommend:

- Requiring the presence of an audible carbon monoxide alarm mandatory in all private rented properties that have gas appliances.

- Introducing into regulation that a landlords’ accreditation scheme should require landlords to not only have an Energy Performance Certificate, a gas safety certificate and electrical safety checks - but that certified copies should be provided to the tenant at the beginning of the tenancy and every 12 months during the life of the tenancy.
• A five yearly electrical safety check which would provide significant additional protection for tenants and is a relatively low-cost way for the Scottish Government and the rented sector in Scotland to demonstrate leadership and best practice.

• Ensuring that Local Authorities have the resources to carry out regular, proactive checking of PRS properties, in accordance with their proposed enhanced powers. Scottish Gas believes this will be particularly important with regards to enforcement under the definition of the repairing standard as introduced by the Housing (Scotland) Act 2006, and the investigation of tenant complaints. It will also be invaluable in ensuring enforcement action can be pursued where necessary.

• Reducing the number of tenants in cold and damp accommodation by promoting measures to increase energy efficiency and reduce fuel poverty such as:
  o encouraging landlords to commission improvements and take advantage of funding that is currently available through the Energy Company Obligation to do so
  o ensuring that greater numbers of landlords adhere to their statutory duty to provide an Energy Performance Certificate to their tenants by requiring that copies are made available to tenants and accrediting bodies responsible for compliance.

• Requiring the inclusion of an obligation for landlords on repairs within the rental contract and the proposed Codes of Practice would be enhanced by adding a Service Level Agreement. This would require a landlord to make provision for repairs within an agreed specified timetable.

• Providing education programmes for tenants and landlords to ensure both understand their rights and responsibilities in this area.

• Consider the early implementation of Section 55(6) of the Energy Act (2011) which states that “Scottish domestic energy efficiency regulations may come into force no earlier than 1 April 2015.”
Scottish Gas believes that this would deliver significant and lasting positive impacts for the health, financial and social wellbeing of tenants across Scotland. It will also have a number of secondary effects, including contributing to the aims of the Scottish Government to eradicate fuel poverty by 2016.

Scottish Gas
27 February 2014
The Scottish Independent Advocacy Alliance is the national membership body for Scottish advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland.

The right to independent advocacy for those with mental disorders or who are potentially at risk is enshrined in Scottish legislation. However, independent advocacy can also have a key role in supporting anyone who is vulnerable due to their situation or circumstances. The SIAA aims to ensure that independent advocacy is available to any vulnerable person in Scotland.

Q7: Do you have any comments on the proposals for transferring certain PRS cases from the Sheriff Courts to the new First-Tier Tribunal?

The SIAA welcomes the movement of (private rented sector) housing cases from the Sheriff Court to the new First-Tier Tribunal. Tribunals are on the whole more accessible for users, particularly those who may be vulnerable, than court proceedings. The less formal nature of Tribunal proceedings are less likely to be intimidating to individuals who may already be fearful and anxious about their situation and about facing a hearing.

However we believe that in only transferring private rented sector business to a specialist housing tribunal, there is a risk of a disparity of approach in how tenants are dealt with. This is likely to put Social Rented Sector tenants at a disadvantage and misses the opportunity to improve access to justice for many vulnerable tenants in Scotland.

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. Access to independent advocacy, particularly for vulnerable tenants can help individuals to understand their rights and responsibilities, consider options and possible outcomes from situations and ensure that their views and opinions are heard and taken into account. This will go a long way towards supporting meaningful dialogue in any dispute.
The importance of independent advocacy support in other tribunal settings, in particular in a Mental Health Tribunal, has been recognised. 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. Access to independent advocacy should be a right for tenants in a dispute situation. There should be a duty on statutory agencies to ensure that staff are aware of the role of independent advocacy and, when becoming involved in a dispute, inform individuals about advocacy and local advocacy provision.

The Scottish Independent Advocacy Alliance (SIAA) is Scotland’s national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

Scottish Independent Advocacy Alliance
28 February 2014
SCOTTISH PROPERTY FEDERATION

WRITTEN SUBMISSION

Introduction to SPF

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors including major institutional investors, developers, landlords of commercial and residential property, and professional property consultants and advisers.

General Comments

2. Greater scales of investment and landlords can act as drivers for improvements in both condition of the private rented sector (PRS), choice for tenants and improvement of the image of the sector as a whole in Scotland. This mixture of positive benefits for the sector will encourage greater confidence for householders deciding to rent rather than own for the time being, or while they build sufficient finance backing for a deposit.

3. Attracting larger scale investment should also be about new build development for rental purposes. This would introduce a scale of quality and choice that would support wider objectives such as additional supply and more energy efficiency housing. Larger scale landlords will also have costs to consider but generally may be in a better position to effect energy efficiency improvements and invest in property condition, than those who operate on a smaller scale.

Part 1: Right to Buy

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

Abolition of the right to buy is likely to provide greater cohesion in the provision of Council housing stock. There have been recent examples of Local Authorities buying individual properties in the housing market (including previous Right to Buy Units) at market value to increase inadequate housing stock levels. Such funding should be directed at modern, new build housing. Local Authorities will have greater certainty in the evaluation of existing social stock levels and also potentially in the implementation of refurbishment programmes (including energy, sustainability & fabric improvement programmes) as there will be less "fragmentation" of housing tenure in priority areas.
Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

3 to 5 years would be a reasonable period.

Part 2: Social Housing

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Our members support these provisions which should allow delivery to be focused on the neediest and prevent those who can afford open market rental or ownership taking much needed low cost housing. However, there is a risk of inconsistency in approach and therefore national guidance will be required particularly in relation to the highest categories of homelessness and legal standards. There is also a risk of landlords receiving inaccurate or fraudulent information from potential tenants, which will require provisions for legal recourse.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

Our members welcome the provisions in the Bill to convert to Short SSTs to tackle antisocial behaviour and the streamlining of the eviction process in order to deal with antisocial behaviour. The current process is lengthy and costly for landlords as well as stressful for other tenants. It should also shift greater priority to the most eligible applicants.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

Our members welcome the extension of the qualifying period for succession to 12 months. We have also argued in the past for a system of consent/registration for succession purposes to be introduced, so the introduction of the provision at section 14 is also welcome. Tenants should notify the landlord of new occupiers, but they regularly fail to do so, causing issues around proving occupancy for succession purposes. We agree that succession should not be permitted unless the new occupier has been notified to the landlord and the current tenant consents to them being registered as being in qualifying occupation for the purposes of succeeding to the tenancy. This provides protection for both tenant and the landlord.

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

While our members acknowledge that this proposal could result in consistency in decision making, they are concerned that the new process could be time consuming
and expensive and therefore there is a risk that it would not be an improvement on the current sheriff court process. They wish to ensure that any new procedure would streamline the current sheriff court process and support a reliable and speedy decision making process offering a fair outcome for all groups. Access to redress is not merely an issue for the consumer; it is also one for landlords for whom a monthly deposit may be little compensation for loss of rent of two or more months or significant damage to a property. Our members have also questioned the implications for legal aid as a result of the transfer to the Tribunal process.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

Our members are concerned that such a fragmented sector, with many single property owning landlords who will have mortgages to cover, amongst other costs, then even a month or two’s possible shortfall in rent while upgrades take place will be a cost too far. Larger scale landlords will also have costs to consider but generally may be in a better position to effect energy efficiency improvements and invest in property condition, than those who operate on a smaller scale. Our members are of the view that local authorities’ powers should be restricted to safety and security as the definition of poor conditions could vary widely among tenants, landlords and their agents. There have also been problems in relation to internal controls in the past e.g. Edinburgh Council. It is our members clear view that the Condition Report which forms part of the Home Report should not be used as an indicator of condition due to the speculative nature and lack of consistency in the preparation of these reports.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

Clearly there is an enormous challenge to improve property condition and energy efficiency across the PRS in general. The nature of the sector will not make it easy to address this problem. It is the strong view of our members that the sector should be market driven. A recent discussion with a landlord seeking to make energy efficiency improvements in a rural setting suggested that there could be considerable upwards pressure on rents. This is not likely to be an unusual scenario. It is important therefore that the government makes a balanced impact assessment before proceeding with any form of compulsory measure. It is worth considering too that the expensive use of energy in homes may well be related to the ability of occupants to make choices about paying for energy consumption.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?
The SPF supports the licensing of letting and managing agents in an appropriate form in order to level the playing field between agents who adopt good practice and those who do not. Larger scale, professionally managed, schemes would enhance the quality of PRS accommodation and empower tenants by providing choice. Landlords will lose out if high standards are not maintained and flexibility not offered. We feel it is important therefore that Letting Agents and Managing Agents who provide such key services to both tenants and landlords are performing equally to good practice standards. It remains the view of SPF that much well intentioned regulation has suffered through patchy enforcement, Landlord Registration being the clear example. Enforcement of existing provisions by local authorities and the government should be effective in routing out rogue landlords and tenants who behave badly. If a proper register of licensed letting agents is not put in place and the register of landlords is not properly enforced, there is a risk that rogue landlords will decide to operate on their own distancing themselves further from due process. Similar consideration could also be given to the inclusion of estate agents.

**Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?**

It is in the interest of the Landlord and their Agent to have a good relationship with a satisfied tenant. The ability to remove anti-social tenants must be enhanced for the benefit of landlords and their tenants if high standards are to be maintained as well as a speedy route to resolving disputes and rent arrear issues is necessary and the enforcement of existing provisions.

**Part 5: Mobile Home Sites with Permanent Residents**

**Q12. Do you have any views on the proposed new licensing scheme?**

No comment?

**Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?**

No comment?

**Part 6: Private Housing Conditions**

**Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?**

Members are of the view that this could be useful, along with a power to take over the voting rights, make payment and recover from non-paying parties, so long as decisions have been reached in accordance with the title deeds and tenement management schemes. However, this should be limited to repairs and maintenance it should not extend to require that owners improve their properties. Members suggest that local authorities could act as arbitrator to enforce decisions taken by owners under the title deeds, tenement management scheme or by unanimity.
Improvement of properties in the private sector should be market led to allow informed choice for investors.

Part 7: Miscellaneous

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

The Bill allows Scottish Ministers to designate schemes, such as Shared Equity or Equity Release schemes, which may be exempted from current provisions, and which allow borrowers to redeem loans at original value after 20 years. It is unclear if such exemption could be offered to providers of SE and Equity Release schemes in the Private Sector. Allowing the same rights of exemption to the private sector should extend the range of choice to home buyers and occupiers. There also appears to be implications in the potential for attracting Sharia compliant housing investment in Scotland on a "level playing field" to that available in England.

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

The single greatest problem in today’s housing market is lack of supply. The Private Rented Sector (PRS) can make a significant difference to the number of new homes provided in Scotland. It is vital that reforms to the tenancy regime do not undermine potential investment in the sector. The multiplier effect of new investment would bring enormous economic benefits and should, be actively encouraged and incentivised. As the growing PRS sector matures and investors are attracted to a stable and sustainable sector there may be benefit in considering PRS as a distinct planning use as part of planning policy. In the short-term however, in order to attract investment and confidence in the sector, some flexibility will be necessary.

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

No Comment?

4. The SPF would be pleased to explain its comments in further detail at the Committee’s request.

Scottish Property Federation
28 February 2014
SCOTTISH REFUGEE COUNCIL

WRITTEN SUBMISSION

About Scottish Refugee Council

1. Scottish Refugee Council is Scotland’s leading refugee charity with a vision to ensure that all refugees seeking protection in Scotland are welcomed, treated with dignity and respect and are able to achieve their full potential. We provide advice and information to people seeking asylum and refugees in Scotland. We also campaign for the fair treatment of refugees and asylum seekers and to raise awareness of refugee issues, including in areas such as housing, welfare, health, education, employment, justice, gender and equalities.

2. We also support organisations in the community working with or led by refugees; coordinate a variety of arts and cultural events; and work to raise the profile of refugees and asylum seekers in the media.

3. Our women’s project works in partnership with Refugee Women’s Strategy Group (RWSG), a group of refugee and asylum seeking women whose aim is to represent the views of refugee women to policy makers and service providers on the issues that affect their lives in Scotland. We include reference below to evidence produced by RWSG in relation to welfare as it impacts specifically on women and families.

4. Our community engagement team works in partnership with a number of Refugee Community Organisations including the Scottish Refugee Policy Forum (a group of refugee and asylum seekers whose aim is to represent the views of refugees women to policy makers and service providers) in order to develop their activities and ensure their activities have maximum impact. We include reference below to evidence produced by SRPF.

Introduction

5. Scottish Refugee Council welcomes the opportunity to respond to this call for views. We have not endeavoured to answer all of the questions set out in the consultation document. Instead we focus on the key areas of the Bill which may affect refugees in Scotland. We preface our response with an overview of the particular issues refugees face in relation to housing access in Scotland.
Background

6. An asylum seeker is a person who has made an application to the UK Government for protection and who is waiting for a decision on their application. Asylum seekers are persons subject to immigration control with temporary admission but not leave to enter or remain in the UK. While they await a decision on their claim, if they appear to the Home Secretary to be destitute or as likely to become destitute, they may receive accommodation and financial support from the Home Office which may extend to limited support, in limited circumstances, if that claim for asylum is refused.¹

7. In Scotland, Glasgow is the only area where asylum seekers are accommodated (under contractual arrangement) by the UK Government, however, there are a small number of asylum seekers across Scotland staying with family and friends, who may receive financial – subsistence only – support, or who may not be receiving any government support. In 2011, an estimated 2101 people in Scotland sought asylum² (roughly 0.04% of the Scottish population).

8. An asylum seeker’s application for asylum is assessed by the Home Office and if he or she meets the criteria set out in the 1951 UN Convention relating to the status of refugees, the asylum seeker will be recognised as a refugee and granted refugee status. In some circumstances, the asylum seeker may be granted a form of ‘subsidiary protection’ and status; either Humanitarian Protection or Discretionary Leave. The asylum seeker may also be granted an immigration status outside of the immigration rules. In the year 2012-2013, 869 refugees were granted leave to remain in Scotland.

9. Both asylum seekers and refugees have a right to access private and social housing (or at least to be admitted on to the waiting list).³ Refugees and people granted Discretionary Leave, Humanitarian Protection or

¹ Sections 95(1), 96(1) and 4(1)-(2) Immigration and Asylum Act 1999.
² This is not the actual number of asylum applications but an estimate based on the number of asylum seekers in Scotland receiving support from the Home Office.
³ This was confirmed by the Scottish Government Guidance on access to housing: http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16342/management/socialhousingaccess/allocations/Guide/Access/admiss ionlist
Indefinite Leave to Remain are all entitled public funds and have access to full housing options, including homelessness and social housing.

10. In its strategy, “New Scots: Integrating Refugees in Scotland’s Communities”, the Scottish Government has recognised the need for action to intervene early to address the housing needs of newly granted refugees, increase housing options for refugees and improve refugees’ access to suitable housing. We will pick up on many of these themes throughout this response.

**Aims of this call for evidence**

11. The Housing (Scotland) Bill was introduced to the Scottish Parliament on 21 November 2013. The Bill proposes a number of changes to housing law including:

a. Abolishing the right to buy in Scotland;
b. Changing the allocation and transfer of tenancies in the social sector;
c. Changing the procedure for dealing with repair problems in the private sector;
d. Increasing regulation of letting agents; and
e. Creating a new licencing regime for mobile home sites.

12. The Bill is now being scrutinised by the Infrastructure and Capital Investment Committee within the Scottish Parliament. Through this consultation, the Committee is seeking views on the general principles of the Bill.

**Abolition of the Right to Buy**

13. Scottish Refugee Council is broadly supportive of the abolition of the Right to Buy insomuch as this is likely to increase the availability of socially rented accommodation to meet the immediate needs of the refugee population. Although many refugees do aspire to own their own home, homelessness and the search for settled rented accommodation remain the dominant challenges faced by refugees⁴. Scottish Refugee Council, therefore, welcomes any steps to increase the availability of socially rented properties.

⁴ For further information see “New Scots: Integrating Refugees in Scotland’s Communities”
14. We do, however, have some concern that the three-year timetable for the abolition of the Right to Buy may be too long and may lead to increased buying activity within the next three years. We would argue that the timescale could be shortened to minimise the impact that the change has on the supply of social housing and to ensure that the changes come into effect swiftly.

**Changes to reasonable preference categories in Social Housing**

15. Scottish Refugee Council does not consider that there is a need to remove the categories of “intolerable standard of housing”, “overcrowding” and “large families” from the statutory requirements for reasonable preference. We consider that these categories are legitimate bases for preference for social housing and it is right that they should be specifically legislated for. We also consider that these parameters already give social landlords considerable flexibility so it is not clear why they should be abolished.

16. In particular, overcrowding is a serious issue for many refugees who have gone through the Family Reunion process (i.e. exercising their right to apply for family members to be reunited with them in the UK subsequent to their being granted refugee status). Such families commonly ask for rehousing in the social housing sector. This is a recognised problem in “New Scots: Integrating Refugees in Scotland's Communities”. We consider that many providers of social housing will continue to give priority in these circumstances as they will recognise that such situations are likely to give rise to “unsatisfactory housing conditions”. However, there is a danger that others will not, creating a divergence in the way that providers deal with applicants and a potential for unfairness in the system. As noted in “New Scots: Integrating Refugees in Scotland's Communities”, Scottish Refugee Council's research has indicated that 96% of refugees experience homelessness at some point after receiving status and there is evidence that many slip through the net and spend time 'sofa-surfing' and rough sleeping.

17. According to the most recent statistics from our Holistic Refugee Integration Service, in the last quarter of 2013 92.3% of Scottish Refugee Council clients were made homeless and presented to Glasgow City Council for assistance because of their asylum support ending. 3.8% of clients were made homeless through voluntary relocation and a further 3.8% were asked to leave their accommodation by friends.
18. Scottish Refugee Council therefore welcomes the proposal that homelessness continues to attract reasonable preference. However, we are concerned by the proposal to consider whether an applicant’s needs are capable of being met by other housing options. It is our view that the concept of “other housing options” is ill-defined and potentially problematic. It is not clear in any of the Bill documents what sort of housing options a housing authority would be entitled to consider and in what circumstances. Would, for example, a registered social landlord be entitled to consider a Section 5 referral from the Local Authority as an alternative housing option? Would a landlord be able to direct an applicant to the privately rented sector if they felt that this was a suitable alternative housing option? If so, there is the potential of the Bill having the effect of reducing the housing options of applicants at a time when the Scottish Government hopes to embed the Housing Options approach, not least within “New Scots: Integrating Refugees in Scotland’s Communities” and the Scottish Government’s Homeless Prevention Strategy.

19. We note that the policy documents state that if a particular group is consistently overlooked by social landlords, ministers would have a power under the Bill to require all landlords to include these groups in their allocation policies. We do not consider this is sufficient as (a) it relies on applicants to raise complaints and (b) it does not cover the likely eventuality that only certain landlords will exclude certain groups, meaning that it is unlikely that any one group will be consistently overlooked by social landlords.

20. It is our view that the current system of considering the housing situation of the applicant at the date of application is sufficient to allow housing authorities to decide whether the applicant is in housing need. We do not believe that it is necessary or desirable to allow housing authorities to consider alternative housing options when allocating preference.

21. It is also unclear why it is necessary or desirable to allow housing authorities to take age into account during allocations beyond the existing permissions provided at section 2B(a)-(b) Housing (Scotland) Act 1987. We consider that any attempt to allocate a property on the basis of age, as the proposed clause 5 implies, is likely to give rise to a complaint of unlawful age discrimination. Furthermore, it is not at all clear that allowing age to be taken into account in either determining priority for or in making
decisions on the allocation of social housing will be capable of objective justification in terms of section 13(2) Equality Act 2010. The proportionality test for such discrimination is high entailing (a) that the aim of the policy must be legitimate, (b) it must achieve that aim (c) its discriminatory effects must be significantly outweighed by the importance and benefits of the policy and (d) the aim could not have been fulfilled in another or less discriminatory way.

22. Furthermore, the potential for unjustifiable age-based discrimination arising from the new section 2B to the 1987 Act as carried in clause 5 of the Bill, has not been identified in the equality impact assessment accompanying the Bill and we recommend this is revisited to ensure the Bill does not, unintentionally, undermine the Scottish Government’s and local authorities’ ability to proactively eliminating unlawful conduct, pursuant to the Public Sector Equality Duty at s.149(1)(a) Equality Act 2010.

23. It is also the case that over 70% of new refugees are under the age of 35. We, therefore fear that refugees, especially younger refugees, may become adversely affected if Social Landlords apply age as a criterion in allocation decision. This may have the effect of (i) indirectly discriminating against younger refugees or, more crudely, (ii) allowing landlords to use age as a proxy for direct race discrimination.

24. Our concern on the clause is, therefore, both at the general level that it enables the arbitrary use of age as a criterion in housing allocation (and hence increase the risk of unlawful discrimination) and, specifically, that such use may adversely affect new, young refugees in trying to satisfy their real need of accessing settled and appropriate accommodation.

25. Scottish Refugee Council does welcome the extension of the principles set out in the Equality Act 2010 to cover 16 and 17 year-old applicants for housing as this enforces the rights of a vulnerable group but considers that this objective could be achieved without allowing housing authorities to take age into account in the allocation of housing.

26. Scottish Refugee Council appreciates why the Scottish Government seeks to take into account the ownership of property when allocating social housing. However, we have some concerns about the change as it is proposed. Firstly, the list of “exemptions” from consideration of the
property appears somewhat restrictive. There are a number of reasons why a property owner may seek social housing (for example overcrowding or affordability problems) which are not captured by the legislation currently proposed and could lead to unfair decisions being made. Secondly, the question of domestic abuse is problematic and requires further explanation. What definition of abuse should housing authorities use when deciding this question? What evidence of abuse would applicants be required to produce?

27. We consider that further guidance would be required to settle these matters and that, in the absence of such guidance (or statement that guidance will be produced), no change should be made.

**Conversion to / Granting of Short Secure Tenancies**

28. Scottish Refugee Council is mindful of the seriousness of anti-social behaviour and harassment and the need to effectively deal with it. The most prevalent way in which refugees and asylum seekers experience such behaviour is through hate crime\(^5\) (reflected in the “Communities and Social Connections” section of “New Scots: Integrating Refugees in Scotland’s Communities”). Thus we welcome initiatives to tackle harassment. However, this experience must be balanced against the need for secure homes, free from the threat of arbitrary eviction.

29. The Bill as we understand it will mean that a Secure Tenancy can be converted into a Short Secure tenancy by way of notice alleging anti-social behaviour or harassment, not involving a court order. Similarly, a Housing Authority will be able to create a Short Secure Tenancy if a notice has been served in the last three years. After the service of a Notice, the landlord would be able to terminate the tenancy, without proving the anti-social behaviour before a court.

30. Furthermore, we consider section 8(2) of the Bill to be unclear and somewhat poorly drafted. There is no reference, for example, to what constitutes anti-social behaviour, who decides when an incident of anti-social behaviour has occurred and how such a decision should be made. The Bill and associated documents do not specify the level of proof needed to trigger a notice under this section, nor do they specify how the

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use of short secure tenancies will be monitored or controlled. Although we think that there are a number of readings of the section which could be open to legal challenge, it is possible that the Bill gives an open-ended provision for landlords to choose when and how to serve conversion notices. We are, therefore, concerned about the potential over-use of short secure tenancies.

31. We consider that it is for the court, not the landlord, to decide whether someone has been guilty of anti-social behaviour or harassment. While we realise that tenants have the right to apply to the court to dispute the conversion of the tenancy, we are sceptical about how many tenants will be aware of this right and effectively exercise it. There is, therefore, a danger that tenants will face eviction without recourse to the legal system. This is likely to have an impact on individuals’ right to a fair trial and may lead to unfair results.

32. On balance, therefore, while we would welcome any further action to reduce anti-social behaviour and hate crime (such as measures to increase reporting and measures to make house transfers easier), we do not agree that these proposals are a proportionate response to this issue.

12-month qualifying periods for joint tenancies, succession etc.

33. We appreciate the reasoning behind setting additional stipulations for these matters. However, many refugees apply for accommodation as a single person but are quickly joined by their families as part of Family Reunion. Family Reunion research\(^6\) and our operational experience confirms that refugees rebuilding new lives in Scotland experience difficulties obtaining suitable family accommodation, or adapting to living in a different type of accommodation. We consider that partners, spouses and children who go through this process should not be disadvantaged as, but for their forcible separation, they would have applied for accommodation as a family. We would, therefore, suggest that the Bill allows for exceptions to the 12 month rule in such circumstances.

Private rented housing tribunals

34. We have no particular view on the location of housing eviction cases within the court system. We would, however, add that any future system

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\(^6\) “One Day we will be reunited” Experiences of Refugee Family Reunion in the UK April 2010
should be accessible to all communities and that legal aid should continue to be available for eviction cases.

Letting Agents and Private Housing Conditions

35. “New Scots: Integrating Refugees in Scotland’s Communities” recognises that the private rented sector is unattractive for refugees. Of the 523 cases that Scottish refugee Council dealt with in 2012/2013, only 6 individuals were housed in a privately rented property. There is some evidence from our casework services that one of the reasons for this is that refugees consider that they would be vulnerable to ruthless landlords and letting agents. We, therefore, welcome the proposals to further regulate the private rental sector and to increase third parties' rights to apply to the Private Rented Housing Panel. However, learning from the experience of landlord registration, it is important that future regulation of the private sector is designed to ensure standards are robustly enforced and regulating bodies are given real “teeth” to combat problems in the private housing sector. In the absence of this, the private sector will remain an unattractive housing option for refugees.

Other issues

36. We were disappointed to see that the Scottish Government has not taken forward proposals to improve security of tenure in the privately rented sector. We consider that (along with punitive Housing Benefit rules for under 35-year-olds7) the lack of security of the Short Scottish Assured Tenancy is one of the main factors deterring refugees from exploring the privately rented sector as a real housing option8. People need homes particularly following a period of major upheaval and unsettlement such as that entailed by the experience of fleeing for safety from persecution and seeking asylum in another country. Short tenancies do not provide the security needed to live a settled life. We would, therefore, urge the Scottish Government to consider further the need for private sector tenancy reform.

Scottish Refugee Council
28 February 2014

7 Statistics from our Holistic Refugee Integration Service show that approximately 73% of our refugees gaining status in Scotland are under the age of 35.
SCOTTISH TRIBUNALS & ADMINISTRATIVE JUSTICE ADVISORY COMMITTEE

WRITTEN SUBMISSION

This is the written evidence of the Scottish Tribunals & Administrative Justice Advisory Committee (STAJAC) in relation to the Infrastructure and Capital Investment Committee’s call for views on the Housing (Scotland) Bill as part of their Stage 1 scrutiny.

Scottish Tribunals & Administrative Justice Advisory Committee was created by Scottish Ministers as an interim advisory committee in November 2013 (following the abolishing of the Administrative Justice and Tribunals Council (ATJC) and its Scottish Committee), to provide external, expert scrutiny of the devolved administrative justice and tribunals system in Scotland.

The Housing (Scotland) Bill covers an extensive range of topics within the overarching subject of housing including abolishing the right to buy, social housing tenancies and the allocation of social housing, establishing a registration system for letting agents, and amending site licencing requirements for mobile home sites with permanent residents.

Of particular interest to this Committee are the provisions in Part 3 of the Bill relating to the transfer of existing Sheriff Court jurisdiction to the new first-tier Tribunal in private rented sector cases. This aspect of the Bill (relating to question 7 of the Call for Views) will be the focus of STAJAC’s comments.

Q7: Do you have any comments on the proposals for transferring certain PRS cases from the Sheriff Courts to the new First-Tier Tribunal?

The Benefit of Tribunals

The Scottish Tribunals & Administrative Justice Advisory Committee welcomes the movement of (private rented sector) housing cases from the Sheriff Court to the new First-Tier Tribunal. Tribunal-administered justice offers many advantages to users over court-administered proceedings in housing disputes: not least the characteristic hallmarks of specialism and accessibility.

The development of a specialist jurisdiction dealing with housing cases has achieved clearly stated support in recent years from organisations forwarding the user (tenant) perspective. The Civil Justice Advisory Group, established by Consumer Focus Scotland and chaired by Lord Coulsfield, recommended that there should be a specialist jurisdiction to deal with housing cases and suggested in their final report that a more interventionist, specialist and less formal forum would be a better way of identifying and resolving the issues
faced by users. This was also reflected by the Scottish Committee of the Administrative Justice and Tribunals Council.

In sum, these elements create an accessibility which court does not offer users. 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.

Specialism allows a forum to develop where the decision makers are experts and are aware of the complex issues a user may be navigating – including but not limited to the immediate legal issue before them (for example, those in housing debt are likely to have other debt problems, problems with benefits or other housing problems). An interventionist approach allows parties to present their own case without the need for lawyers with the expert (inquisitorial) decision makers adept at asking the right questions in order to elicit the information necessary to make an informed, reasoned and fair decision.

The less formal nature of the tribunal forum underpins this specialist and interventionist approach: holding the hearings outwith daunting court buildings and with greater flexibility in their rules and procedures. A tribunal is likely to be less intimidating for users than a court. The public associate courts strongly with criminal cases, and research has found that their perception of courts as institutions which deal with crime contributed to their reluctance to become involved in civil court proceedings. Going to court can cause real fear and anxiety for defenders in housing cases, as found by Consumer Focus Scotland/Scottish Legal Aid Board research ‘The Views and Experiences of Civil Sheriff Court Users’ from 2009. One defender in a rent arrears case said, for example:

‘I was actually shaking to be quite honest with you....What was going to happen to me, was I going to go to jail?.... I was sitting outside the court room and I was biting my nails...and I was actually crying.... Nobody had said what would happen to me’.

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In the housing context, the characteristic hallmarks of tribunals (user centred, affordable and expeditious) are important for landlords as well as tenants. Most private landlords in Scotland operate on a small scale- around 70% own only one property, while 95% own five properties or fewer. There has been long-standing support for a specialist housing forum from the Chartered Institute of Housing, who first argued for the change to a tribunal in 2004 for both the private rented and social rented sectors.

The Social Rented Sector

The Private Rented Sector (PRS) Tribunal should, for cases within the private rented sector, provide a forum of specialism, interventionism and accessibility. It is disappointing that the same benefit is not being extended to cases within the Social Rented Sector (SRS) at this stage.

Paragraph 123 of the Policy Memorandum which accompanies the Bill highlights the reasons the current dispute resolution mechanism (the sheriff court) is not working. These include:
- the length of time taken for a case to reach court
- frequent delays
- low priority of housing cases within the court system
- difficulty understanding/following process and procedure made worse by lack of representation
- inconsistent and unpredictable decisions

These issues are not exclusive to the PRS. They are shared equally with tenants in the SRS.

The Policy Objective, outlined at paragraph 104 of the Policy Memorandum, makes the benefit of a PRS tribunal clear: “to provide more efficient, accessible and specialist access to justice for both landlords and tenants in that sector.” While the proposals in the Bill will provide access for PRS tenants to a more specialist and less formal dispute resolution mechanism, it will be the minority of tenants in Scotland who are afforded access to this improved dispute resolution system and the vast majority of tenants in Scotland will still need to go to court.

In their consideration of a housing tribunal, the Civil Justice Advisory Group were clear in their belief that all housing cases should be dealt with by this new forum - including cases relating to social tenancies and mortgage

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repossessions. We endorse this view. And although the Civil Courts Review did not propose that housing cases be moved away from the courts, it did believe that all housing cases should be heard in the same forum. This is important in terms of consistency of approach, and also in the interests of users, for the reasons stated above.

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. Presumably this will apply only to cases relating to housing outwith the private rented sector. 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. It may also be difficult for judges who spend the majority of their time dealing with criminal cases in an adversarial environment to switch to a more inquisitorial approach when dealing with housing cases.

We therefore believe that in only transferring private rented sector business to a specialist housing tribunal, there is a risk of a disparity of approach in how tenants are dealt with in the civil justice system, depending on the type of tenancy they have, and in particular of putting SRS tenants at a disadvantage. There is accordingly a missed opportunity to improve access to justice for many vulnerable tenants in Scotland in limiting the tribunal to the PRS. It is not clear when, or if, SRS tenants will experience the benefits of similar accessibility to a specialist jurisdiction in the future.

Preparedness of the PRS Tribunal

In 2012, the Private Rented Housing Panel (PRHP) dealt with around 270 cases in total. It received 232 new repairing standard applications, and dealt with 37 rent cases. We understand, however, that the number of cases dealt with in 2013 was in excess of 300. In absolute terms, the number of cases which the Policy Memorandum suggests the increased caseload could reach is not substantial. The most significant addition to the jurisdiction is the transfer of actions for possession. This by itself would, on current figures, add 500 cases to the current PHRP case-load of 300 plus. This produces a total of

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7 Civil Justice Advisory Group Report Ensuring Effective Access to Appropriate and Affordable Dispute Resolution (2011)

8 Scottish Government (2010) Response to the Report and Recommendations of the Scottish Civil Courts Review, Edinburgh: Scottish Government. Note: this refers to ‘district judges’ rather than summary sheriffs- the terminology used by the Scottish civil courts review, but the role they will perform is the same.

9 Private Rented Housing Panel and Homeowner Housing Panel Annual Report 2012:
only 800+ cases for the PRS Tribunal which is not especially high (although it should be noted that these are estimated numbers). None of the other transferred functions or the new functions are likely to be on the scale of the transfer of possession cases so the projected annual case-load would be unlikely to exceed 1,000 cases in the short term.

While this does not represent a large figure overall, it is more than triple the caseload of the current PRHP. The caseload also represents a sizable expansion of the current jurisdiction, introducing the need to consider new areas of law including (but by no means limited to) recovery of possession, right to adapt, houses in multiple occupation and registration of landlords. The majority of these will be party-to-party cases, as is currently the case with PRHP.

There will be a need to recruit and train further specialist housing tribunal members to carry out this work. At present, the same members sit on both the private rented housing panel and the homeowner housing panel (HOHP), which deals with disputes between homeowners and property factors. HOHP began business in October 2012, and we understand it dealt with around 350 cases in 2013. Both panels are overseen by the same tribunal president, and are also supported by the same secretariat. It would make sense to build on these arrangements when introducing the new tribunal. Given the likely numbers of potential tribunal judges and members in Scotland who possess the relevant housing knowledge, this could also impact on the recruitment of summary sheriffs with specialist housing knowledge and vice versa.

It is also of note that there are a number of unknown and unpredictable elements in regard to the PRS. The economic climate has had a substantial impact on the PRS. Today, 12% of all households in Scotland are privately rented\(^\text{11}\) which is double the number ten years ago. This increase would have been hard to predict ten years ago, and it is equally hard to predict how the PRS will develop over the next 10 years. In turn, the future number of cases before the tribunal is uncertain.

It is essential that the Scottish Government and the Scottish Tribunal Service have a clear plan for managing this increase in the caseloads and the expansion of jurisdiction, covering for example recruitment and training of members, provision of venues for hearings, case administration etc. With many unknown factors, it will also be crucial to the success of the tribunal that there are effective oversight and review processes in place to monitor the development of the forum.

Availability of Legal Aid and pre-hearing advice

A key factor highlighted in the Policy Memorandum as a barrier to court was difficulty understanding and following process and procedure, which is made worse by a lack of representation. While tribunal procedure is generally held

\(^{11}\)Housing Statistics for Scotland, published 26th August 2013 available through [http://www.scotland.gov.uk/Publications/2013/08/2641](http://www.scotland.gov.uk/Publications/2013/08/2641)
to be more user-friendly, accessible and understandable\textsuperscript{12}, there remain clearly evidenced benefits in access to advice, and in some cases advocacy or representation\textsuperscript{13}.

Much of the past research has suggested that representation (not necessarily legal representation) tends to increase the prospects of success of appellants/parties. However, a more recent study\textsuperscript{14} did not find the same ‘representation premium’ as earlier studies but did find that pre-hearing advice was crucial to unrepresented applicants; those who neither received advice nor were represented had lower success rates than those who had either advice or representation. That research concluded that the main reason the ‘representation premium’ was so much lower than in the past was that tribunals have increasingly adopted an ‘active, interventionist and enabling’ approach. This allows them to elicit the necessary information from parties without the need for representation. In order to benefit fully from this approach, however, unrepresented parties need access to pre-hearing advice.

One effect of the Bill is likely to be to take away an existing opportunity for legal aid funded representation in a serious matter – eviction from one’s home – from a large number of persons. The Scottish Government must therefore be satisfied in relation to the jurisdictions to be exercised by the PRS Tribunal, but especially in eviction cases, that: 1) the tribunal will take an ‘active, interventionist and enabling approach’ and 2) the tenant has a fair chance to defend or assert their interests, whether this be through legal aid funded representation or through the availability of readily accessible pre-hearing advice. While, provided the tribunal takes the right approach, it is likely that pre-hearing advice will be sufficient in many cases, this may not be the case for some tenants. We therefore welcome the flexibility over the availability of legal aid funding that the Policy Memorandum suggests, but consider that paragraph 160 of the Policy Memorandum takes too narrow a view of when publicly funded assistance might be desirable to ensure a fair process and outcome.

We consider that there should be a clear strategy for the funded provision of advice, advocacy and, where necessary, representation going beyond legal aid availability. ‘Advice’ should be considered widely to include accessible information and toolkits as well as traditional telephone or face-to-face

\textsuperscript{12} As highlighted in the Policy Memorandum at paragraph 147
\textsuperscript{13} See for example:
H. Genn and Y. Genn, \textit{The Effectiveness of Representation at Tribunals} (London: Lord Chancellor’s Department, 1989).
\textsuperscript{14} M. Adler, ‘Tribunals Ain’t What they Used to Be’, available at: http://ajtc.justice.gov.uk/adjust/articles/AdlerTribunalsUsedToBe.pdf
services, and the availability of pre-hearing advice for the PRS tribunal perhaps along the lines of that currently provided by in-court advisers.

Fees

We note from the Policy Memorandum\(^1\) that there will be scope to charge fees for parties to bring a case before the PRS Tribunal (under the FTT provisions in the Tribunals (Scotland) Bill).

While there may be an argument for charging landlords a fee to bring a case, as they are currently required to do in the courts, it must be ensured that fees can never be charged to tenants who are defending an eviction case, or those who bring a repairs case. Charging a fee in such circumstances could inhibit the exercising of a right that enables a tenant to stay in their home. While introducing an exemptions policy, as suggested in the Policy Memorandum, would help, this introduces an extra layer of complication for tenants, which may deter some, and those whose income is just above the threshold may also be deterred from defending their case.

Dispute Prevention and Resolution Mechanisms

It is disappointing that the Bill does not include more specific reference to alternative dispute resolution (ADR). At no point is ADR mentioned in the Bill itself or in the Explanatory Notes and, while mentioned, no committed plan is forwarded in the Policy Memorandum.

The consultation previous to this Bill, the Scottish Government’s Better Dispute Resolution in Housing, consulted specifically on the potential for the increased use of mediation. This was welcomed by the majority of respondents to the consultation,\(^2\) which is a positive recognition of the benefits mediation can offer to all in resolving cases earlier or more proportionately – tenant, landlord and the tribunal itself.

STAJAC supports the use of dispute prevention and alternative dispute resolution (ADR) mechanisms as a complement to formally administered justice. While the Committee notes the Scottish Government’s intention to increase the use of mediation in housing disputes,\(^3\) it is not clear what the implication of this will be for users of the new PRS tribunal. At present the PRHP offers mediation in some cases. There is an in-house mediation service for repairs cases to which appropriate cases are referred, if both parties agree. If no agreement is reached or either party is unwilling to try mediation, the case is referred to a committee for determination. The HOHP has also recently launched a pilot mediation service. It is not clear how an increased caseload which represents an increased variety of case type will impact on this resource, for example in terms of the availability of trained mediators.

\(^1\) Policy Memorandum at paragraph 151
\(^2\) As noted in the Policy Memorandum at paragraph 156
\(^3\) Paragraph 153 of the Policy Memorandum
Accessibility of mediation is a key factor in embedding this form of ADR in the civil justice and tribunals systems. With such clear support for increased use of mediation already expressed, we believe that practical measures to facilitate that demand should be openly considered as part of, or in parallel to, this Bill.

Scottish Tribunals and Administrative Justice Advisory Committee
21.02.14
A submission by SELECT, the Trade Association for the Scottish electrical installation industry.

Statistics indicate that more than two thirds of all accidental domestic fires are caused by electricity and that the private rented housing sector is most at risk.

SELECT believes that the Housing (Scotland) Bill offers the opportunity to improve conditions in the private rented housing sector and raise standards of electrical safety.

Currently, gas appliances and fittings are legally required to be inspected and tested but there is no similar requirement for electrical appliances and, more importantly, installations.

Given that the Housing (Scotland) Bill is already proposing changes to the Repairing Standard, SELECT believe electrical safety could be improved by introducing a requirement for mandatory five-yearly safety checks by a registered electrician of electrical installations and appliances in private rented housing.

Making such an improvement would help protect properties from fire, improve safety standards for tenants and not place any significant burdens on landlords.

SELECT is aware that the Electrical Safety Council has submitted a similar but more detailed submission proposing mandatory electrical safety inspections. Their input has the full support of the electrical industry in Scotland.

SELECT
18 February 2014
www.select.org.uk
Simply Let is a residential letting agency based in Inverness. We are a small company of two directors and two further employees. We are regulated by RICS, Licensed by ARLA, members of the Council of Letting Agents, accredited by Landlord Accreditation Scotland and carry the SafeAgent badge.

We seek to make renting a completely dependable option for both our landlord clients and for their tenants and we are keen to see management standards raised throughout the PRS. Indeed we believe that standards must be raised if the sector is to properly fulfil its key role in meeting Scotland's housing need. We therefore welcome this Bill and the opportunity to submit our views on its proposals, particularly in relation to Parts 3 and 4.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

We welcome this proposal and believe that it potential to simplify and accelerate the processing of cases and will be less stressful for tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

We do not believe that mandatory registration of agents will by itself be effective in raising standards of management. Registration of landlords has, in our experience, failed to improve management standards to any significant extent. Effective and visible policing of the system would be necessary as well as the imposition of penalties for non-registration, but even with that in place we do not consider that registration alone will be effective.

The proposals couple this requirement to a requirement for agents to abide by a Code of Practice. Much will depend therefore on the content of that Code. In our view it must be a demanding one if it is to be effective in raising management standards amongst agents.

In our view anyone who plays any part in managing a tenant's home, or who is entrusted with the management of a landlord's valuable asset (and possibly pension fund) must be competent and qualified in their field and appropriately insured. They must also, in your view, have protective measures in place for the handling of money which does not belong to them and offer a path to redress for clients who have a valid complaint.

It follows from this that a Code of Practice for letting agents must contain, as a minimum:-
• a requirement to undertake training and CPD for all staff

• a requirement to hold third-party monies in a discrete and ring-fenced client account

• a requirement to have client money protection in place

• a requirement to hold Professional indemnity insurance

• a requirement to offer recourse to an Ombudsman scheme

Without all of those components management of a standard necessary to secure a high quality PRS is unlikely to be achieved and tenants' and landlords' interests will remain at risk.

Our much preferred option, instead of registration, would be a requirement for all agents to belong to a recognised professional body such as the Royal Institution of Chartered Surveyors or the Association of Letting Agents. These bodies already have all of the above requirements in place.

We are concerned at Article 220 of the Housing (Scotland) Bill Policy Memorandum which, in relation to this option (requirement to belong to a professional body) states “This approach would also be likely to place the most significant financial burden on the industry. All letting agent businesses would be required to undertake mandatory accreditation and training, before being considered for membership of a professional or trade body.”

In our view the interests of letting agents should not take precedence over the wider public interest objective of a high quality PRS. As stated at the beginning of this submission, Simply Let is a small firm. Notwithstanding that our budget for professional memberships and training is significant as, without those things, we could not operate on a professional basis and assure landlord clients and tenants a fully informed service.

Lastly, if registration is the requirement enacted we believe there is scope for confusion. "Registered Letting Agent" suggests reliability and fitness for purpose but may not in fact be any guarantee of that at all. The public are likely to be confused between "Registered" and "Regulated" and, unless registration is backed by a fully effective code containing all of the elements above and is rigorously and visibly policed, we fear that low standards of management will masquerade under the mantle of registration leaving landlords and tenants poorly served.

Simply Let
28 February 2014
SOUTH AYRSHIRE COUNCIL

WRITTEN SUBMISSION

Introduction

A group of South Ayrshire Council tenants, who regularly attend tenant participation events locally and nationally, met on Thursday 20th February 2014 to discuss the proposals within the Housing (Scotland) Bill.

Each Part of the Bill was discussed and the group reached a consensus on their collective response to each question posed by the Infrastructure and Capital Investment Committee.

Part 1: Right to Buy

Q1
- The group agreed the Right to Buy should be ended to protect the affordable housing stock.
- Removing the RTB will bring to and end the income generated from the Council house sales. This money is used to part fund new development and to improve the current stock. The Scottish Government should, therefore, fully fund new build social housing to allow for this disparity.

Q2
- Prohibiting commencement of the main section on repeals for at least 3 years is a concern for tenants. It could result in a peak in RTB sales, further diminishing the stock of affordable housing, and possibly allows for houses currently protected by pressured area status to be bought. It is suggested that the Scottish Government amend this to 1 year.

Part 2: Social Housing

Q4
- Yes the proposals will increase the flexibility landlords have when allocating housing but the term “unmet housing needs” and the definition “needs that are not capable of being met by other housing options which are available” were considered to be vague and don’t make sense. It is suggested that the Scottish Government must provide clear guidance to be followed by allocations staff.
- Should gypsy travellers (who wish to settle in permanent accommodation), and applicants living in caravans be considered as a reasonable preference groups?
Q5
- Initial (or probationary) tenancies must be reconsidered by the Scottish Government as they offer a real potential for tackling tenancy problems such as anti social behaviour.
- Tenants agree with the principals of SSST's. The legislative tools, when enacted, must be used by social landlords as historically landlords have been reluctant to do this.
- Support must be available to tenants who are victims of anti social behaviour in addition to the support provided to perpetrators living in SSSTs. Often it seems that perpetrators are supported more than victims and this results in a lack of faith in local authorities powers.
- Landlords should have powers to evict a tenant from a SSST for a breach of tenancy without the need to have a repossession order granted by a court.

Q6
- Yes this part of the Bill will meet the Scottish Government's objective of providing further protection for tenants, particularly tenants with SSSTs.
- However tenants do not necessarily agree with this proposal. An SSST is being issued due to the behaviour/actions of the person(s) to which it applies. Rather than strengthening their rights it should be for that person(s) to prove that they can merit being awarded an SST.
- There should be strengthened rights for people who have anti social behaviour inflicted on them, rather than for perpetrators of anti-social behaviour.

Part 3: Private Rented Housing

Q7
- This proposal should also include public sector cases.

Q8
- The group agree with this proposal but emphasised the need for local authorities to use the powers available when enacted.

Q9
- The group agree with this proposal but emphasised the need for local authorities to use the powers available when enacted. It is suggested that local authorities should be held accountable if they do not exercise the power available to them to tackle poor conditions within the area.
Part 4: Letting Agents

Q10
- The group agree with the proposal to create a mandatory register of letting agents in Scotland and statutory provisions regarding practice. The importance of implementing this register and administering it effectively was emphasised.

Q11
- This proposal will depend on the powers available to the First-tier Tribunal.

Part 5: Mobile Home Sites with Permanent Residents

Q12
- The group are in support of the proposal to introduce a new licensing scheme for mobile home sites with permanent residents.

Q13
- This new scheme could result in homelessness for permanent residents where a license is not allowed or removed.

Part 6: Private Housing Conditions

Q14
- The group were in agreement with the proposed adjustments. However, legislative tools must be used by social landlords as historically landlords have been reluctant to do this.

Part 7: Miscellaneous

Q16
- **SHR Transfer of Assets**
  Tenants feel strongly that the Scottish Housing Regulator should identify potential insolvency before it reaches this stage and that this proposed amendment should be removed from the Bill.

  This was not included within the original draft and should be removed.

Other issues

Q17
- Local authorities and RSLs must make use of the powers available to them and implement them effectively. These organisations should be held accountable if they do not use the powers.
Q18
- Initial (probationary) tenancies

South Ayrshire Council
24.02.14
SOUTH LANARKSHIRE COUNCIL
WRITTEN SUBMISSION

Introduction
South Lanarkshire Council welcomes the opportunity to respond to the Infrastructure and Capital Investment Committee questionnaire seeking evidence on the Housing (Scotland) Bill at Stage 1. We have responded to the pre-Bill consultation process and have also played an active role in stakeholder discussions of the Housing Policy Advisory Group. We have also recently submitted a response to the Finance Committee questionnaire on the Housing (Scotland) Bill’s Financial Memorandum.

We are broadly supportive of the Bill’s provisions and aims and believe the legislation will have a positive impact on both safeguarding social housing and helping to improve housing conditions of the Private Rented Sector (PRS). We have a broader concern, however, that the Welfare Reform Act 2012 could have a detrimental effect on the positive aspects that the Bill provides; aside from making it more difficult for councils to meet their duties under existing housing and homelessness legislation.

The provision may also help authorities in allocating properties which would sustain or create a balanced and sustainable community. For example, age compositions of residents within blocks could be taken into account to ensure that properties that are available to relet are allocated to tenants who would not have a detrimental impact on the lives of the current residents — therefore reducing likelihood of tenancies ending prematurely or anti-social behaviour (ASB) occurring.

This response answers the questions contained in the Committee template on the Bill, that are relevant to South Lanarkshire Council. Before addressing the specific questions, the response outlines additional views on areas that we feel it would be appropriate to include in the Bill, or in future legislation.

General comments: provisions not included in the Bill
Common Housing Register (CHR)
As noted in previous consultation responses, we remain strongly of the view that there should be a statutory requirement for all social landlords to participate in a CHR. As it stands, whilst we appreciate that the Bill’s scope does not extend to include a provision to make this mandatory, since South Lanarkshire and our RSL partners established the CHR in June 2009, there has been real improvements in terms of service awareness and access. Establishing a clear statutory requirement on social landlords to actively participate in local CHRs would undoubtedly help further improve access to social rented housing across Scotland.

Introductory Tenancies
South Lanarkshire Council are of the view that establishing a system whereby introductory tenancies were more widely available to social landlords would:-
• help establish positive patterns of behaviour and promote personal responsibility by new tenants
• at the same time, the use of such tenancies would also give neighbours and the wider community reassurance that effective action could be taken against new tenants who fail to act responsibly at the outset of their tenancy
• emphasise that along with the rights associated with a council or RSL tenancy, come quite clear obligations on tenants

As noted in our response to Affordable Rented Housing: Creating flexibility for landlords & better outcomes for communities, we would propose that all tenancies which are commenced for people who are not currently a tenant of the same landlord should be established as introductory tenancies, and where an individual has lost their tenancy due to their inability or unwillingness to address their behaviour, councils should not be required to provide them with accommodation under the terms of the homelessness legislation.

In general terms we feel that it would give landlords and communities reassurance that action could more readily be taken to remove a household from their tenancy where they have failed to adhere to their tenancy conditions (especially in relation to those who engage in ASB).

Tribunal for the Social Rented Sector (SRS) and the Civil Court Review

Through previous consultations, we have argued the need for the establishment of a Housing Tribunal for the SRS. A key argument, amongst others, which we have consistently made in favour of tribunals in the SRS, is that they would afford sufficient time and expertise to be devoted to housing issues and in particular, eviction actions.

Although the Housing (Scotland) Bill does not (currently) introduce a Housing Tribunal for the SRS, we welcome the publication of the Courts Reform (Scotland) Bill earlier this month (7th February 2014). It introduces a provision to include a creation of a new judicial post – the summary sheriff - to resolve lower value civil cases, such as debt cases, more swiftly and efficiently in areas such as family and housing law.

It would be helpful if the Scottish Government would give a commitment to monitor and review the new arrangements and incorporate any findings into assessment of whether it has addressed the fundamental issues we and others (for example, the CIH) have routinely pointed to.

Taking into Account Income in Allocations

As noted in earlier consultations, taking into account income in allocations would allow landlords the opportunity to allocate houses to certain ‘income groups’ which might help achieve more balanced and sustainable communities and help landlords with their ability to meet identified housing need. However, we are clear that policies should avoid “means testing” access to the sector as this would undoubtedly further exacerbate the residulisation of the SRS. We are of the view that providing scope to consider
income (albeit within specified limits) could assist social landlords to facilitate appropriate community mix.

**General comments on specific Bill areas**

*Financial capability of local authorities to implement the Bill’s provisions*

There is always a challenge for local authorities in meeting new legislative provisions with existing resources or being able to source new funds from additional borrowing. For some time now, however, we have been able to plan and take into account the financial impact of, for example, the abolition of Right to Buy (RTB). In this respect, there are a number of the Bill’s provisions that we have no major concerns with and where the financial costs associated with them can be met.

However, there are a few areas of the Bill where we do perceive a potential for significant additional resource requirements by local authorities. Whilst we support the intention of the Bill’s approach, the discretionary powers for local authorities to apply as a third party to the Private Rented Housing Panel (PRHP), where the private landlord has failed to comply with the Repairing Standard, could have considerable resource implications (aside from giving authorities ambitious new duties to enforce). For this reason, we believe it is necessary to exercise some caution in terms of the assumption inherent in the Financial Memorandum of the Bill, that local authorities can reasonably carry out this new role without identified new resources.

For the provision clarifying local authority powers to pay missing maintenance shares on behalf of owners, we have some concerns that by using this provision a local authority could find it both costly to meet the missing shares to enable the work to be carried out and onerous to recoup monies which arise from those owners who do not pay up.

The other area where we have some financial concerns relates to the cost to local authorities of resourcing housing support for tenants who have been provided with a (Short Scottish Secure Tenancy) SSST as part of the Bill’s provisions relating to ASB. Since June 2013, homeless households have been assessed for their housing support requirements as part of a new housing support duty and this combined with the requirement to offer housing support to all tenants (as long as they have a SSST), will further increase the pressure on the housing support budget.

**Consultation Questions**

**Part 1: Right to Buy**

Q1. What are your views on the provisions which abolish the Right to Buy (RTB) for social housing tenants?

South Lanarkshire Council believes abolishing the RTB will remove continuing uncertainty in terms of future levels of supply of social rented housing. The

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1 For more information, please refer to South Lanarkshire Council’s response to the Finance Committee Questionnaire on the Housing (Scotland) Bill 2013
change will also support local authorities to meet the continuing duty to provide permanent accommodation to homeless households and to help develop the supply of affordable rented housing in line with wider strategic objectives.

In our response to the Finance Committee questionnaire on the Housing (Scotland) Bill’s Financial Memorandum, we outlined that RTB sales for South Lanarkshire Council have reduced very significantly over the last decade (where RTB receipts in 2012 accounted for 2% of funding for the Business Plan compared with 23% in 2004/5). However, recent figures suggest that the proposed policy change is already having an impact and that a ‘spike’ in RTB sales preceding the abolition of the policy is likely (where it is assumed that there will be a doubling of the 60 sales to 120 sales in 2014/15 to 2016/17).

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?
South Lanarkshire Council believes that the three year ‘grace’ period before the RTB is abolished is too long and could exacerbate a spike in sales on top of what we have already seen locally, since the intentions of the Bill were announced. As outlined in our response to The Future of Right to Buy in Scotland, a shorter notice period as possible (12 months) would protect valuable council housing stock.

Part 2: Social Housing
Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Broader Definition of Groups
In terms of how the Bill would amend the reasonable preference provisions in relation to allocation policies for social landlords, we feel the changes are more in line with modernising the language and context and will make little difference in how we allocate housing. Our housing allocation policy already ensures that those in the most acute housing need are prioritised. As a result, the Bill’s amendment to clarify that homeless people and those living in unsatisfactory housing conditions have to be in housing need merely reinforces what we and other social landlords already carry out in practice (and which has been a clear focus of the regulatory framework).

Taking Age into Account in Allocations
We believe the provision that will allow social landlords to take age into account in allocations provides welcome clarity and will be useful in terms of giving landlords enhanced flexibility in housing, for example, older people as part of a ‘sensitive’ letting approach. Social landlords will need to consider what would be considered appropriate in terms of how to apply the policy locally, but certainly, the policy could be effectively implemented to enable certain age groups to access appropriate housing and maximise their chance of maintaining their tenancy.
South Lanarkshire Council believes that consulting with tenants and a range of other stakeholders regarding changes to the allocation policy (and other housing policy areas) is a matter of good practice. Although more detail is expected, the Bill’s provisions to ensure local authorities consult and report in this manner and that their allocation policies have regard to the Local Housing Strategy are, therefore, welcomed.

**Taking Home Ownership into Account in Allocations**

We welcome the provision to allow social landlords to take into account home ownership in allocations. Although we would not want to prevent home owners from applying for social housing, consideration needs to be given to their financial circumstances. We believe this provision will enhance the ability of social landlords to appropriately target available housing to those in most need.

**Awarding of a SSST as a Temporary Solution to Home Owners**

The Council agrees with the Bill’s provision to allow landlords to award a SSST to a home owner as a temporary solution. We do not expect this change to have a significant effect, but we are aware of situations where it could be useful, for example, where an applicant is making arrangements to bring their own property back into use (e.g. temporary repair or fire/flood) but require a temporary home in the meantime.

**Qualifying Periods for Succession, Subletting, Joint Tenancy Requests and Assignation**

We broadly agree that the introduction of a twelve month qualifying period before tenants can exercise these rights, along with a requirement that the prospective tenant must have informed the landlord that it is their main home, should address concerns around succession, subletting, joint tenancy requests and assignation.

However, we feel it is important that within the finer policy detail surrounding these changes, that the provision allows local authorities sufficient flexibility to take into account special circumstances, as not all decisions will be simple ‘clear cut’ cases. There is a danger that if this flexibility does not exist, there could be circumstances where some people may be disadvantaged (for example, in palliative care cases where a family member has moved in with a parent/grandparent etc).

Q5. **Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?**

Tenants being ineligible for an offer of housing for a minimum period of time due to ASB or outstanding rent arrears.

South Lanarkshire Council welcomes the provisions in the Bill which clarify the circumstances in which an applicant may be made ineligible for an offer of housing for a minimum period of time and agree it may help in deterring tenants from acting anti-socially or failing to meet their obligations to pay their
rent. In order to assist Councils implement the policy change, we feel it is important that supporting guidance\(^2\) for this provision is developed soon after the legislation is finalised.

*Allow landlords to grant a SSST to a new applicant where there is a history of ASB*

South Lanarkshire Council agrees with the provision in the Bill that social landlords have the power to grant SSSTs to new applicants where they have a history of ASB. However, as with all of the provisions relating to the granting of SSSTs in cases of ASB, there is the duty to provide housing support to the client while they are in the tenancy. While we agree this is vital, we have some concerns that the expected extra provision (of the actual support and the prior stages of the referral process) will be particularly onerous on the Council when the budget for housing support is already stretched and that no new resources have yet to be identified or allocated to local, from central, government.

Like the previous provision, we believe it is important that guidance stipulates how challenges and appeals relating to ASB from prospective tenants can be effectively and consistently dealt with.

*For existing tenants who have a history of ASB – landlords are able to convert their SST to a SSST*

We agree with the provision which will allow social landlords to have the ability to convert a tenants Scottish Secure Tenancy to a SSST in cases where they have a history of antisocial behaviour. In its implementation, this provision could be used as another ‘tool’ to tackle ASB in tenancies – rather than using the lengthy processes involved in evicting the tenant. In essence, it is a way in which the tenant is offered another and a final opportunity to modify their behaviour before eviction is considered.

We don’t believe that simply converting one tenancy to another is the answer to preventing anti social behaviour occurring, or that it will necessarily encourage the antisocial tenant or member of their household to change their behaviour. We do, however, feel that the provision would provide an additional tool to be used in appropriate circumstances.

Again, in common with the other ASB related provisions, there are the same resource implications for social landlords having to provide the housing support plans to tenants having converted their tenancy to a SSST.

*SSST tenancy can be converted to a SST after 12 months and the extension of the SSST for a further one-off period of six months*

South Lanarkshire Council agrees with the provision that will allow social landlords to convert a SSST tenancy to a SST after 12 months if the tenant refrains from acting anti-socially, and where the individual is ready to manage their tenancy without intensive support. Likewise, it appears reasonable that

\(^2\) For example, on what type of ASB evidence would be considered appropriate or in what circumstances an applicant could challenge and appeal their ASB status.
where the individual does not refrain from acting anti-socially that the landlord can decide to extend the SSST for a further one-off period of six months (18 months in total).

As with the other provisions relating to ASB and use of SSSTs, we are aware that the availability of extended SSSTs may put further pressure on the housing support budget if this becomes a common route for some tenants.

**Grounds for landlord eviction after criminal conviction of a tenant – where the landlord can evict without further court action**

South Lanarkshire Council believes that the best means of tackling ASB is through a multi-agency approach and one which can’t be dealt with effectively as a individual agency. Whilst we agree with the inclusion of the provision in the Bill, we do not feel the specific proposal will significantly simplify the eviction process. When appearing at court seeking eviction, we would already point to relevant convictions as a fundamental aspect of our application. The key consideration for the court and the part which can be most problematic, is the courts consideration of reasonableness of the action.

We believe some clarity is required on the type of conviction that should be specified – as it may be inappropriate for all convictions to be considered ‘workable’ under this provision.

**Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?**

The policy documents which accompany the Bill for this section refer to the well acknowledged South Lanarkshire Council v McKenna case. It confirmed that reasons did not need to be given prior to or at the time of serving, the notice to quit. If the tenant disputes the reasons, they are effectively being provided with defence akin to “not reasonable to evict”. This and the compulsory 12 month term in ASB cases, may undermine the effectiveness of the use of SSSTs to deal with ASB for tenants while in this type of tenancy.

There is also a specific legal issue with the *Service of Notice of Proceedings* in SSST cases when using Section 16. The service of a NOP without reference to the ‘ish’ of the tenancy differs fundamentally from the usual practice in relation to service of notices and could cause confusion and error. This is because the date at which the tenancy ends (and can start again) could be associated with both the Short SST and the SST (as the Bill does not specify this). The Bill also removes the need to establish reasonableness in (ground 2) evictions. This may help councils to deal with serious ASB but could be open to challenge on human rights grounds, which could lead to lengthy and costly litigation.

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3 [http://www.tcyoung.co.uk/blog/2012/social-housing/housing-law-scotland-significant-legal-judgement](http://www.tcyoung.co.uk/blog/2012/social-housing/housing-law-scotland-significant-legal-judgement)
Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal (FTT)?
We are supportive of the policy objectives for this provision which aims to provide a more efficient, accessible and specialist access to justice for both landlords and tenants. It is important the FTT is funded appropriately and to ensure its effectiveness, we would support the use of full time tribunal judges – especially if the numbers of cases are expected to rise, as tenants and landlords become more aware of its functions.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?
South Lanarkshire Council welcome’s the Bill’s provisions to allow third party reporting to the PRHP and to enable local authorities to make a direct application to the panel where there is evidence that a landlord is not meeting the repairing standard. We believe it could helpful in circumstances where tenants have a difficult relationship with their private landlord – and now have an option to distance themselves from the situation.

Although we agree it is a positive measure, there needs to be a consideration that additional and specialised staff (within, for example, Environmental Services) may be required to provide this service. We are also unsure what the process would be if an officer requires access to properties to determine defects etc – as a result, guidance on matter such as this would be beneficial.

As pointed out within General Comments (above) we have some concerns relating to the continuing and costly responsibility for councils to ensure the support required to meet the provision is made available to the tenant

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?
South Lanarkshire Council welcomes provisions to be brought forward at Stage 2 but believes the new provision will lead to only a marginal change and is not significant. However, the option to seek Enhanced Enforcement Area status, may in certain circumstances improve the enforcement capability.

Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?
South Lanarkshire Council agrees with the policy intentions behind the creation of a mandatory register of letting agents and understands it may help promote better letting practice in the PRS – where both landlords and tenants will benefit. However, we are unsure how the national mandatory scheme of letting agents will be monitored and enforced at a local level. When
considering an approach for registration, we would hope that the Scottish Government seeks that the appropriate balance is achieved between encouraging letting agents to provide a service and ensuring agents operate to a consistently high standard.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)? Before commenting on this provision at length we would like to see more detail on it.

Part 5: Mobile Home Sites with Permanent Residents
Q12. Do you have any views on the proposed new licensing scheme?
The suggested amendment to the Caravan Sites and Control of Development Act 1960, in respect of permanent residential sites, is welcomed (as per earlier local authority consultation). We believe the other provisions and the proposal for published guidance on setting fees, addresses the key issues.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

We have no further comments to make on this Part.

Part 6: Private Housing Conditions
Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

South Lanarkshire Council agrees with the inclusion of the provisions which clarify the existing local authority power to pay missing maintenance 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 for maintenance works). However, we have some concerns that by using this provision, a local authority could find it initially costly to meet the missing shares to enable the work to be carried out and thereafter, onerous to recoup monies which arise from those owners who do not pay up.

Part 7: Miscellaneous
Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

South Lanarkshire Council have no specific comments to make on this part of the Bill.

South Lanarkshire Council
28 February 2014
The following response is submitted on behalf of tenants from across South Lanarkshire based on feedback from a session held to discuss the Housing Bill.

Q1 What are your views on the provisions which abolish the right to buy for social housing tenants?

Tenants were still broadly concerned about the proposal to remove the right to buy and felt that it was too late to make a difference as most social landlords had already lost most of their more desirable stock. The consensus was that right to buy should be left as is, and with the changes already made by the Scottish Government less and less stock would be lost. Indeed a majority of the tenants felt that by abolishing the right to buy social landlords would lose more stock over the next 3 years as tenants felt forced to make a decision to exercise their right. This is particularly the case as rent increases continue to be greater than inflation and wage increases. Could the proposal end up losing more social stock than if it had been left as is?

Q2 Do you have any views on the proposed 3 year timetable before these provisions come into force?

Assuming the proposal to abolish Right to Buy is made, tenants felt that a 3 year window was not sufficient to give tenants an appropriate time to decide whether to exercise their right to buy. They felt a 5 year window would be more appropriate. They would also like clarity on what happens with applications that have been made before the ‘deadline’ which have not yet been completed.

They feel that if the proposal is accepted and Right to Buy is indeed abolished then the Government needs to take steps to inform every tenant individually who will lose their right. Whether this is organised by landlords or not, the tenants felt the Government should fund the publicity.

Q3 In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Tenants support the proposal to give landlords more flexibility in allocations, particularly the change to include those who are under occupying. Tenants also support the changes made with regard to home ownership and ability to be allocated a social property. Tenants on the whole however, do worry that the lack of stock will always be an issue in addressing housing need, despite the very welcome investment by the Scottish Government in social and in particular Council Housing.
Q4 Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

Tenants feel it will make a little difference and so should be welcomed. However, tenants still felt that landlords and agencies needed to be doing more to prevent anti social behaviour impacting on communities. Tenants are very supportive of the proposal to enable landlords to use convictions in another court to support eviction proceedings.

Further comments

Tenants are concerned about the extra powers being granted to the Regulator, especially as there has been no consultation in this area.

South Lanarkshire Tenants Development Support Project
24.02.14
SOUTH WEST SCOTLAND REGIONAL NETWORK
(Dumfries & Galloway, East Ayrshire and South Ayrshire)

WRITTEN SUBMISSION

Introduction

South West Scotland Regional Network is one of the 9 Regional Networks of Registered Tenants Organisations (RTOs) formed in 2008 and covers the local authority areas of Dumfries & Galloway, East Ayrshire and South Ayrshire.

We are a committee of 12, elected annually, and generally represent the views of our tenant and resident members of the 49 RTOs across our area.

We welcome being involved in the extensive consultations held on many of the proposals included in the Bill and we particularly welcome the proposals to abolish the Right to Buy and the provisions on social sector allocations and tenancies.

However, we are disappointed that the proposal to create a Housing Tribunal for the social rented sector and the introduction of Probationary Tenancies are not included in the Bill.

Our comments are as follows on the provisions in the Housing (Scotland) Bill are:

Part 1 – the Right to Buy

- The Right to Buy (RTB) should now be abolished in order to safeguard and protect the limited social housing resource that we currently have in Scotland.

- The timetable for abolishing the RTB should be less than 3 years and we would propose one year. We consider that people who currently have the RTB, have had this right for a significant number of years and have not exercised it in these years and may now be unlikely to do so, and we do not wish any more houses to be lost through RTB.

Part 2 – Social Housing

a) Allocations

We agree with this measure as it removes an unhelpful barrier to landlords wanting to allocate to particular groups in specific situations and believe the Bill makes it explicit that removing this age bar does not mean that landlords
can discriminate against particular age groups or that it contravenes the Equality Act 2010.

However we consider that landlords should be enabled to allocate housing in a “common sense approach” in order to sustain tenancies, protect the interests of existing tenants in terms of their right to live in a safe and secure environment and allocate tenancies in a sensitive manner with regard to the demographic of other people living in neighbouring properties, with particular regard to areas or property types that are more suitable for or already have older people living in them.

Landlords should be able to take an applicant’s previous Antisocial Behaviour (ASB) into account when considering whether or not to offer them a house. This should also include homeless applicants previously evicted for ASB.

Landlords must consult tenants and tenants’ organisations on any proposals to change allocations policies and procedures.

b) Probationary Tenancies (Initial tenancies)

The outcome of the Governments consultation concluded that the majority of the sector, including tenant responses, were in favour of introducing Probationary tenancies (or Initial Tenancies) and we are disappointed that it was dropped for this Housing Bill.

We strongly support the introduction of initial tenancies and support the introduction of probationary tenancies for all social housing tenants and believe that the benefits of introducing this outweigh any negativity especially when it has the real potential to help deal with tenancy problems, such as anti-social behaviour, much sooner.

c) Short Scottish Secure Tenancies (SSSTs)

We consider that:

- Short Scottish Secure Tenancies should be increased to 12months
- Under no circumstances should people be allocated a social rented house and continue to keep their own home elsewhere.
- Landlords should be able to allocate Short Scottish Secure Tenancies to allow them to work with people with a previous history of ASB.

d) Antisocial Behaviour - SSSTs

We consider that:

- Landlords should be able to give all new tenants Short Scottish Secure Tenancies where there has been previous ASB
• Landlords should be able to convert full Scottish Secure Tenancies to Short tenancies where they are dealing with a tenants ASB to allow them to work with the tenant to try to improve the behaviour or stop the tenancy where the ASB continues

• Increasing the timescale of a Short Scottish Secure Tenancy should allow landlords additional time to monitor tenancies and provide tenancy support. This should be an increase to 12 months with potential to extend to 18 months if things improving. However it should be noted it is vital that this does not mean that other tenants suffer ASB in their communities for a longer period of time

• Landlords should be able to continue to extend Short Scottish Secure Tenancies until they are convinced that the tenancies will not cause problems to neighbours and / or the wider community

• Landlords should continue to provide tenancy support whilst tenants have a Short Scottish Secure Tenancy and there needs to be powers for landlords to make sure that the ASB can be addressed or tenancy terminated

Part 3 – Private Rented Housing

In terms of the private rented sector, we agree that there needs to be increased powers and measures to deal with this sector, and that this is required in relation to:

• Ensuring private tenants have up to date and accurate information on their rights and responsibilities

• Protecting the rights of private tenants

• Protecting the rights of the private landlords and

• Protecting the rights of other tenants and residents in communities where:
  o Private tenants are the cause of ASB, damage to the property of other tenants and residents in the block, street or community
  o Ensuring common repair and investment work is carried out that social landlords need to or want to do for their tenants and properties
  o Private landlords lack of care or investment in properties causes problems for social housing tenants or landlords

a) The Tribunal

We agree that the introduction of the private sector housing tribunal is positive HOWEVER it should be noted that we are disappointed that this has not been included in the Bill for the social rented sector as per our response to the Dispute Resolution Consultation in 2013. In addition it should be noted that:
Further information and clarification is required on the operation and enforcement powers of the Tribunal and that the Tribunal needs to “have clout and teeth” or it will not be worth the bother.

The Tribunal needs to be able to “streamline” the disputes process and make it easier and quicker than the current operation via the Sheriff Court system.

b) Private Rented Housing Panel

We agree that:

- Local Authorities should have increased powers to enforce the repairing standard.
- That evidence in relation to private landlords not meeting the standard should not just have to come from tenants and that neighbours, fire and rescue services, police, others and the local authority itself should be able to provide this evidence.
- Where appeals are made by the private landlord, the funding required from the Local Authority to defend their position / action should not come from Housing Revenue Accounts (HRA’s).
- The Private Rented Housing Panel should make the process simpler and more streamlined and that the Panel should have “teeth” and be a less onerous process than using the Sheriff Court system.
- Local Authorities will require enforcement powers to ensure the repairs and maintenance work is carried out.
- All Private Lets should meet the repairing standard and Local authorities should have increased powers to enforce this.

Part 4 – Letting Agents

We consider that:

- Letting Agents should be subject to a robust and effective registration scheme.
- Local Authorities should have additional enforcement powers in areas where there are issues with management of all stock owned by this landlord.
- Local Authorities should have increased powers to deal with private landlords where there are issues in relation to:
  - The behaviour of the tenant living in their property.
The lack of repairs and maintenance of the property and any common areas, especially where this social housing tenants and / or properties

- Letting Agents should be required to meet and sign up to a Code of conduct
- Guidelines need to be developed
- Letting Agent Registration and Code of conduct “needs to have teeth”
- Disputes between agent and landlord should be addressed by Trading Standards
- The Bill and the Scottish Government needs to look at “beefing up” existing systems and ensure Local Authorities and other involved implement the use of the full powers already available rather than adding new things

Part 6 – Private Housing Condition

We agree that Local Authorities should have powers to enforce private landlords to carry out repairs and improvement to their properties. In addition in properties where social landlords own some of the properties, social landlords should have additional powers to enforce repairs and easier mechanisms to encourage private landlords to contribute their share of improvement works required.

Consideration should be given to developing a private rented housing standard, similar to the Scottish Housing Quality Standard.

Others

a) SHR Transfer of Assets

These changes were not the subject of previous consultation.

We strongly disagree with this provision and would like to see this removed from the Bill and that the consultation with tenants’ clause is retained.

It is our view that if the SHR is “doing its job properly”, that evidence of potential insolvency will be known in ample time to ensure the RSL tenants are consulted on any proposals to transfer to or merge with or be taken over by another landlord, therefore we do not agree that the requirement to consult should be removed.

For the reasons outlined above, we also do not consider that the duty on the SHR to always obtain a valuation of assets or direct a transfer at an open
market valuation should be removed. The value of assets should always be known.

South West Scotland Regional Network
21 February 2014
I would like to present our views on the proposed new licensing scheme (Question 12) and the implications this new scheme might have for permanent residents of sites (Question 13)

We feel that no consideration has been given to residents who have a signed agreement with the site owner. In our case my husband and I thought long and hard before embarking on living in a Residential Park Home Site as we were not envisaging making another move in our lifetime. Our discussions with the Site Owner satisfied us that we would have long term security and safety within a well maintained and managed site

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 license every 3 years. Where are we to live if the site is not granted a licence? It seems a detrimental move for residents rather than an enhancing of the rules and potentially could leave us with the financial burden of not being able to sell our home or having to move elsewhere, surely there has to be a reasonable way of the Scottish Government to deal with this matter.

It seems to us that because of a few bad site owners the many good site owners are being penalised with the cost of licensing which will subsequently be passed on to the site residents.

We understand that there has to be rules and regulations in place to safeguard residents but feel obliged to point out that in passing the proposed recommendations this would cause severe stress and worry about the long term future of residency on our Site. The present system in place and the agreement we have with the owner of our Site works very well and removes our future worries.

Janis and Thomas Stoddart (Individual)
20 February 2014
TENANCY AND ESTATE MANAGEMENT SERVICE

WRITTEN SUBMISSION

Q1 - What are your views on the provisions which abolish the right to buy for social housing tenants?

Increase in housing stock to meet demand.
Improved access to social housing when people's personal circumstances need it the most.
Safeguard housing stock for future generations, helping to build more cohesive and sustainable communities.
Assist Scottish Government's investment in housing and deliver on their target of 30,000 new affordable homes over the lifetime of this Parliament.
Safeguard an estimated 15,000 homes over the next decade for future generations to access social housing.

Q2 - Do you have any views on the proposed 3 year timetable before these provisions come into force?

Deemed to be fair under Human Rights consideration for tenants to be given reasonable time to exercise their right to buy the property.
Provide tenants time to way up financial options.
Some authorities have asked for Ministers to concede to reduce the timescale for provisions to come into force from 3 to 2 years.
A 3 year lead in time may lead to a spike in applications over this period. The impacts of this on business plans will need to be modelled.

Q4 - In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Changes to rules and procedures around the allocation of social housing are welcomed, as they will enable social landlords to be more flexible and make best use of available stock to allocate tenancies which are more sustainable, particularly where issues around lifestyle clashes can be foreseen (elderly / young / vulnerable tenants. The ability to seek recovery of adapted properties also contributes to an overall improvement in use of stock.

It would also be helpful if we could take into account location of previous ASB / or where people involved in previous ASB now reside (i.e. if their friends, who were previously involved in ASB at their property are now living near where a new tenancy is available for them). This would help us prevent more ASB occurring in future.

The introduction of a minimum period before an applicant may be eligible for housing will be helpful in certain circumstances, e.g. previous tenant who has abandoned a tenancy; previous tenants with rent arrears still to pay; those with history of ASB. This would have to be considered on a case-by-case basis though.
The need for an occupant to inform the landlord when they move into a property and to qualify for the longer 12 month qualifying period for succession will mean that the succession process is less open to abuse.

Q5 - Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

There are a number of points under this section, so comments have been split as follows:

- Minimum period before applicant eligible for housing:
  Good when there are ongoing issues at tenancy. Minimum period can be placed on someone wanting to move / MX if they have been behaving anti-socially. This may help reduce ASB levels and act as an incentive to adhere to tenancy conditions.

- Able to put tenant on SSST if there is evidence of ASB during the last three years in locality of property:
  Makes conversion process easier, and would mean we could possibly do this prior to an ASBO being gained.

- For allocation of SSST on basis of previous ASB:
  Helps us in situations where ASBO has not been granted or has not been suitable at a previous tenancy. Often persons will abandon or terminate a tenancy before an ASBO can be obtained, and this will give us additional tools to tackling anti-social behaviour if a person reapplies for housing.

- Can extend SSST’s for ASB or previous eviction for further 6 months but tenant needs to be in receipt of HST:
  Gives Housing longer to establish / ensure that a person is able to sustain a tenancy. Extra 6 months with support will help us tackle ASB but also help sustain tenancies at the same time. The tenancy can be ended during this period if the tenant fails to engage in support.

- Same procedure for recovery of possession in SST.
  This makes sense and reduces the period of time to give a tenant notice to 4 weeks instead of having to wait 8 weeks to terminate the SSST. Quicker process to take action.

- Removes requirement that court considers whether it is reasonable to make an order for eviction, in cases where another court has already convicted a tenant of using the house for immoral or illegal purposes or of an offence punishable by imprisonment, committed in, or in the locality of, the house. The tenant retains a right to challenge the court action:
  Is only likely to be used in cases where a tenant has received a prison sentence for a crime committed. Will be on a case-by-case basis, however, this means less onus on Housing to prove that an eviction
order is reasonable. Onus more so on the tenant to prove eviction order is not reasonable. Also gives housing 12 months from date of sentencing to act. This is a good period of time, especially if we do not become aware of a conviction at the time of sentencing.

Q6 - Will this part of the Bill meet the Scottish Government's objective of providing further protection for tenants, particularly tenants with short SST's, by strengthening their rights?

The introduction a minimum SSST period of 12 months will be of benefit to tenants, as it gives them longer to demonstrate their behaviour and ability to manage a tenancy. Also more security for tenants, and more time to settle in an area.

The changes to the repossession process should also be of benefit to the tenant, the shorter period for notices to be served being less stressful since they do not have to wait two months for a final decision. If the tenant decides to appeal the decision, they will be better informed as to why the SSST is being ended as the landlord will have to notify of the reasons the tenancy is being ended, and there will be a national standard to be met by the landlord.

Q7 - Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

We welcome the introduction of the First-Tier tribunals to deal specifically with private rented sector cases. It is felt that the new process will give sufficient weight to existing issues, not solely related to property condition, which will allow private rented tenants accessible and efficient recourse against landlords who are potentially avoiding dealing with problems.

Although the Tribunals Bill is current before Parliament, therefore not finalised at present, will the Scottish Government be providing publicity information for a new Tribunal which will be available to private sector tenants.

Given the proposed changes in this Bill with regards to third party referrals to the Private Rented Housing Panel, clarification would be appreciated in relation to who can approach a tribunal. As with third party referrals to the PRHP, the same issues can apply to making a case to a tribunal against a landlord. Many tenants may feel unable to do this themselves, for a range of reasons, and will require assistance to put forward an effect case. If this were to involve local authorities, the question of resources to deal with the influx of this type of work.

Q8 - Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?
Clackmannanshire Council fully supports the amendment to legislation introducing third party referrals to the Private Rented Housing Panel. From experience we know that some private tenants are unwilling or unable, for a range of reason, to approach the PRHP with concerns about the condition of their home. As much as possible we currently provide assistance to tenants in these situations but it is still very much in the hands of tenants, potentially vulnerable at times, and they do not always follow through with the guidance provided. Therefore leaving them still in a position of having a home which may not reach the repairing standard.

By enabling local authorities to make applications on behalf of private tenants, effectively in an advocacy role, will hopefully help to put some 'weight' behind an application and make a landlord take the claims seriously. It will also ensure consistency in approach, making the sure the tenant responds accordingly to each part of the process.

**Q9 - Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector**

We welcome the intention of the new Stage 2 provisions to implement enhanced enforcement areas. Although we do not have any significant issues within Clackmannanshire at present where these provisions could apply there are certainly benefits to having them available.

**Q10 - Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?**

The creation of a mandatory register for letting agents, along with the introduction of statutory provisions (code of practice) is welcomed. At present there is a wide variation in the level of service provided by letting agents to both private tenants and landlords.

It will be beneficial to all involved to have a standard which Agents are expected to attain. However information will require to be available as to how this will be monitoring. Will there a similar 'light touch' approach as per Landlord Registration?

At present it seems unclear as to who will administer the register of Letting Agents. Will this be done by the Scottish Government or will be a role for local authorities? If this is the case then the resource implications of this role will need to be clearly examined. Particularly in relation to enforcement issues when a letting agent does not comply with the code of practice.

Lessons should be learned from the Landlord Registration scheme in terms of operation of the IT system and how useful this will be. It will be beneficial to be able to carry out full reporting options, such as producing reports to identify
the number of properties managed by agents in a particular area, number of agents operating in an area, etc. Currently the registration system makes it difficult to identify numbers of properties owned where there are joint owners, properties can be double counted.

Q11 - Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenant)?

We welcome the ability for both landlords and tenants to be able to apply to the FFT if they feel there has been a breach in practices by an agent. However, we are cautious as to the impact this will have. How will agents be monitored if they have an enforcement order placed on them? Will this be the local authority assuming this role?

Also if an agent is subsequently removed from the register due to non compliance with the Code of Practice what will the implications be for their landlords and tenants? For example, will they be entitled to compensation if the issue relates to a financial matter handled incorrectly by the agent?

Q12 - Do you have any views on the proposed new licensing scheme?

And

Q13 - What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

Clackmannanshire has a limited presence of licensed sites.

We have licensed sites at; Woods Caravan Park, Diverswell, Coalsnaughton and another private site at Riverside Dollar. In addition we have a Council owned site at Westhaugh.

Beyond these sites we have had small privately owned sites for individual families at Marchglen and Gartlove, though both of these sites appear to subsequently been vacated.

Finally, we have an issue with agricultural sites with individual vans for farm workers. These are currently exempt under Schedule 1 of the 1960 Caravan Sites and Control of Development Act 1960 where a licence is not required. We think there may be a couple of caravans at the Poultry units at Blackgrange and Gartmorn for staff working there, but will check this out. There was also a planning application/enquiry for siting a caravan at Harviestoun Home Farm, which is exempt from Licensing.

“For the use as a caravan site of agricultural land for accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation”.

Most of our licensing and enforcement under current legislation is dealt with by our Environmental health Service. Current activity is simply related to ensuring a licence is in place as well as ensuring basic Health and Safety and
Environmental concerns are addressed—such as eclectics and adequate sanitation or supply of fresh water. For Clackmannanshire only one site is known to have permanent residents—other than the Council site at Westhaugh. The additional requirements therefore should not present a significant challenge and may be an inherently positive step to ensure a consistent standard of behaviour is evident. The controls and standards now increasingly common in private rented accommodation should be enjoyed by those permanent on private sites. Powers to take action and enforce improvement are particularly welcome as is the power to revoke licence.

The only remaining exemption may relate as said above to agricultural workers on smaller farm sites, or on small privately owned Gypsy/Traveller sites. Again Clackmannanshire has only evidence of a couple of such sites.

The implication for residents would add to existing powers and have to be positive guarantee of basic constant minimum standards for the management of their site. For the owners it will mean having to pass a fit and proper test and ensure their permanent residents enjoy at least those standards applicable to wider private residents. 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.

Q14 - Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenement properties.

Statistics show that there are around 1.8 million private homes in Scotland 80% of which have some form of disrepair. Improving the condition of Scotland’s private housing stock would contribute to goals for housing quality, climate change and economic growth. Increased annual spending by owners on maintenance may reduce the long term repair costs and possibly improve the value of the property.

Disrepair should be addressed to ensure that people are able to live in good quality homes and encouraging home owners to invest in maintenance may benefit the Construction Industry.

Granting discretionary powers to local authorities will ensure that they have a range of powers to tackle poor condition in the private sector. This also incorporates a new section in the Tenements(Scotland) Act 2006 allowing Local Authorities to pay a missing share when the majority of the owners in a tenement block have agreed to carry out work repair or maintain their property and one or more of the owners has not paid their share of the work. This ensures that the other owners are not liable for the costs of another owner which are met by a share paid by the Local Authority.

There is also additional grounds where a work notice can be issued where work is needed to improve the safety and security of any house, regardless of
whether or not that it is situated in a housing renewal area. Local Authorities also have discretionary third party reporting rights to enable them to make a direct application to the Private Rented Housing Panel where there is evidence that a landlord is not meeting the repairing standard.

There has been broad support for these additional measures, but this brings with it significant concerns about how this may work in practice. This could lead to substantial additional enforcement costs for Local Authorities. The Private Rented Housing Panel itself would have to incur set-up costs for the first year, this would have to include the cost of judicial recruitment and training of panel members, president fees, general office expenses and staff salaries for these involved in the set-up. Also, research into the private sector tenement properties suggests that maintenance is a relatively low priority and the first priority is to protect the function and appearance of the home.

The power to pay missing shares in relation to the tenement management scheme of a block is useful with regards to helping proactive owners proceed with works in particular situations, however, there are concerns over the resource implications of this.

The proposed changes to work notices and maintenance orders are welcomed and hopefully they will make things smoother in the aim of encouraging owners to take responsibility towards property maintenance.

We welcome the amendment to repayment charges being applicable to non-residential part of a building including housing. Hopefully this will make reclaiming costs from commercial properties easier, however, it does still have a potential repayment period of up to 30 years. This again will have a possible impact on the resources available from local authorities to fund works in the first instance.

Q16 - Do you have any comments in relation to the range of miscellaneous housing provisions set out in the part of the Bill?

No

Q17 - Are there any other comments you would like to make on the Bill's policy objectives or specific provisions?

No

Q18 - Are there any other issues that the Scottish Government consulted on that you think should be in the bill?

No

Tenancy and Estate Management Service
27 February 2014
1. Overview and background to the Regional Networks

The 9 Regional Networks of Registered Tenants Organisations (RTOs) were formed in 2008 with the support from the Scottish Government and cover the length and breadth of Scotland. The networks comprise of 98 committee members elected annually from the 600 RT0s across Scotland to represent the views of their tenant and resident members.

We work with Scottish Government officials in developing and influencing national housing policy on issues important to tenants and the wider community and we feed in tenants and residents views to Scottish Government Housing Strategy and Housing Policy.

The Networks have been involved in the development of “Firm Foundations”, the Housing (Scotland) Act 2010, the Scottish Social Housing Charter (which was drawn up in conjunction with tenants), new guidance on the use of Housing Revenue Accounts and the Housing Bill 2013.

We have also contributed to Policy Sounding Boards and Advisory Boards such as the Housing Policy Working Group, Affordable Rented Housing Advisory Group and the Housing Benefit Reform Stakeholder Advisory Group.

The Networks also have liaison meetings with senior Housing Policy staff from time to time, and regularly relay views on Policy either directly or through the Scottish Government Tenant Priorities Team.

Currently we have regular discussions at senior level, primarily, with the Minister for Housing and Welfare, as well as with Housing Supply Section, the Scottish Housing Regulator and have regular training and/or information sessions with other Stakeholders involved in the Housing field, including CIH, TPAS, TIS and others.

2. General comments on the Bill

Overall there is much to welcome in this wide-ranging Bill. The networks have been represented on a number of key Scottish Government working groups involved in the development of the Bill. The networks were also pleased to be involved in the extensive consultations which were held on many of the proposals included in the Bill. We particularly welcome the proposals to abolish the Right to Buy and the provisions on social sector allocations and tenancies.
3. **Issues not included in the Bill**

We are, on the whole, disappointed that the proposal to create a Housing Tribunal for the social rented sector and the introduction of Probationary Tenancies are not included in the Bill.

4. **The Bill**

4.1 **Right to Buy (RTB), Part 1**

The Networks welcome the proposal in the Bill to abolish the RTB and thank the Scottish Government for listening to tenants views on this issue.

The Regional Networks view, however, is that the proposed transitional period of 3 years is too long and feel that this should be reduced to a period of one year. This shortened period of notice would still likely be within the rules of European Human Rights legislation.

Based on diminishing house sales over the years, we believe that there is not going to be a rush from existing tenants to exercise their right to buy at the last minute and conclude that one year notice should be stipulated from the date of Royal Assent.

4.2 **Social Housing (Part 2)**

**Allocations**

The Bill presents a proposal to increase flexibility for Landlords in allocation of tenancies, including “reasonable preferences” to those who wish to be considered for Social Housing. This also takes account of age, and whilst Landlords must take account of the 2010 Equalities Act, Networks feel that this will assist to protect sustainability.

Sustainability of communities and a sensitive lettings framework will ensure that there are balances when introducing younger tenants. Often younger people have tenancies which are short-lived and sustainability has to be of importance if Landlords are to have viable mixed communities.

Networks believe that giving this flexibility to landlords will allow them to allocate tenancies sensitively as appropriate and make best use of their housing stock.

**Probationary Tenancies (Initial tenancies)**

When tenants and other stakeholders were consulted on this proposal in 2012, the majority of all respondents to the consultation favoured the introduction of initial (or probationary) tenancies.

Initial tenancies would have been applied solely to all NEW tenants and would have introduced a statutory 12 month period of a Short Scottish Secure Tenancies
Short Scottish Secure Tenancies (SSST)

It is to be recognised that the Bill also proposes extended powers to convert tenancies to a SSST from an SST where there are violations of the tenancy agreement and extensions of this power can be applied to a tenant but is subject to the right of appeal.

Such a policy, in some cases, is not always applied by landlords, particularly in cases of Anti-Social Behaviour (ASB) which can take up so much time and resources with which to authenticate such instances.

The networks generally welcome the introduction of this SSST extended power.

4.3 SHR Amendments.

The Bill proposes to remove the requirement for the SHR to consult with tenants prior to the removal of Assets of a Registered Social Landlord (RSL) where there is immediate threat of Insolvency.

The Networks strongly disagree with this provision and would like to see this removed from the Bill and that the consultation with tenants’ clause is retained.

We feel that tenants should always be consulted on issues as important as this and that consultation could be carried out quickly without jeopardising any actions that the SHR takes or requires the RSL to take to protect the interests of tenants and their homes.

4.4 Private Rented Sector, Parts 3 & 6

We are pleased to see the focus on the Private Rented sector and making it fairer and safer for the growing number of tenants relying on the sector. The difficult
financial situation and the growing waiting list have made renting in the Private Sector the only housing option for many families and individuals, yet despite this growth there continue to be a lack of protection for tenants in this sector.

The Regional Networks feel that the regulation of the private sector still does not give adequate protection for tenants in this sector.

**Letting Agents**

We are disappointed that the proposed regulatory framework for letting agents falls far short of proper and full regulation similar to the way the social rented sector is regulated. We would like to see a mandatory set of professional standards for letting agents introduced and monitored. This will ensure proper checks and balances where there are disputes between Agents and Landlords/Tenants.

**Tackling poor housing standards in the Private Rented Sector**

We also are aware that the Bill gives Local Authorities new discretionary powers in relation to tackling poor standard housing by private landlords. The regional networks feel the Bill does not go far enough and want effective and transparent mechanisms in place to ensure that Private Landlords adhere to the new legislation and that they will be monitored for compliance with the legislation.

**4.5 Housing Tribunal**

Regional Networks welcome the First Tier Tribunal system (Housing Tribunal) for the private sector which should give added protection to both tenants and landlords. Similarly, we welcome the Private Rented Housing Panel which will allow Local Authorities to bring cases on behalf of tenants.

Regional Networks feel that this Panel system should also cover disputes in the Social rented Sector. The impact on Social Housing Tenants waiting on resolution of disputes with their landlord, and the fact that most are through the judicial system, with long waiting periods before their dispute is heard, does not inspire good faith on behalf of the courts. A team of Housing experts would be preferential for tenants in the Social rented sector, rather than a prolonged court system decided by one Sherriff.

**Central Regional Network on behalf of the Registered Tenant Organisation Regional Networks in Scotland.**
**18 February 2014.**
1. TPO Overview

History and Purpose

1.1 The Property Ombudsman (TPO) has been providing alternative dispute resolution to the property industry for 24 years.

1.2 Originally established in 1990 as the Ombudsman for Corporate Estate Agents, in 1997 the scheme was renamed as the Ombudsman for Estate Agents, later changing to TPO to reflect its broader jurisdiction covering disputes relating to sales, lettings, personal search organisations, residential leasehold management, international sales (through UK based agents), chattels auctions and commercial property.

1.3 In June 2008 TPO was the first redress scheme to gain the status of an Office of Fair Trading (OFT) Approved Estate Agents Redress Scheme under the provisions of the Consumers, Estate Agents and Redress Act 2007. TPO is currently in the process of applying for approval as an approved letting and managing agent redress scheme under the provisions of the Enterprise and Regulatory Reform Act 2013 (ERR), prior to mandatory redress requirements being introduced for all letting and management agents in England.

1.4 TPO provides consumers with a free, impartial and independent alternative dispute resolution service for complaints against TPO scheme members (property agents operating throughout the UK). The Ombudsman’s resolutions are designed to achieve a full and final settlement of the dispute and all claims made by either party. The Ombudsman can, where appropriate, make compensatory awards in individual cases up to a maximum of £25,000 for actual and quantifiable loss and/or for aggravation, distress and/or inconvenience caused by the actions of a registered firm.
1.5 The Property Ombudsman Limited is a ‘not for profit’ company limited by guarantee. There is no cost to the consumer or the taxpayer for TPO’s services.

1.6 **Scottish Letting Agents and TPO Membership**

1.7 The Scottish Government estimate that there are around 719 letting agent businesses (branches) in operation which account for about 50% (150,000) of annual lettings.

- Overall, the number of Scottish property agents registered with TPO is 457
- The number of Scottish agents providing a lettings service and registered with TPO is 216
- The number of letting branches in Scotland registered with TPO is 309

**UK Membership, Standards and TPO’s Codes of Practice**

1.8 TPO’s Code of Practice for Residential Estate Agents has received full approval from Trading Standards Consumer Codes Approval Scheme (CCAS) and is followed by 12,181 estate agent branches who are members of TPO. We believe this equates to approximately 95% of the estate agents trading in the UK.

1.9 Despite no current legal requirement for letting agents to be registered with a redress scheme, the TPO Code of Practice for Residential Letting Agents is voluntarily followed by 10,989 letting agent branches who are members of TPO. Based on the same figures used by the Scottish Government in point 184 of the Housing (Scotland) Bill – Financial Memorandum (contained in the Explanatory Notes), we consider this equates to approximately 90% of letting agents trading in the UK.

1.10 TPO’s new Code of Practice for Residential Lettings Agents is in the process of being finalised prior to achieving CCAS approval. Significant changes to the current Code include updated requirements of the Equalities Act 2010; more explicit requirements in relation to the Consumer Protection from Unfair Trading Regulations 2008; the upcoming changes to the consumer cancellation rights contained in the Consumer Contracts (Information, Cancellation and Additional
Charges) Regulations 2013; clarification in relation to the charging of premiums to Scottish tenants; the requirement to provide tenant information packs to potential tenants in Scotland and updated deposit registration requirements for Scotland and Northern Ireland.

1.11 TPO’s Codes of Practice are widely respected and used throughout the property sector by other industry bodies. For example the National Association of Estate Agents (NAEA) and the Association of Residential Letting Agents (ARLA) use TPO’s Codes as the basis for their own judgements regarding their members conduct. In addition, TPO’s Codes have been replicated by other trade bodies to use as their own membership codes, for example the UK Association of Letting Agents (UKALA).

1.12 Customer satisfaction and compliance surveys carried out as part of CCAS monitoring requirements have shown a consistent increase in consumer (buyer and seller) satisfaction with member firms and the firms’ compliance with the TPO Code of Practice for Residential Estate Agents. Similar positive results have been received for CCAS monitoring carried out on TPO letting agents who voluntarily follow the Code of Practice for Residential Letting Agents.

1.13 The cost of TPO membership is £170 (plus VAT) per office which covers the agent for letting, sales, buying, commercial, international and auction related services.

**Governance, Independence and Principles**

1.14 The Ombudsman provides redress, where appropriate, to consumers whose complaints are supported after consideration on a case by case basis. Redress is intended to put the consumer back into the position they were before the complaint arose. The Ombudsman is not a regulator and does not have the authority to take regulatory or legal action against a registered firm. The Ombudsman does not have the power to impose fines or dictate the way in which firms conduct their business.
1.15 The scheme charges its members an annual subscription collected by the Board of TPO Ltd. However, it is the TPO Council, chaired by Lord Richard Bes, who appoints the Ombudsman and sets his Terms of Reference, (i.e. how the complaint process operates). The Ombudsman is accountable to the Council and reports directly to them. The Council’s majority is made up of non-industry members in accordance with the company’s Articles of Association.

1.16 Agents who do not comply with the Ombudsman’s decisions or who have been referred to TPO for other compliance related matters can be referred to the Disciplinary and Standards Committee (DSC) who can impose sanctions on the agent or, if necessary, expel the agent from membership. The DSC is accountable to the Council and is made up of non-industry members with representation from the Board. Serious non-compliance matters which are potentially illegal are referred to the relevant authority (e.g. Trading Standards).

1.17 Unresolved complaints concerning TPO’s service can be referred to the Council who, if appropriate, will ask the Independent Reviewer to conduct an internal investigation.

1.18 TPO’s Annual Report includes reports from both the DSC and the Independent Reviewer. The DSC also issue press releases, where appropriate, to inform consumers about agents expelled from the scheme.

1.19 TPO is a full ‘ombudsman member’ of the Ombudsman Association (previously named the British and Irish Ombudsman Association - BIOA) and the Ombudsman sits on its Executive Committee. TPO operates in accordance with the organisation’s principles of good governance:

- Independence
- Openness and transparency
- Accountability
- Integrity
- Clarity of purpose
• Effectiveness

2. TPO’s work in 2012

2.1 At the time of writing TPO’s Annual Report for 2013 is being compiled. Whilst statistics have yet to be finalised, it is apparent that complaints related to lettings activities have once again increased by around 20%, with the most prevalent issues being communication, complaint handling and repair and maintenance.

2.2 Unlike the single source data collected by consumer organisations, the Ombudsman’s investigations consider submissions from both side of the dispute to enable him to determine what is fair and reasonable in the specific circumstances of the of the case, taking into account the requirements of the TPO Code of Practice and relevant legislation.

2.3 During 2012, TPO received complaint enquiries from 15,782 consumers. Relevant to lettings, 8,334 tenants and landlords raised complaint enquiries which covered 14,017 different issues.

2.4 Relevant to Scotland, TPO received 333 complaint enquiries from landlords and tenants covering 561 issues. Most enquiries related to more than one issue, a common occurrence in letting disputes. From these enquiries, 35 cases required a formal review. The remainder were either resolved informally by TPO staff or the consumer was signposted to the appropriate organisation.

2.5 The average award made against a letting agent in 2012 was £325 and 70% of all disputes were either supported in whole or in part by the Ombudsman.

2.6 The majority of complaint enquiries referred to TPO were resolved by providing consumers with further information, signposting to appropriate bodies and/or directing the letting agent to deal with the complaint in accordance with the in-house complaint procedure set out in the TPO Code of Practice.
2.7 Overall, the combined UK 2012 figures represented a 12% increase in letting complaint enquiries and a 22% increase in cases requiring formal reviews compared with 2011. Whilst currently unconfirmed, figures for 2013 indicate an estimated lettings workload increase of 20% on 2012 figures.

2.8 Using the grouping system recently employed by the Office of Fair Trading, TPO data relating to complaint enquiries and formal reviews for the UK in 2012 are displayed in Tables 1 and 2:

**Table 1 – UK Complaint Enquiries – Issues**

<table>
<thead>
<tr>
<th>OFT Groups</th>
<th>Issues</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1 – Fees and charges</td>
<td>1,713</td>
<td>12.22%</td>
</tr>
<tr>
<td>Group 2 – Agents providing poor service</td>
<td>7,553</td>
<td>53.88%</td>
</tr>
<tr>
<td>Group 3 – Security deposits</td>
<td>878</td>
<td>6.26%</td>
</tr>
<tr>
<td>Group 4 – Delayed and substandard repairs</td>
<td>791</td>
<td>5.64%</td>
</tr>
<tr>
<td>Group 5 – Unfair business practices</td>
<td>2,676</td>
<td>19.09%</td>
</tr>
<tr>
<td>Other</td>
<td>406</td>
<td>2.90%</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>14,017</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

**Table 2 – UK Formal Reviews – Issues**

<table>
<thead>
<tr>
<th>OFT Groups</th>
<th>Issues</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1 – Fees and charges</td>
<td>401</td>
<td>19.77%</td>
</tr>
<tr>
<td>Group 2 – Agents providing poor service</td>
<td>1,022</td>
<td>50.39%</td>
</tr>
<tr>
<td>Group 3 – Security deposits</td>
<td>183</td>
<td>9.02%</td>
</tr>
<tr>
<td>Group 4 – Delayed and substandard repairs</td>
<td>180</td>
<td>8.88%</td>
</tr>
<tr>
<td>Group 5 – Unfair business practices</td>
<td>70</td>
<td>3.45%</td>
</tr>
<tr>
<td>Other</td>
<td>172</td>
<td>8.48%</td>
</tr>
<tr>
<td>---------</td>
<td>-----</td>
<td>-------</td>
</tr>
<tr>
<td>Totals</td>
<td>2,028</td>
<td>100%</td>
</tr>
</tbody>
</table>

2.9 Overall UK figures fairly reflect the balance between complaint issue groups in relation to disputes concerning Scottish letting agents referred to TPO.

3. TPO response to the Scottish Government’s call for views on the Housing (Scotland) Bill

   **Part 1: Right to Buy**

3.1 Q1 and Q2 - TPO has no comments on this aspect of the Bill.

   **Part 2: Social Housing**

3.2 Q3, Q4 and Q5 (recorded as Q4, Q5 and Q6 on the ‘Call for views’ document) - TPO has no comments on this aspect of the Bill.

   **Part 3: Private Rented Housing**

3.3 Q6, Q7 and Q8 (recorded as Q7, Q8 and Q9 in the ‘call for views’ document)

   Whilst a regulatory regime may be inconsistent with the future minimal requirement for mandatory redress in England, it is likely to be similar to some or all of the initiatives that will be introduced in Wales. Some of the larger letting agents and professional landlords operate across national borders and they and their clients may experience an inconsistency in treatment. Consumer, landlord and agent education will therefore be essential to ensure clarity and compliance for agents and landlords.

   **Part 4: Letting Agents**

3.4 Q9 (recorded as Q10 on ‘call for views’ document) Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?
TPO is supportive of the Scottish Government’s objective of introducing a regulatory framework for letting agents to help improve overall levels of service and professionalism within the industry. The framework intends to incorporate a mandatory register of letting agents, with an associated ‘fit and proper person test’ and the creation of a statutory code of practice to which all letting agents must adhere. The Bill also enables the First-tier Tribunal (FTT) (which is to be established under the Tribunals (Scotland) Bill) to make a range of enforcement orders to provide redress for tenants and landlords in cases where a letting agent fails to comply with that code of practice.

TPO’s comments in relation to these aspects of the Bill are discussed below:

**Mandatory Register**

Section 26 of the Bill describes the national register which the Scottish Government intend to be made available to the public. TPO would suggest that for the reasons later explained in this response, information regarding whether the agent is registered with TPO is also collected and displayed.

**Code of Practice**

Providing a benchmark for service to be measured against is the key to maintaining and improving standards. It also provides agents with a clear reference point to ensure their business operations are enacted to recognised standards and compliant with relevant legislation. TPO’s Code of Practice for Residential Letting Agents currently provides this benchmark and is already applicable to over 300 Scottish letting agent branches. Given that approximately 90% of letting agents in the UK follow the TPO Code, consumers and agents alike are familiar with TPO’s Code which provides clear standards on every aspect of a letting agent’s service.

TPO understands the Scottish Government’s reasoning for developing a mandatory code of practice and as such TPO is keen to offer our experience to the development and implementation process.
3.5 Q10 (recorded as Q11 in ‘call for views’ document) Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Lettings Complaints

At this stage in the Bill’s progress, the Scottish Government may wish to consider the volume and nature of the complaints which could be potentially referred to the FTT. Point 197 of Financial Memorandum (Explanatory Notes) sets out three scenarios regarding the potential number of cases referred to the FTT, which takes into account the additional 481 anticipated complaints relating to letting agents.

In 2012, TPO received 333 complaints from landlords and tenants covering 561 issues. Most enquiries related to more than one issue, a common occurrence in letting disputes. From these enquiries, the majority of issues reported concerned the service provided by letting agents and specifically communication and complaint handling failures. Generally speaking, these disputes arose from a lack of communication or simple human error. In other words, in only a minority of cases was an agent found to have deliberately breached the TPO Code of Practice. The average compensatory award of £325 underlines the fact that the consequences of these agent shortcomings were relatively minor.

Potential Cost Savings

TPO understands that aside from the structured and formal regulatory approach contained in the Housing (Scotland) Bill, it is the intention of the Scottish Government to allow existing voluntary redress arrangements (such as TPO) to continue and to work alongside mandatory requirements. Given this proposed scenario, it appears there is an opportunity for the Scottish Government to generate significant costs savings if it was of a mind to formalise an arrangement with TPO, allowing consumers wishing to complain about a TPO registered agent to be directed to TPO in the first instance.
At this point we would stress that whilst the Ombudsman’s decisions are binding on the letting agent, the consumer is free to either accept or reject his decision and pursue the matter elsewhere. Accordingly, when complaining about a Scottish letting agent, such an arrangement would allow the consumer to retain the right to reject the Ombudsman’s decision and refer the matter to the FTT.

TPO would recommend such an arrangement to the Scottish Government on the basis that it would be beneficial to all stakeholders.

**Proposed Arrangements**

To put such an arrangement into practice, TPO would recommend that the Scottish Government consider discussing the following areas with TPO which could have the potential effect of reducing the FTT’s estimated workload and its costs, and shortening the timescale for complaints to be resolved.

a) **Consumer Awareness**

Ensuring the consumer is aware of the letting agent’s membership of TPO will be vital to directing complaints away from the FTT in the first instance, where the matter can be dealt with by TPO. This could be achieved by:

- Displaying the agent’s TPO registration within the mandatory register results.
- Requiring letting agents to inform complainants about their voluntary redress arrangements as well as the statutory route to redress either as part of their internal complaint process or at the outset of the transaction.

Both actions would alert and direct landlords and tenants towards the initial option of less formal dispute resolution. It should also be noted that this option will also be relevant where a consumer feels they have been treated unfairly yet the agent appears to not have breached the mandatory code of practice.
b) Ombudsman’s Process

Upon referral to TPO, the Ombudsman would carry out his review process, consider the submissions from both parties and propose a resolution. The consumer would be free to either accept or reject that decision. TPO will inform the consumer of their right to refer the matter on to the FTT, should they choose to reject the Ombudsman’s decision. TPO will also include the relevant information to allow the consumer to elevate their complaint to the FTT in all of the Ombudsman’s decisions.

c) Data-sharing and Monitoring

TPO are used to working within a regulatory framework and regularly provide various statistical reports to the OFT (and soon the CMA) concerning workload and performance on a quarterly basis. TPO can provide similar reports in respect of letting agents to the Scottish Government and other regulatory bodies as required. TPO can adapt, amend or increase the number of reports depending on the requirements of the Scottish Government.

As a guideline, the current reports provided to the OFT are:

A – Analysis of initial complaint enquiries received. These are ‘immature’ complaints in that they have not completed the agent’s in-house complaint procedure or are simply general enquiries.
B – Analysis of new cases received
C – Analysis of non-supported cases by complaint type
D – Analysis of supported cases by complaint type
E – Analysis of closed cases by outcome
F – Analysis of closed cases by time taken
G – Analysis of requested documentation in different format / language
H – Analysis of the Ombudsman’s awards
I – Report on cases more appropriately dealt with by the Courts/other independent complaints/conciliation or arbitration service/exceed £25,000 claim
J – Number of complaints not progressed as outside the Ombudsman’s Terms of Reference
K – Membership figures

Accordingly, TPO would be happy to discuss with the Scottish Government their requirements for:

- The development of a formal reporting structure whereby breaches of the mandatory code identified by TPO could be reported to the Scottish Government/FTT.
- The referral process for disputes referred to TPO which would be better dealt with by the FTT.
- The referral process for cases not accepted for consideration by the FTT but could be considered by TPO.
- The provision of case information to the FTT where a complaint has passed through the TPO process and has been elevated to the FTT.
- The provision of TPO membership data for the national register.
- Regular contact to discuss and plan for current and evolving areas of concern and complaint trends.

d) Summary

Overall, TPO is of the view that requiring letting agents to make consumers aware of an alternative route to redress would reduce the level of applications to the FTT and therefore reduce the costs to the Scottish Government. It would also provide consumers with relatively speedy resolutions while allowing the FTT space in which to refine its procedures at the outset. Additionally, where cases have already passed through TPO, information will be made available to the FTT to assist their determination of the case, which may also prove a cost saving for the FTT and for the complainant and the agent.
Part 5: Mobile Home Sites with Permanent Residents

3.6 Q11 and Q12 (recorded as Q12 and Q13 in ‘call for views’ document)

TPO has no comments on this aspect of the Bill.

Part 6: Private Housing Conditions

3.7 Q13 (recorded as Q14 in ‘call for views’ document)

TPO has no comments on this aspect of the Bill.

Part 7: Miscellaneous

3.8 Q14 (recorded as Q16 in ‘call for views’ document)

TPO has no comments on this aspect of the Bill.

Other Issues

3.9 Q15 (recorded as Q17 in ‘call for views’ document) – Are there any other comments you would like to make on the Bill’s policy objectives of specific provisions?

Other than the comments already made in points 3.3, 3.4 and 3.5, TPO has no other comments on the Bill’s objectives and specific provisions.

3.10 Q16 (recorded as Q18 in the ‘call for views’ document) – Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Please refer to the comments made in points 3.3, 3.4 and 3.5 above.

4. Closing Comments

4.1 TPO is supportive by the Scottish Government’s stated aim of improving and growing the private rented sector by enabling a more effective regulatory system, targeting tougher enforcement action and attracting new investment.
4.2 Given TPO’s extensive experience of lettings issues and its prominent position in providing alternative dispute resolution to the lettings sector, we would be pleased to engage further with the Scottish Government throughout its consultation process with the aim of providing Scottish consumers with a robust and efficient redress mechanism.

The Property Ombudsman
28 February 2014
As a landlord with rental property in Scotland I would like to make the following comments in relation to the Housing (Scotland) Bill: -

Part 3: Private Rented Housing

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

This proposal will simplify and speed up private rented sector cases and make the court process more user friendly and less intimidating for landlords and tenants. This will be particularly beneficial in speeding up the eviction process for landlords who are unfortunate enough to find themselves with a tenant who fails to pay rent or commits other serious breaches of their tenancy agreement. The potential for higher quality and more consistent rulings from more specialised tribunal decision makers is also welcomed.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities' discretionary powers to tackle poor conditions in the private rented sector?

The ability for local authorities to apply to the private rented housing panel for a determination on the repairing standard will provide a means of addressing poor standards in individual properties without having to rely on the tenants to take action against their landlord. This will assist in cases where tenants feel too intimidated by the landlord or the application process to take action themselves, or where they feel that direct action on their part may cause the relationship with their landlord to deteriorate and consequently put them at risk of losing their tenancy. It will also help in situations where the tenant has already vacated the property (or been evicted) but the local authority still wishes to take the case to the PRHP.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action in an area characterised by poor conditions in the private rented sector?

This proposal will not only benefit those tenants who reside in areas characterised by poor conditions in the PRS, but will also improve the overall image of the PRS, which for some time has suffered at the hands of poor landlords and letting agents. It will also assist local authorities who are undertaking regeneration work in particular areas in forcing private landlords to improve their properties in line with other properties in the local area.
Part 4: Letting Agents

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

This is a welcome proposal as it will drive out poor practice and improve standards and the reputation of the industry while at the same time providing landlords and tenants with better recourse in the event that they are dissatisfied with their agent.

There is the potential for confusion between agents who are registered through landlord registration (as established by the Antisocial Behaviour (Scotland) Act 2004) and registered letting agents as defined in the Bill. In order to reduce bureaucracy and avoid this confusion, registered letting agents should be automatically entered on the landlord register and the letting agent reference number should be used by all local authorities for the purposes of identifying letting agents on the landlord register (replacing the current system of giving agents registration numbers which differ from authority to authority).

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

The proposed mechanism is appropriate in providing a simple and swift method of resolving disputes.

Part 6: Private Housing Conditions

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

For landlords of properties in multi-ownership buildings this proposal will be of great benefit in ensuring that essential repairs can be carried out even when some property owners can’t be identified or are unable or unwilling to contribute. 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.

Tughan & Cochrane Property Managers
28 February 2014
UNISON
WRITTEN SUBMISSION

Introduction
UNISON is Scotland’s largest public sector trade union representing over 160,000 members delivering services across Scotland. UNISON members deliver a wide range of services in the public, community and private sector - including in the provision of social housing through councils and other social landlords. We welcome the opportunity to participate in this call for evidence on the Housing (Scotland) Bill.

Response

Part 1: Right to Buy
This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

UNISON Scotland believes that investment in social housing is the key to solving Scotland's housing crisis. In our housing policy document Making Homes for a Fairer Scotland in June 2013 we argue that there is an acute shortage of homes - with official figures showing 335,000 households on social housing waiting lists across Scotland and 71,000 overcrowded households - 65 per cent of which included families with children.

Shelter Scotland estimated a need to build a minimum of 10,000 affordable homes a year, almost twice the current level of social house building.

The shortage of housing was exacerbated over the period of the Right to Buy as quality social housing was transferred to the private sector. UNISON has a long standing policy to end the Right to Buy, in order to protect vital social housing stock.

The level of demand to buy remaining stock is now low and ending the Right to Buy will not in itself provide any new homes - but would stop further transfers of stock out of social housing. We therefore strongly support this part of the Bill.

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

We note that the majority of respondents (74%) who commented on the consultation recommended a period of two years or less on the basis that this
would minimise potential stock loss and allow social landlords to get on with strategic planning. We would support this view.

Our members also report a significant increase in adverts from lending firms leading to more inquiries regarding the current Right to Buy scheme. Elsewhere in the UK there has been an increase in private landlords buying up properties on a two stage move via Right to Buy. This further removes social housing from the rented sector.

**Part 2: Social Housing**

*This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.*

**Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?**

Our housing policy document *Making Homes for a Fairer Scotland* in June 2013 is clear that as well as a massive increase in building of social housing that "we do need to make better use of current housing stock."

Under the current criteria social landlords must give "reasonable preference" to person who are:
- occupying houses which do not meet the tolerable standard or
- occupying overcrowded houses or
- have large families or
- are living under unsatisfactory housing conditions and
- to homeless persons and persons threatened with homelessness.

The proposed new criteria would be:
- those who are homeless or threatened with homelessness
- those who are living under unsatisfactory housing conditions and in each of these cases the person must have unmet housing needs and
- tenants of houses held by the social landlord which the social landlord considers to be under-occupied.

We believe the criteria on 'tolerable standard' and 'overcrowding' should remain in order to safeguard quality of housing and tackle overcrowding which is a problem in both private and social housing.

We would also support the inclusion of a 'local connection' criterion which is not in the proposed Bill as it stands.

**Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?**
We believe the changes will assist in tackling anti-social behavior.

**Q6. Will this part of the Bill meet the Scottish Government's objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?**

We believe these proposals get the balance between rights and landlord flexibility about right.

**Part 3: Private Rented Housing**

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament).

**Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?**

There has been a significant increase in private landlord accommodation in Scotland. This sector has a number of challenges that need to be addressed. Anything that makes it easier and cheaper for tenants to get legal redress is to be welcomed. However, this is only meaningful if tenants have real rights to enforce. See Q18 below.

**Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?**

**Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?**

UNISON supports strong and enforceable regulation for local authorities to tackle poor conditions in the private rented sector. Regulations must cover: property standards, safety, occupancy rates, tenancy agreements and repairs.

Standards must also include investment in the upkeep of communal areas in flats. Standards and registrations need to be monitored and enforced. This should be the responsibility of local authorities.

**Part 4: Letting Agents**

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code.
Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents' practice?

UNISON supports the mandatory registration of letting agencies. Landlords themselves will also benefit from regulation of letting agencies.

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

No

Part 5: Mobile Home Sites with Permanent Residents
This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. Do you have any views on the proposed new licensing scheme?

and

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

We support the strengthening of the current arrangements

Part 6: Private Housing Conditions
This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

see response to Q9 above. We support the ‘missing share’ proposals so long as they are properly funded. We also believe that local authorities should have the power to go further than the bill in ordering improvements to property.

Part 7: Miscellaneous
This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator's powers and a repeal of certain enactments relating to defective designation.
Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?
No.

Other Issues
Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?
see response to Q18 below

Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Funding and building the homes Scotland needs
The main issue for housing in Scotland remains the shortage of homes. In our document *Funding and building the homes Scotland needs* (March 2013) UNISON Scotland has outlined a proposal developed with assistance from the Scottish Federation of Housing Associations to finance social housing in Scotland with investment from local authority pension funds.

Rent control
In order to ensure that private sector tenants can have secure and affordable homes, a proper system of rent control - along with improved regulation of landlords and decent housing standards - is required.

Devolution of Housing Benefit
UNISON Scotland supports the devolution of Housing Benefit, along with Council Tax Benefit, which should be administered through local authority housing departments. It is difficult to fully influence housing policy without control over housing benefit.

Conclusion
Improving our housing requires more than just the regulatory reform as proposed by the current bill. The housing crisis requires a massive programme of social housing investment from the public sector. UNISON Scotland has made a series of recommendations in our recent housing policy publications *Making Homes for a Fairer Scotland* June 2013 and *Funding and building the homes Scotland needs* March 2013 which we urge the committee to consider.

UNISON
28 February 2014
### WEST LOTHIAN COUNCIL

### WRITTEN SUBMISSION

<table>
<thead>
<tr>
<th>Q</th>
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<tbody>
<tr>
<td><strong>Part 1: Right to Buy</strong></td>
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<tr>
<td>This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced</td>
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<tr>
<td><strong>Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?</strong></td>
<td>This is a welcome change to abolish RTB entirely given the constraints already put on a dwindling resource.</td>
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<tr>
<td><strong>Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?</strong></td>
<td>The view seems to be that three year timetable is a fairly lengthy lead in to abolishing the RTB, there is a potential to see an increase in RTB applications.</td>
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<tr>
<td><strong>Part 2: Social Housing</strong></td>
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<tr>
<td>This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies</td>
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<tr>
<td><strong>Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?</strong></td>
<td>We are supportive of this approach giving more flexibility on who should be allocated housing and in particular welcome the removal of the prohibition of taking age into account when allocating housing. This will help particularly in relation to reshaping the balance of care agenda and allocation of housing in particular locations. There are some concerns over the establishment of a right of appeal on being suspended from housing waiting lists and the administrative difficulties for the landlord in administering this.</td>
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<td><strong>Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies</strong></td>
<td>It is important to get the right balance between giving a measure of security for tenants and allowing a local authority the powers to manage situations effectively. Ideally the grounds for establishing a short SST should not be over prescriptive. With a measure of flexibility it is more likely that the desired</td>
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<tr>
<td><strong>provide landlords with tools that will assist them in tackling antisocial behaviour in an appropriate and proportionate manner?</strong></td>
<td>outcome of establishing a stable and responsible tenancy in the future can be achieved. While the proposal for probationary tenancies not taken forward this is a welcomed alternative however, it would be helpful to have a measure of guidance and criteria in place to ensure transparency and accountability. While the provisions to enable the conversion of a SST to a short SST are welcomed, there is no statutory form or guidance to be provided to tenants for conversion to short Scottish Secure Tenancy. (SSST) Under Section 35 of the Act, provision of such form/guidance would help provide clarity and consistency. It is not clear what might happen in the event of a short SST coming to an end and nothing being put in place, i.e. a person would not have a tenancy. The statutory form of notice for recovery of possession under Section 36 would also require to be updated to take account of the proposed changes. While the proposals on the concept of short Scottish Secure Tenancies is welcomed there is a concern over the staff and support resources that will be required to effectively manage these tenancies in the community. There will undoubtedly be high expectations from local communities that these arrangements are satisfactory. The equality considerations in relation to placing people on short Scottish Secure Tenancies (SSST) on the basis of new anti-social behavior grounds should be clear and on the basis of consultation with equality groups. There are a disproportionate number of complaints raised in connection with people with mental health disabilities, often through a lack of knowledge/ understanding of their condition. The stages providing checks and balances before instigating a SSST must be made very clear, and the route to appeal set out.</td>
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<tr>
<td><strong>Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants,</strong></td>
<td>Given the period for SSST has been extended it will give tenants strengthened rights however, it may be problematic to manage those cases which are anti-social from initial stages of the SSST. In these cases no action could be taken to recover possession</td>
</tr>
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</table>

Q6. **Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants,**

Given the period for SSST has been extended it will give tenants strengthened rights however, it may be problematic to manage those cases which are anti-social from initial stages of the SSST. In these cases no action could be taken to recover possession.
particularly tenants with short SSTs, by strengthening their rights?

under Section 36 of the Act for 12 months. During the initial 12 month period, the Landlord would require to take any action under Section 14 of the Act which is available for Scottish Secure Tenancies anyway.

The changes regarding the tightening of restrictions and qualifying periods on assignations, sub-tenancies and joint tenancies are beneficial to social landlords in allowing for much greater clarity of the rules, and a stronger position to prevent abuse of the system, particularly around assignations.

However, in practical terms, the clause which states that the 12 month qualification period can only apply where the individual has notified the landlord that they are living in the property as their only or principal home before the 12 month period begins may prove problematic in terms of deployment. This would need to be widely communicated and is likely to lead to a spike in appeals/complaints whilst the new rules take initial effect. It also may present practical difficulties in that tenants are unlikely to know 12 months in advance that they wish to sublet, assign or change to a joint tenancy. Indeed, circumstances such as a relationship breakdown, change in employment/redundancy may mean that a tenant wishes to make changes which were not anticipated in advance. Accordingly, clarity is required around this requirement and how this would work in practice.

**Part 3: Private Rented Housing**

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

**Q7. Do you have any comments on the proposal?**

The proposal is to be welcomed and should increase the access to justice for PRS tenants and landlords.
| proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal? | alike and enable cases to be dealt with more quickly. The removal from the court system will remove some of the ‘fear factor’ and will potentially reduce costs, depending on the degree of paid legal representation that parties engage. The option of a low cost, ‘easy’ approach to dealing with disputes may encourage some landlords to use it rather than adopt potentially illegal ‘resolution’ methods to disputes. |
| Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities discretionary powers to tackle poor conditions in the private rented sector? | We think there is a strong argument for returning to arrangements to regulate the levels of rent which can be charged by private landlords. We think that there should be a relationship established between social rents and private sector rents so that the latter do not get unrealistically and unreasonably high. Historically there was a well established rent officer process which managed this in local areas. With the recent growth in the numbers of private sector landlords and growth in the numbers of private rented properties, there are dangers in allowing unregulated rent levels to continue. Allowing Councils to undertake referrals to the Private Rented Housing Panel where landlords are failing to meet the Repairing Standard will be of benefit to private sector tenants. However, there may be a resourcing implication depending on the expectation of tenants that wish the Council to make referrals on their behalf. Local authorities will therefore have to adopt policy which makes it clear that the primary responsibility to take failures to meet the Repairing Standard to the PRHP lies with the sitting tenant. Examples where it may be useful or appropriate for a Local Authority ‘third party referral’ are:  
  - The is existing evidence of past or ongoing misconduct on the part of a landlord or his /her representatives towards the tenant;  
  - The is a foreseeable likelihood of misconduct on the part of a landlord or his /her representatives towards the tenant;  
  - The tenant is identified as being vulnerable;  
  - The tenant is not capable of making an application;  
  - The house is declared likely to ‘Below Tolerable Standard’(BTS); |
The matter has been reported by a vacating tenant and the property condition is such that the Local Authority does not view it as suitable for habitation. This could properties not yet declared as BTS or for matters which do not constitute a failure of the tolerable standard (such as a non-operational heating system).

From an equalities perspective, this is a welcome enhancement to powers for local authorities in tackling poor quality housing conditions – these properties have a higher proportion of vulnerable people from the protected characteristics groups protected within the Equalities Act. As these groups of people also tend to have a higher proportion of low paid workers and very often are in danger of poverty, social deprivation and isolation, the effect of poor quality housing on health, employment opportunities and social mobility is disproportionately damaging.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

The proposals have not yet been made explicit. It is therefore not possible to comment on them in any detail. However, the potential for area specific, time limited further enforcement powers could potentially be useful in arresting or ‘nipping in the bud’ the decline of an area. However, the absence of specific resources to accompany additional powers may limit their use, particularly as any declaration would create expectations which it may not be possible to meet. Once the provisions have been further outlined at Stage 2 West Lothian Council may wish to comment further.

Whilst any enforcement powers to tackle areas of multiple deprivation, and in particular, areas featured on the Scottish Index of Multiple Deprivation is a bonus, the Scottish Government needs to provide more detail around the criteria and scope of these powers to ensure that LA’s have the tools to accurately identify these areas. A framework for identification and scale of action required would be beneficial.
### Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

<table>
<thead>
<tr>
<th>Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?</th>
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<tr>
<td>Experience in West Lothian mirrors the variability in standards highlighted in the Policy Memorandum to the Bill. Provided that it is effectively enforced, lettings agents that are regulated by Scottish Government to ensure that best practice is achieved is desirable. However, it is the content Statutory Code of Practice which will determine whether the intent of the Bill is satisfied. Once this becomes clear, West Lothian Council may wish to comment further.</td>
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<tr>
<th>Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?</th>
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<tbody>
<tr>
<td>It is noted that only a tenant or landlord can request the First Tier Tribunal to enforce the Code of Practice. This may mean that vulnerable tenants or former tenants are denied justice. No third party referral exists.</td>
</tr>
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### Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

<table>
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<tr>
<th>Q12. Do you have any views on the proposed new licensing scheme?</th>
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</table>
| The proposed changes go a significant way to addressing the existing regulatory deficiencies. However, the Bill does not:
- Provide any additional protection to residents living on non-‘protected’ sites. These residents may include the vulnerable and may have been mis-sold their mobile home as a permanent residence. The absence of improved controls on non-protected sites may encourage a shift in attention to these sites by unscrupulous operators;
- Provide any additional enforcement powers for local authorities on non-‘protected’ sites. Given existing instances of operator instigated full time residence on non-protected sites, it is important that local
authorities are equipped to deal with such abuses. Sections 64-69 inclusive should apply to all sites.

- Clarify the status of ‘Model Standards’. The current wording of the Caravan Site and Control of Development Act is sufficiently ambiguous to result in considerable legal doubt and debate;
- Require, in the minimum information requirements, evidence of consent to occupy land from the site owner. As the owner and occupier can be different, this is important to prevent unwitting or undesired development of residential sites. (It is possible to apply for planning consent for land which is not in your ownership);

With regard to the ‘Fit and Proper Person’ test, the Bill is insufficiently precise as to how this will operate where the applicant is not a natural person. In particular:

- The Bill and Paragraph 244 of the Policy Memorandum appear to be contradictory in terms of who the F&PP Test will be applied to;
- The way in which individuals applying on behalf of a company, partnership or some other ‘non-natural’ person will be treated needs to be made explicit. This is particularly important where the applicant is not the ‘most senior manager’ listed in amended Section 32D (1) (b) (ii) of the Caravan Sites and Control of Development Act 1960.

With regard to the licensing and re-licensing elements:

- The Bill must require that the relationship between site owner and the site occupier is made explicit, where different;
- The Bill leaves it open as to whether an individual can hold a license on behalf of a ‘non-natural’ body. This may be intentional, but leaves room for a person who can pass the F&PP Test holding a license on behalf of a body which might not due the person holding ‘the most senior position within the
management structure’;

- The criteria for issuing a license (amended Section 32D(1)(b) of the Caravan Site and Control of Development Act 1960) should include a requirement that the local authority is satisfied with the quality or voracity of information provided by the applicant and that there is no information (or absence of information) which would make issue of a license inappropriate). The current legislation does not allow the local authority to consider the quality, voracity, completeness or appropriateness of information provided and the Bill would appear to allow this to continue. Similar elements should also be added to (amended Sections 32D(2) and 32E(2) of the Caravan Site and Control of Development Act 1960);

- The proposed Section 32G of the Caravan Site and Control of Development Act 1960 (Local Authority Power to Transfer License where no Application) should include at 32G (5) and explicitly require the information from the current occupier specified in amended section 32B (2), 32B (2) (d) and 32B (3), the minimum information requirements.

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<tr>
<th>Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?</th>
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| The new scheme should assist local authorities to effectively regulate residential mobile homes sites, provided they are licensed for year round occupation. Where occupied illegally year round, local authority powers are unimproved as are resident protections.

There will be an additional administrative burden for occupiers to apply for a new license and for re-application every 3 years. |

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<tr>
<th>Part 6: Private Housing Conditions</th>
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<tbody>
<tr>
<td>This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.</td>
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</table>

| Q14. Do you have any missing shares under the... |
Tenements Act is useful to empower the majority of owners in a building to pursue repairs or maintenance where a minority can’t pay or won’t pay. This would get work done sooner and with little or no local authority staff time commitment. No works in default procedures would be necessary, reducing the burden on local authorities. However, a Local Authority must be prepared to pay for the work up front but without any degree of certainty in regard to the timing of the money being repaid.

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

### Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

| Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill? | No Comment |
| Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions | No Comment |
| Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill? | There may be advantage to the Scottish Government considering whether an Empty Dwellings Management Order could be employed in Scotland. This could help Local Authorities address issues with severe intractable difficulties in relation to individual empty homes. The Maintenance Orders provisions cannot apply to common infrastructure such as septic tanks. This is because they are usually separate from the ‘house’ concerned. Extending the circumstances in which |
Maintenance Orders can be used would usefully permit the use of 'Missing Shares' legislation. This would again assist with proactive maintenance and reduce demand for Work In Default activity by local authorities.

We also suggest that you should give consideration to historic property title conditions which can inhibit proposals to develop a site. In some circumstances the existence of a condition can place unreasonably onerous restrictions on the council’s ability to develop and fulfill its statutory obligations. An example of this in West Lothian was in relation to the Broxburn School annex where there was a contractual reversionary right.

West Lothian Council
04 March 2014
WEST STRATHCLYDE REGIONAL NETWORK
(East Renfrewshire, Inverclyde, North Ayrshire and Renfrewshire)

WRITTEN SUBMISSION

Introduction

West Strathclyde Regional Network is one of the 9 Regional Networks of Registered Tenants Organisations (RTO’s) formed in 2008 and covers the local authority areas of East Renfrewshire, Inverclyde, North Ayrshire and Renfrewshire.

We are a committee of 10, elected annually, and generally represent the views of our tenant and resident members of the 68 RTO’s across our area.

We welcome being involved in the extensive consultations held on many of the proposals included in the Bill and we particularly welcome the proposals to abolish the Right to Buy and the provisions on social sector allocations and tenancies.

However, we are disappointed that the proposal to create a Housing Tribunal for the social rented sector and the introduction of Probationary Tenancies are not included in the Bill.

Our comments are as follows on the provisions in the Housing (Scotland) Bill are:

Part 1 – Right to Buy

- The Right to Buy (RTB) should now be abolished in order to safeguard and protect the limited social housing resource that we currently have in Scotland.

- The timetable for abolishing the RTB should be less than 3 years and we would propose two years. We consider that people who currently have the RTB, have had this right for a significant number of years and have not exercised it in these years and may now be unlikely to do so.

Part 2 – Social Housing

a) Allocations

We agree with this measure as it removes an unhelpful barrier to landlords wanting to allocate to particular groups in specific situations and believe the Bill makes it explicit that removing this age bar does not mean that landlords can discriminate against particular age groups or that it contravenes the Equality Act 2010.

However we consider that landlords should be enabled to allocate housing in a “common sense approach” in order to sustain tenancies, protect the interests of
existing tenants in terms of their right to live in a safe and secure environment and allocate tenancies in a sensitive manner with regard to the demographic of other people living in neighbouring properties, with particular regard to areas or property types that are more suitable for or already have older people living in them.

Landlords should be able to take an applicant’s previous Antisocial Behaviour (ASB) into account when considering whether or not to offer them a house. This should also include homeless applicants previously evicted for ASB.

Landlords must consult tenants and tenants’ organisations on any proposals to change allocations policies and procedures.

b) Probationary Tenancies (Initial tenancies)

The outcome of the Government's consultation concluded that the majority of the sector, including tenant responses, were in favour of introducing Probationary tenancies (or Initial Tenancies) and we are disappointed that it was dropped for this Housing Bill.

We strongly support the introduction of initial tenancies and support the introduction of probationary tenancies for all social housing tenants and believe that the benefits of introducing this outweigh any negativity especially when it has the real potential to help deal with tenancy problems, such as anti-social behaviour, much sooner.

c) Short Scottish Secure Tenancies (SSSTs)

We consider that:

- Short Scottish Secure Tenancies should remain as 6 months

- Under no circumstances should people be allocated a social rented house and continue to keep their own home elsewhere.

- Landlords should be able to allocate Short Scottish Secure Tenancies (for a 6 month period) to allow them to work with people with a previous history of ASB.

d) Antisocial Behaviour - SSSTs

We consider that:

- Landlords should be able to give all new tenants Short Scottish Secure Tenancies where there has been previous ASB

- Landlords should be able to convert full Scottish Secure Tenancies to Short tenancies where they are dealing with a tenants ASB to allow them to work with
the tenant to try to improve the behaviour or stop the tenancy where the ASB continues

- Landlords should continue to provide tenancy support whilst tenants have a Short Scottish Secure Tenancy and there needs to be powers for landlords to make sure that the ASB can be addressed or tenancy terminated.

**Part 3 – Private Rented Housing**

In terms of the private rented sector, we agree that there needs to be increased powers and measures to deal with this sector, and that this is required in relation to:

- Ensuring private tenants have up to date and accurate information on their rights and responsibilities
- Protecting the rights of private tenants
- Protecting the rights of the private landlords and
- Protecting the rights of other tenants and residents in communities where:
  - Private tenants are the cause of ASB, damage to the property of other tenants and residents in the block, street or community
  - Ensuring common repair and investment work is carried out that social landlords need to or want to do for their tenants and properties
  - Private landlords lack of care or investment in properties causes problems for social housing tenants or landlords

**a) The Tribunal**

We agree that the introduction of the private sector housing tribunal is positive **HOWEVER** it should be noted that we are disappointed that this has not been included in the Bill for the social rented sector as per our response to the Dispute Resolution Consultation in 2013. In addition it should be noted that:

- Further information and clarification is required on the operation and enforcement powers of the Tribunal and that the Tribunal needs to “have clout and teeth” or it will not be worth the bother
- The Tribunal needs to be able to “streamline” the disputes process and make it easier and quicker than the current operation via the Sheriff Court system.
b) Private Rented Housing Panel

We agree that:

- Local Authorities should have increased powers to enforce the repairing standard

- That evidence in relation to private landlords not meeting the standard should not just have to come from tenants and that neighbours, fire and rescue services, police, others and the local authority itself should be able to provide this evidence

- Where appeals are made by the private landlord, the funding required from the Local Authority to defend their position / action **should not** come from Housing Revenue Accounts (HRA’s)

- The Private Rented Housing Panel should make the process simpler and more streamlined and that the Panel should have “teeth” and be a less onerous process than using the Sheriff Court system

- Local Authorities will require enforcement powers to ensure the repairs and maintenance work is carried out

- All Private Lets should meet the repairing standard and Local authorities should have increased powers to enforce this

Part 4 – Letting Agents

We consider that:

- Letting Agents should be subject to a robust and effective registration scheme

- Local Authorities should have additional enforcement powers in areas where there are issues with management of all stock owned by this landlord

- Local Authorities should have increased powers to deal with private landlords where there are issues in relation to:
  - The behaviour of the tenant living in their property
  - The lack of repairs and maintenance of the property and any common areas, especially where this social housing tenants and / or properties

- Letting Agents should be required to meet and sign up to a Code of conduct

- Guidelines need to be developed

- Letting Agent Registration and Code of conduct “needs to have teeth”
• Disputes between agent and landlord should be addressed by Trading Standards

• The Bill and the Scottish Government needs to look at “beefing up” existing systems and ensure Local Authorities and other involved implement the use of the full powers already available rather than adding new things

**Part 6 – Private Housing Condition**

We agree that Local Authorities should have powers to enforce private landlords to carry out repairs and improvement to their properties. In addition in properties where social landlords own some of the properties, social landlords should have additional powers to enforce repairs and easier mechanisms to make private landlords pay their share of improvement works required. Where resources are to be utilised in this area, monies should come from the General Fund.

Consideration should be given to developing a private rented housing standard, similar to the Scottish Housing Quality Standard.

**Others**

a) **SHR Transfer of Assets**

These changes were not the subject of previous consultation.

We **strongly disagree** with this provision and would like to see this removed from the Bill and that the consultation with tenants’ clause is retained.

It is our view that if the SHR is “doing its job properly”, that evidence of potential insolvency will be known in ample time to ensure the RSL tenants are consulted on any proposals to transfer to or merge with or be taken over by another landlord, therefore we do not agree that the requirement to consult should be removed.

For the reasons outlined above, we also do not consider that the duty on the SHR to always obtain a valuation of assets or direct a transfer at an open market valuation should be removed. The value of assets should always be known.

**West Strathclyde Regional Network**  
26 February 2014
Part 1: Right to Buy

This part of the Bill places abolishes the right to buy by making certain repeals. The commencement of the main section on repeals is prohibited for at least 3 years. The Bill will also make some amendments which it is intended will apply before the repeals are commenced.

Q1. What are your views on the provisions which abolish the right to buy for social housing tenants?

Q2. Do you have any views on the proposed 3 year timetable before these provisions come into force?

Response Q1 & Q2: The Wheatley Group is notionally in favour of the provisions. However, the lead-in period of three years appears overly long. Two years is sufficiently long to allow interested tenants to exercise the Right to Buy while allowing Registered Social Landlords to plan with more certainty.

Part 2: Social Housing

This part makes provisions which relate to social housing. The rules and procedures around the allocation of social housing will be adjusted as will the operation of short Scottish secure tenancies and Scottish secure tenancies.

Q4. In your view, will the provisions which are proposed to increase the flexibility that landlords have when allocating housing, allow them to make best use of social housing?

Response Q4: The Wheatley Group is in favour of the principle of giving Registered Social Landlords more flexibility in regard to allocations. However, the Scottish Government and/or the Scottish Housing regulator must provide robust guidance to accompany the provisions.

This guidance should encompass, to offer some examples, (i) There should be more information regarding how the age bar removal would work in practice (and how this relates to equalities legislation), (ii) More detail should be offered around consultation i.e. are there requirements for social landlords to consult in a specific way with tenant and prospective tenants regarding the new provisions? (iii) More detail is also required on how the new provisions relates to housing options.

Q5. Will the proposals which will adjust the operation of short Scottish secure tenancies and Scottish secure tenancies provide landlords with tools that will
assist them in tackling antisocial behaviour in an appropriate and proportionate manner?

Response Q5: The ability to refer to previous conduct is welcomed. However, although more flexibility is important the Group has some concerns with the Bill as drafted in relation to the potential costs of additional housing support.

While there are some improvements from previous legislation, the new proposals require to be accompanied with robust guidance. More information and guidance might relate to; the determinants of behaviour change (and who determines them), clarity around flexibility on suspensions and how converting an SST to an SSST works with or without court.

Q6. Will this part of the Bill meet the Scottish Government’s objective of providing further protection for tenants, particularly tenants with short SSTs, by strengthening their rights?

Potentially, although it should be noted that tenants in SSSTs already enjoy significant rights and protections under the current arrangements both for SSTs and SSSTs.

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

Response Q7: In principle, the proposals for transferring certain private sector cases to a new tribunal should be a good thing. However, in practice the First-tier tribunal would have to prove easier and faster than the current arrangements. If this is not the case, then the new proposals are essentially meaningless.

It would be beneficial for there to be detail regarding monitoring arrangements to ensure the efficacy of the proposal once it has been put in practice.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?
Response Q8: Adjustments to the legislation may help tackle poor private rented sector conditions. Specifically, the strict control of landlord registration and the active pursuit of landlords to ensure both registration and compliance with existing standards would be helpful.

As important as any legislative changes, however is the enforcement of either new or existing laws. Effective and well-resourced enforcement is required to ensure that legislation is meaningful and acts both as a benchmark for effective landlord to work by and as a deterrent to landlords who may contribute to poor condition through their actions or inactions.

Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

Part 4: Letting Agents

This part establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

Q11. Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?

Response Q10 & 11: The Wheatley Group is supportive of the registration and regulation of letting agents. This will allow responsible landlords in the sector, such as Lowther Homes, to adhere to the proposed national registration scheme and statutory code of practice and drive improved standards.

Registration and regulation, however, should remain proportionate and should not place an excessive administrative burden upon landlords.

As with the response to Q8, enforcement regarding the registration and regulation of landlords is fundamentally important. Registration needs to be backed up with resource and activity to ensure that it is practitioners who are not doing things ethically and efficiently who are inconvenienced, rather than those who are.
Part 5: Mobile Home Sites with Permanent Residents

This part creates a new licensing regime for mobile home sites with permanent residents. It inserts a new Part 1A into the Caravan Sites and Control of Development Act 1960.

Q12. Do you have any views on the proposed new licensing scheme?

Response Q12: No.

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

Response Q13: See Q12.

Part 6: Private Housing Conditions

This part includes a number of adjustments to the law as it relates to private housing including conferring on local authorities a power to pay a share of costs arising from the tenement management scheme under the Tenements (Scotland) Act 2004 and modifying provisions relating to work notices, maintenance notices and maintenance orders under the Housing (Scotland) Act 2006.

Q14. Do you have any comments on the various provisions which relate to local authority enforcement powers for tackling poor maintenance, safety and security work, particularly in tenemental properties?

Response Q14: Not at this stage, other than to reiterate the previous point regarding the importance of enforcement being properly resourced.

Part 7: Miscellaneous

This part contains some miscellaneous housing provisions, including a power to exempt certain securities from the right to redeem after 20 years contained in section 11 of the Land Tenure Reform (Scotland) Act 1974, the conferral of a power to delegate on the president of the private rented housing panel and homeowner housing panel, a modification of the Scottish Housing Regulator’s powers and a repeal of certain enactments relating to defective designation.

Q16. Do you have any comments relation to the range of miscellaneous housing provisions set out in this part of the Bill?

Response Q16: No.

Other Issues

Q17. Are there any other comments you would like to make on the Bill’s policy objectives or specific provisions?

Response Q17: No.
Q18. Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Response Q18: No.

Wheatley Group
3 March 2014
I would like to contribute my thinking on the Housing Bill going through our own Parliament. Here in Scotland. I aired some of these views at the presentation given by T.I.S. in Aberdeen.

My responses are in no particular order.

1. On the Abolition of the right to buy. Might I suggest a sliding scale of discount given to all Landlords whose properties come under the right to buy? Example. Full entitled discount till the end of 2015. Two thirds till end 2016. One third till end 2016. This would stop a rush at the end.

2. Social Housing. Clarification on the Under-occupying property. What does this mean as a Homeless person is not under-occupying and property

3. Short Scottish Secure Tenancies. The probationary tenancy of 12 months is I think enough. BUT it should be made clear to antisocial tenant that any infringement by them or parties known to them causes any antisocial behaviour in the 12 months the consequences are dire with no redress. Now this tenancy should be extended to 18 months 1 misdemeanour should be allowed but the tenant be made aware that 1 more than it is one more and out. 18 months to 24 months 2 misdemeanour are enough 24 months to 36 months 3 misdemeanours only. Then a full tenancy could be considered with the antisocial tenant be visited on a sliding scale as they improve as a social tenant.

Scottish secure tenancies. It is important that tenant’s know about the assignation Tenancies. A tenant should be told that anyone staying with them would have to be considered on merit just like any other applicant. Although they should be given preference if behaviour is not antisocial.

4. Found guilty by tribunal. Participation. This tribunal should cover, the share issue if a council has not been paid. Councils should have the power if they have had no repayment on work undertaken they should through the power of the tribunal get full restitution. Either by renting property or selling it until full payment has been made.

Arrears in rent should be paid in full. Tenant should be given a choice on how they are going to pay if found guilty by tribunal. Within a time limit. Landlord if found against should be given a time limit to resolve problem.

Frank Williams
15 February 2014
The Scottish Parliament
Edinburgh.

[REDACTED]

[REDACTED] Howmy (Scotland) Bill.

Thank you for the opportunity of telling you of my experiences, in respect of Tenants, Landlords, and
Leasing Agents.

Firmly I am not wealthy, having worked all my life, I am one of the much derided 'Affluent Population', so as not to be a burden on Society.

I am trying to source another income, I discovered a ruin in the centre of a Scottish Village
much to the delight of the windows, a ruined new house fully furnished, better even than to live in.

1) [REDACTED]

The Service was to source, verify
rental and draw contracts.
The tenants broke their lease, no payment for
rent, heating fuel and stolen stuff.

When I attempted to pursue action against
the tenants, the Solicitors could not provide
application forms, previous address, only
employment references, on which no checks
had been made and were full of lies.

T. Duncan Solicitors denied wrong doing and
would not involve the Law Society to compensate
me.
3) Most recently, I have used Ayling Leasing’s Mistere - Ful to secure tenants and factor the property.

Problems have been numerous, lies and allegations from the leasing agent and tenants. There has been an absence of E-mail, bullying, taunts and none payment of Rent.

I commenced with the leasing agent services on Jan 7th 2014, in writing, noting unprofessionalism, direction of my business affairs with maintenance contracted, and either, directly or indirectly with the tenants. Further use of non regulated trades, to the point of jeopardising the lives of my tenants, and properly despite my explicit instructions, allowed by the leasing agent.

Their requesting details, copies of the tenant file, and return of key old house allegedly been lost by either the leasing agent or Royal Mail.

Now I am being indirectly threatened by the Ayling Leasing Agent.

Because of the lack of records, from either myself or the tenants, when requests have been made to the leasing agent, allegations have been made but not substantiated. I have been the target of hostile tenants, who similarly have not entered requests for maintenance.

I have kept diary records, and letter, reports from outside contractors. But all of little consequence when attempting to resolve a situation.

The fourth is would like to raise with you.

1) Personally I believe the ayling process is too long to evict tenants, most landlords are reasonable to the point of being willing to negotiate a rent to admit the right tenant.
2) Tenants have too many rights, to the point of
causing hostility and taking away communication,
leading Agents are not the best mechanism to
resolving disputes, indeed as in my case were the
cause of the problem.

3) The private landlord scheme, offers nothing to support
the landlord, so should it powert of purpose.

4) Safest Deposit Scheme Scotland, who is voluntarily
the scheme responsible to both landlord and
tenant, where is the information held.

5) The interest from the deposit scheme, should be
used to fund a rogue tenant, Rogue letting
agent, Rogue landlord database.

6) I see ‗Policing‘ of these proposals – letting Agents
- Housing Bill, difficult, and seems what been
offered ‗lip service‘ and ‗knee jerk‘ reaction.

7) The intention of the Scottish Parliament under
the Housing Act, for Councils with the Charity
status, to impose 300% Council Tax on
properties vacant in 2015, is false evidence
of how best to treat property owners and landlord.
—
it is not the way forward, but coulds
defensive, and not contumible to a working
relationship. In other part of the UK, Councils
work with landlords and property owners do not
supply penalties.

Cont.
As yet we, do I need the drain on my health, dealing with tenants who do not pay rent, dealing with agents who cannot do a job well, added to this the council’s scheme, rent scheme and the council tax abuse. The legal system that does not help plus other organisations imposing restrictions.

I have decided this very personal for my properties to be tenancy acts, something I never wanted to do, because I care about the community, and the effect empty houses place on them.

Thank you once for your time.

Jacki Williamson

25 February 2014
21 January 2014

Dear Ms Watt

Housing (Scotland) Bill – Officials Evidence Session

I undertook to write to you to provide further information and clarification in relation to a number of points discussed at the Committee session on 15 January 2014. These are as follows:

Part 2 - Social Housing

How many replies were received through social media (i.e. Facebook) during the public consultation?

20 responses were received through social media (Facebook) during the public consultation.

In addition:

- completed questionnaires were received from 219 individuals or organisations;
- written responses were obtained from 18 organisations; and
- responses to the consultation questions were obtained from seven regional workshops. During the regional workshops responses to questions were received from 154 individuals attending the events.

Further information on the consultation and stakeholder engagement is provide in the policy memorandum (paragraphs 83 to 92).

(n.b. it is possible that some individuals responded through more than one route.)
Can you give a bit more detail on why the categories of occupying overcrowded houses and large families have been dropped? Is there a shift away from giving priority to those who live in overcrowded conditions?

**General effect**

The general effect of the changes is to replace the existing specified priority groups with a broader definition more focussed on housing need. The Scottish Government’s view is that the needs of communities differ and the changes will give social landlords more flexibility to meet the needs of local communities and make the best use of available social housing.

The case for modernising the reasonable preference framework rests on the view that the existing legislation no longer properly reflects contemporary housing needs. Research has indicated that the existing priority groups for allocating social housing were outdated and needed to be revised. For example respondents to research on *Reasonable Preference in Scottish Social Housing* (2011) suggested that the large family category was outdated, that there was a lack of clarity about what constituted a large family and that being a large family was not of itself indicative of any housing need.

The majority of respondents to the 2012 consultation were in agreement with the proposal to provide increased flexibility to social landlords in the housing allocation process.

**Summary of Changes**

The amendments to current legislation in the Bill mean that in future there would be three categories of people who must receive reasonable preference in the allocation of social housing:

- Homeless people and people threatened by homelessness and who have unmet housing needs (except where the person is only homeless or threatened with homelessness as a result of regard being had to a “restricted person”);
- People who are living under unsatisfactory housing conditions and who have unmet housing needs;
- Tenants of houses held by the social landlord which the social landlord considers to be under-occupied.

People who are homeless or are threatened by homelessness remain a specified group which must be given reasonable preference in the allocation of social housing, as are people living under unsatisfactory housing conditions. In these cases there is the added requirement of having unmet housing needs. People have unmet housing needs where the social landlord considers them to have housing needs which are not capable of being met by other housing options which are available.

Unsatisfactory housing conditions will continue to cover a broad range of situations and, for example, would include housing needs arising from a health condition or other personal circumstances, in addition to factors stemming from the physical condition of the property.

Tenants whom the landlord considers to be under-occupying are a new specified group.

**Groups no longer specified**

The following priority groups are no longer specifically referred to in the list of groups who must be given reasonable preference in the allocation of social housing:
Persons:
- occupying houses which do not meet the tolerable standard;
- occupying overcrowded houses;
- with large families.

People in these groups would fall within the category of living under unsatisfactory housing conditions in circumstances where they have unmet housing needs, so they are no longer specifically referred to.

**What would be the right of appeal for a tenant who had their tenancy converted to a short SST?**

The Bill includes provisions at section 8 which allow a social landlord to either grant a Short Scottish Secure Tenancy (Short SST) or convert a Scottish Secure Tenancy to a Short SST on certain antisocial behaviour grounds. These extend existing provision in the Housing (Scotland) Act 2006. A person who is unhappy with the landlord’s decision currently has the right of appeal to the courts and that will apply to the provision made by the Bill.

**Part 4 – Letting Agents**

**Details of criminal offence if failing to register?**

It will be an offence to operate as a letting agent without registration (at section 39). A person who commits the offence is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale, or to both. It is also an offence (at section 40) for a person who is not registered to use a number purporting to be a letting agent registration number in any document or communication, without reasonable excuse. A person who commits that offence is liable on summary conviction to a fine not exceeding level 3 in the standard scale.

**Part 5 – Mobile Home Sites with Permanent Residents**

**What views did mobile home site owners and residents express in the consultation on the proposed revised licensing regime?**

In response to the question regarding the views expressed by mobile home site owners in the consultation on the proposed revised licensing regime we would like to clarify that as a consequence of the concerns expressed in the consultation regarding the effect on the industry as whole, Ministers took the view following consultation that the new licensing regime should only cover mobile home sites with permanent residents and not apply across the board to all sites. In listening to the views expressed in the consultation it was considered that it would not be appropriate for mobile homes on holiday parks which are only occupied for part of the year to be covered by the new regime.

**What impacts are there on Travelling People’s sites?**

The changes to the mobile home site licensing in Part 5 of the Bill will affect the licensing regime that applies to mobile home sites with permanent residents. The changes would apply to private Gypsy/Traveller sites with permanent residents, but would not apply to
private Gypsy/Traveller sites without permanent residents (e.g. those that are only open for part of the year). The changes would not apply to Local Authority Gypsy/Traveller sites.

Part 6 – Private Housing Conditions

How maintenance orders would work in practice?

Local authorities have powers to require private home owners to carry out work to repair and maintain their homes under the Housing (Scotland) Act 2006. These powers came into force in April 2009. The Housing Bill contains some provisions to amend the existing powers.

Owners are responsible for maintaining their properties. But where they are unable or unwilling to do so, the 2006 Act gave local authorities powers to make owners maintain them. Local authorities can issue a maintenance order in two circumstances –

1. Where owners have not maintained, or are unlikely to maintain, their house to a reasonable standard, or

2. If the benefit of a work notice or repairing standard enforcement order has been reduced or lost because of a lack of maintenance.

Maintenance orders require an owner to draw up a maintenance plan, or contribute to a joint plan with other owners in a tenement building, stating how the affected property will be maintained in a reasonable standard over a period of up to five years. Owners are responsible for implementing the maintenance plan, but the authority can step in to enforce it if the owner fails to do so.

When the home owner submits a maintenance plan, the local authority can approve or reject it. If the local authority rejects the maintenance plan, it can then devise a maintenance plan of its own for the house or it can issue another maintenance order to require the owner to submit a new maintenance plan. The local authority can also devise a maintenance plan if the owner of the house does not submit one in time. Local authorities also have powers to vary or revoke maintenance plans in different circumstances. They have to give home owners notice of the decisions that they make in connection with maintenance plans and, at the moment, these notices must be registered in the land register.

The following diagram from the Scottish Government guidance on maintenance of private homes (http://www.scotland.gov.uk/Publications/2009/03/25154634/0), summarises the process –
The Housing Bill makes three changes to this process –

(1) Section 74 adds an additional circumstance in which a local authority can issue a maintenance plan, namely, where it has had to issue a work notice to require the owner to carry out repairs, and no certificate has been issued to confirm that the work required to be carried out by the work notice has been completed.

(2) Section 75 provides that documents required in relation to maintenance plans should be recorded in the building register rather than the land register. This is intended to reduce costs. The maintenance order itself will still be in the land register.

(3) Section 75 also allows a local authority to revoke a maintenance plan if the owners appoint a property factor.

These amendments are intended to make the process of issuing maintenance orders more straightforward and to reduce costs – these costs are incurred by local authorities but can be recovered from home owners.

During the evidence session, I mistakenly stated that section 74 will amend the 2006 Act to allow a maintenance order to be issued where a previous maintenance order has been issued. In my letter to the Committee dated 20 December 2013, I advised that the Policy Memorandum for the Bill contains an error at paragraph 275. The situation I referred to was considered during policy development but was not included in the Bill. I apologise for my mistake.

What safeguards are in place for homeowners so the provisions in the Bill do not replicate the problems experienced by the Statutory Notice scheme in Edinburgh?

Separate from the powers in the 2006 Act there are local powers that only apply in Edinburgh. These are in Part 6 of the City of Edinburgh District Council Order Confirmation Act 1991 (the “statutory notice scheme”). We understand that following a recent investigation into the misuse of these powers, the Council has suspended the use of
statutory notices except, if there is a defect in a building which may be a risk to safety or health, to require “make safe” work to reduce or remove the danger and protect the safety and health of passers-by. These powers are not affected by the current Housing Bill.

Although City of Edinburgh Council has continued to use the 1991 Act powers, since April 2009 all Scottish local authorities have had general powers under the Housing (Scotland) Act 2006 to require home owners to carry out work on substandard property and for the local authority to carry out work themselves if owners are unable or unwilling to do so and to recover their costs (“work notices”).

The work notice powers in the 2006 Act have several safeguards for owners –

- The local authority must allow the home owner a reasonable period (which must be at least 21 days) to complete the work before carrying it out themselves.

- The work notice must specify what work needs to be done and if, in the course of carrying it out, the local authority find that additional work is needed, they must usually give the home owner another 21 days’ notice before carrying out any additional work.

- Home owners can appeal to the sheriff by summary application against the local authority’s decision –
  - to serve a work notice
  - to carry out additional work when enforcing a notice
  - to recover expenses following enforcement of notices, or
  - to refuse to grant a certificate to confirm that work has been completed.

If a home owner appeals the decision to serve a work notice, the notice will not take effect until the home owner or the local authority abandons or concedes the appeal, or until it is finally determined.

- A local authority must provide assistance to home owners in respect of the work required under a work notice. Assistance can include financial help by way of grants and loans, practical help and advice. But it is up to each local authority to decide what kinds of assistance should be provided in different circumstances.

The amendments in the Housing Bill do not affect these safeguards for home owners.

What recovery options are available to Councils to manage outstanding repair bills where owners cannot afford to pay?

Local authorities are entitled to recover the cost of work undertaken to enforce work notices and maintenance orders. They can pursue these costs as a civil debt against home owners. In addition, local authorities have powers under the 2006 Act to create repayment charges. Section 72(2)(a) of the Bill ensures that the repayment charges will be available for recovery of costs incurred in respect of the new power to paying missing shares under the amendment in that section to the Tenement (Scotland) Act 2004. A repayment charge is repayable in thirty annual instalments.

The repayment charge is registered as a burden against title to the property in a land register and any person purchasing the property becomes liable for the debt outstanding at the time of the purchase, unless the repayment charge is redeemed before title is transferred to them.
The effect is that any sale of the property will usually result in the charge being repaid, if it has not already been repaid through the annual instalments that have fallen due.

Section 76 of the Housing Bill amends the 2006 Act to allow a repayment charge to be imposed on the non-residential parts of a building which includes housing, for example, the shops on the ground floor of a tenement building.

I hope this information is of assistance to the Committee.

Yours sincerely

Linda Leslie
Housing Bill Team Leader
Right to Buy – impact on social housing lets.
This issue is best covered in the SG’s 2006 report: http://www.scotland.gov.uk/Publications/2006/09/26114727/7

At section 4.2, the report highlights that the Right to Buy does not have an impact on the number of available social lettings at the time it is exercised, and that the impact is felt when the property is no longer occupied by the original buyers. At this point, it can be assumed that if the property had stayed in the social rented sector it would have become available for re-let.

This reinforces the point we made at the session that the impact of abolition is a long term one in terms of properties being available for let – obviously it is the case that in the short term, abolition has little impact on lets because abolition is not expected, by itself, to increase the normal rate of turnover in the stock. It isn’t possible to be specific about the number of vacancies which abolition would create in the long term, but based on the SG’s estimate (in its 2012 consultation) that abolition could protect up to 10,000 houses over a five year period, with average turnover in social housing being around 9% per annum, it might be estimated that abolition could create an additional 900 vacancies over a five year period. It might be reasonable to reduce this figure in recognition of the fact that the tenants whose RTB is being ended are probably more likely to be longer term tenants, so our estimate of the vacancies figure would be somewhere between 500-900 over a five year period.

Age restriction on social sector allocations
This was introduced in September 2002 by the Housing (Scotland) Act 2001, which amended the 1987 Act as follows:

A local authority and a registered social landlord may take into account the age of applicants in the allocation of—
(a) houses which have been designed or substantially adapted for occupation by persons of a particular age group;
(b) houses to persons who are or are to be in receipt of housing support services (within the meaning of section 91 of the Housing (Scotland) Act 2001 (asp 10)) for persons of a particular age group.”

As you can see, the 2001 Act allows age to be taken into account only where the housing is specially designed or where the person is to receive specialist housing support for people of a particular age group.

David Bookbinder
Chartered Institute of Housing
30 January 2014
SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS

ADDITIONAL WRITTEN EVIDENCE

(Received further to evidence offered at Infrastructure and Capital Investment Committee meeting on Wednesday 22 January 2014)

Please find attached [link inserted: http://extra.shu.ac.uk/ppp-online/wp-content/uploads/2013/06/consequences_local_housing_allowance.pdf] the report I referred to during the session, (Sprigings, N. and Smith, Duncan H (2012), Unintended Consequences: Local Housing Allowance meets the Right to Buy), which tracks what happened to properties purchased under Right to Buy, and suggests that up to £2billion per year is paid out in excess Housing Benefit on ex RTB properties now rented out, at higher rents, in the private sector.

As for the reasonableness versus proportionality remark, this might be best addressed by a lawyer, but my understanding of how the Bill would work in practice is that the reasonableness test for evictions currently embedded in statute will not need to be met under the streamlined evictions process for ASB within 12 months of a criminal conviction contained in the Bill.

However, there will still be a proportionality test applied by sheriffs, in relation to Human Rights legislation (Article 8; European Court of Human Rights). Perhaps Scottish Government lawyers would be able to pick the bones of that one?

I hope this clarifies the two points I made, and we will include reference to both in the SFHA written submission, which will be made before the closing date. Please do not hesitate to contact me should the Committee require any further clarification.

Andy Young
SFHA
27 January 2014
I indicated during the evidence session on 22 January that I would write about some aspects of access to justice in the context of the Bill. The Society’s civil justice team have provided me with these comments.

The civil legal assistance implications of the new tribunal would likely affect a small number of cases, though in very significant ways. The shift of cases to the First-tier tribunal would remove them from the scope of civil legal aid and bring them into the scope of civil ABWOR (Advice by Way of Representation). The implications for access to justice will be quite wide ranging. A number of people who would previously have received legal aid will not receive ABWOR. For example, in 2012-13, there were 3,490 grants of advice and assistance for housing matters and 758 grants of legal aid for housing/recovery of heritable property.

The number of cases that would be heard by a Private Rented Housing Panel would be significantly smaller. The Scottish Government’s Final Business and Regulatory Impact Assessment for a Private Rented Sector Housing tribunal suggests around 100 grants of advice and assistance and 23 grants of civil legal aid annually. However, a large number of housing cases are undefended at the Sheriff Court and a consequence of a new tribunal may be an increase in the number of applications for civil legal assistance. Also, the number of housing cases overall has recently increased: between 2011-12 and 2012-13, the number of advice and assistance grants by 11.9%, the number of civil legal aid applications by 30.5% and the number of civil legal aid grants by 34.2%.

As the Final Business and Regulatory Impact Assessment notes, representation at tribunals is usually met by civil ABWOR rather than civil legal aid. For the small number of private rented sector (PRS) cases, if ABWOR were available, the change could be significant. First, the overall income eligibility for civil legal aid is significantly higher, at £26,239 (after deductions), than for civil ABWOR, at £12,740 (after deductions). The contributions required from a claimant can be higher for civil legal aid, with a contribution of between 33% and 100% for eligible income, than for civil ABWOR, which requires a single contribution of between £7 and £135. In 2012-13, for instance, 640 grants of civil legal aid for housing/recovery of heritable property cases were assessed without contribution and only 129 with a contribution: the average contribution was £2,243 and the median, £1,814.

The most significant factor, however, may be the overall availability. With tribunals intended to be informal and accessible venues for the resolution of disputes. Accordingly, for work before the First-tier (and other) tribunals a test of effective participation is applied. The test is three-fold: first, the case is arguable; second, it is reasonable in the circumstances of the case to grant ABWOR; and third, the matter is too complex for the applicant to present it in person. In 2012-13, for instance, of the total 4,721 grants of civil ABWOR, 2,768 were for mental health, 1,924 for immigration and asylum, 7 for bankruptcy/petition by debtor, 2 for employment, 1 for sequestration and 19 others.
We expect that there will be extremely few cases that receive public funding at the new tribunal. It may be that the informal and inquisitorial nature of tribunal proceedings may suit self-representation. However, it is clear that this will not be suitable for a number of the people likely to use the tribunal. As cuts to publicly funded legal assistance are made across jurisdictions, there is an emerging body of work around the effect and outcome of self-representation. In the United States, for instance, the Greacen Report, *Resources to Assist Self-Represented Litigants: A Fifty-State Review of the “State of the Art”* outlines the challenge:

“Self-represented litigants and their cases present an endless variety of situations, ranging from highly educated and capable persons seeking to obtain the simplest forms of court relief... to persons with limited education, limited English capability, and other handicaps (ranging from hearing and sight impairment to mental illness) seeking to obtain relief in the most complex sorts of legal proceedings... Some litigants can obtain all the assistance they need to vindicate their legal rights from court-provided forms and information. Others need limited legal advice to enable them to represent themselves. Others need full legal representation because of the complexity of the factual or legal issues involved in their cases or because of their lack of the basic skills needed to present them to a court.”

In short, the move from court to tribunal, from civil legal aid to civil ABWOR, presents a challenge for people who, despite the less formal and less adversarial process, cannot otherwise receive effective access to justice.

**The Law Society of Edinburgh**

10 February 2014
SUPPLEMENTARY WRITTEN EVIDENCE

BRITISH HOLIDAY AND HOME PARK ASSOCIATION

(Members asked BH&HPA for more information on site financing during its evidence session on 19 February 2014. The following information is an extract from an email from RoyScot Larch Ltd to BH&HPA)

Time-Limited Caravan Site Licenses

You asked me to confirm our thinking on the potential impact of time-limited caravan site licenses on our appetite to lend in the caravan sector.

Our lending, to both residential caravan owners on licensed residential sites and to leisure users on licensed holiday caravan parks, is by way of a Conditional Sale agreement. Under the terms of this type of finance instrument the asset is purchased from the vendor by us and sold to the customer by instalments, with ownership & title passing to the customer once all the repayments have been made.

Security for our lending is thus the ownership of the asset financed for the duration of the life of the finance agreement and until the customer’s obligations under that finance agreement have been fully discharged.

The corollary of this is that should we need to realise our security, as a result of customer non-payment or some other set of circumstances that causes the agreement to be brought to an end, it is through the ownership of the asset and their disposal that we will seek to recover monies outstanding to us and mitigate our losses, and any resultant liability that our customer may face.

In the case of both residential park homes and caravan holiday homes the asset financed is financed at the sited price, which is significantly higher than the ‘ex-works’ factory gate cost of the caravan. As an extension to our security in the ownership of the caravan under the terms of the finance agreement we seek, in the case of both residential parks and holiday parks, the site owners written agreement that, in the event that we have to enforce our finance agreement and take possession of the caravan, we are afforded the right to sell that caravan ‘on-site’ together with the rights and obligations under the occupation agreement.

This ability to sell ‘on-site’ ensures that we can sell at open market (i.e. sited) value mirroring the fact that we have financed and acquired the asset at open market or sited value. As a business model it would be completely unsustainable to finance a caravan at say 80% of its sited price but seek to recover outstanding amounts owed in the event of repossession or similar by selling the caravan ‘off-site’. Potential losses incurred in this way would be unsustainable and it could also give rise to customers caught in these circumstances facing significant, and in our eyes unacceptable, post asset sale liabilities.

As such the ability to sell a caravan ‘on-site’ is core to our continued lending in this sector.
Given the foregoing I cannot conceive how we, as a lender, could enter into a financing arrangement for an asset that is sited on licensed property for a period that exceeds the term of that licensed. Indeed it is likely that we would limit our lending term to a period somewhat shorter than the licensed period to ensure that, should the circumstances arise where we need to sell a caravan ‘on-site’, there is a sufficient amount of the license period remaining to enable a sale at a realistic market price. We already apply this principle in the case of caravan holiday homes whereby we limit our lending term to a period of 5 years less than the occupation agreement, subject to an overall maximum lending period. Whilst the occupation agreement referred to here and the site license are different things the principle is the same.

The introduction of time-limited residential park site licenses in Wales later this year, has led us to review our Credit Policy for lending on residential park homes in Wales for the reasons outlined above.

The proposal to limit Site Licences to 3 years for residential parks in Scotland would clearly impact on providing finance on residential park homes in Scotland, as it has in Wales.

RoyScot Larch Ltd
20 February 2014
BRITISH HOLIDAY AND HOME PARKS ASSOCIATION
SUPPLEMENTARY WRITTEN EVIDENCE

Following the evidence session attended by BH&HPA on 19th February 2014, the Convenor of the Infrastructure & Capital Investment Committee indicated that it would be in order to contact the Committee in writing if the Association had anything further to add that would be of assistance to members whilst considering the Housing (Scotland) Bill.

Firstly, we take this opportunity to reiterate our concerns regarding the proposed time limited licensing for the reasons outlined during the evidence session on 19th February and detailed in our written submission to the Committee.

It is noteworthy that, in addition to the points we have already put forward, we are in agreement with the three National Residents Associations representatives that, rather than protect those living on residential parks, a move to time limited licensing will cause great concern amongst those living on residential parks.

After reflecting on the content of the report of the Meeting on 19th February 2014, the following additional information may prove helpful.

**Improvement Notices**

It is our understanding that, under the proposed legislation, a park owner who provides electricity and gas through sub meters and private water and sewerage supply on his park, which is then charged out to residents, can be deprived of payment for these services because of Local Authority action regarding non-compliance with an Improvement Notice. Under such a system, the Local Authority will contact residents to inform them that due to the park owner not complying with an Improvement Notice they do not require to pay for these services.

We think that the above proposal may come from other Housing Legislation covering single property situations rather than a business like a mobile home park with a number of homes on it, which are usually occupied by quite elderly people.

We wish to highlight in more detail some of the potential downsides of the proposal that the Park Owner can be deprived of his income if he does not, or cannot, comply with an improvement notice.

Whilst we consider it unlikely that such a situation would arise, the fact that the ability for a park owner to be deprived of his income is being proposed in the legislation implies that the Scottish Government consider it to be a possibility. Consideration therefore needs to be given to the possible unintended consequences on mobile home park residents of the park owner not receiving payment for electricity, gas, water, sewerage, pitch fees etc.

**Electricity:** Most residents on parks have their electricity supplied through sub meters and make payment for it to the park owner. Some have their
electricity supplied direct by an electricity company. Those supplied by the park owner would not be paying for the electricity in the scenario outlined above whilst those supplied directly by the electricity company would be required to continue to make their usual payments.

As the park owner could not possibly afford to supply all the mobile home owners on his park with sub meters with ‘free’ electricity, he would have no choice but to discontinue supplying those residents with electricity.

**Gas:** On the majority of parks gas is supplied to residents in 47kg tanks of LPG (Liquid Petroleum Gas) supplied and changed over by the park owner. Some residents on parks are supplied with their gas from a bulk tank which is piped round the park and payment is then made by the residents to the park owner. Others are supplied direct to the mobile homes by a gas company.

In situations where the park owner is not being paid for the gas, he would be unlikely to replace the 47kg tanks for residents. Those supplied with gas from a bulk tank, belonging to the park owner, would have their gas supply discontinued, leaving them with no central heating and potentially no cooking facilities, etc. Those supplied direct by a gas company would be required to continue to make their usual payments.

**Water and Sewerage:** Most parks have a mains water supply but some have a private supply. We estimate that approximately 50% of the parks have mains sewerage with the others having private sewerage, by means of septic tanks or sewerage treatment plants.

Residents on parks which have either private sewerage or private water would pay the park owner for these services. It is hoped that no park owner would find it necessary to discontinue water and sewerage services for their residents.

Where parks have mains water and sewerage, residents pay for it via their Council Tax and their ability to have these services would be unaffected by the withdrawal of the park owner’s income.

**Rents (Pitch Fees):** If payment of pitch fees ceases, how is a park owner going to pay for maintenance of the park, any mortgage he may have on the park and any other expenses for running the park? A drop in the level of park maintenance will impinge on the value of homes on the park and the amenity of the park itself, which will be to the detriment of the residents on the park.

Many residents on a park have their pitch fees and Council Tax (less the water and sewerage which they have to pay themselves) paid by the Local Authority/Housing Benefit. We assume that this means that as soon as the Local Authority advises residents they need not pay pitch fees, either the Local authority, or the residents receiving housing benefit, would have to inform the relevant authorities that they were no longer paying rent. If this is the case, residents in this position would not be entitled to receive housing benefit for the period during which no rent is being paid. Having to re-apply for housing benefit and repay all rent due at some future date depending on
the decision of the courts could be stressful and time-consuming for residents, many of whom are elderly.

It is our understanding that, under the proposed legislation, a park owner who provides electricity and gas through sub meters and private water and sewerage supply on his park, which is then charged out to residents, can be deprived of payment for these services because of Local Authority action regarding non-compliance with an Improvement Notice. Under such a system, the Local Authority will contact residents to inform them that due to the park owner not complying with an Improvement Notice they do not require to pay for these services.

Taking all the above into consideration, if the income of the park owner is removed, residents could find themselves with no supplies of electricity, gas, possibly water and reduced or no maintenance on the park, in a very short period of time. Should they wish to sell up, difficulties could arise in getting a reasonable price for their mobile home under such a scenario.

**Fit and Proper Person**

Scottish Government Officials often refer to Landlord Registration during discussions about the proposed Fit and Proper Person Legislation for parks.

We have checked how landlord registration operates and find that the procedures are as we suggested should apply for mobile home parks, with all Local Authorities working on the same criteria. Interestingly, landlords can make one application centrally for all their properties and make one payment for all areas in Scotland. The information is then circulated to all relevant Local Authorities.

A central record is kept so that anyone can access the internet and find out whether their landlord is registered. All in all it appears to be a very simple and very efficient process as far as the applicant is concerned.

We are aware that some Local Authorities have quite a backlog of Landlord Registration applications to process and this is a cause for concern. The reason for our concern is that when an employee on a park leaves his job, it is imperative that a new employee is put in place at the very earliest date. This is particularly important as there is often only one employee on a park.

Whilst a park owner would normally expect to advertise for and employ a new employee in a couple of weeks, it is conceivable that a Local Authority could take 6 to 8 weeks, or possibly longer, to process an application for Fit and Proper Person status. Many applicants would not be prepared to wait for that period of time to find out if their job application is successful or not.

This could mean that residents on a mobile home park would have no-one looking after the park, possibly for a period of months. We are concerned as to how parks will be able to deal with such a situation which will leave residents, mostly elderly, with no one looking after and maintaining the park, supplying and fitting gas bottles, collecting rent and other payments and generally dealing with any issues the residents may have.
An employee with Fit and Proper status for working on a mobile home park should be able to work on any mobile home park in Scotland the same way as anyone with a personal licence to be in charge in a public house can work in any pub in Scotland.

British Holiday and Home Parks Association
11 March 2014
LET SCOTLAND

WRITTEN SUBMISSION

We thank the Parliament for this opportunity to comment on aspects of the Housing (Scotland) Bill relevant to the private rented sector (PRS) housing and letting agents in particular. We set out some observations on the questions provided with some additional comment in conclusion.

LetScotland’s ambition is as described on our website:

LetScotland – the Association of Professional Letting Agents in Scotland, believes that the private rented sector plays a crucial role in Scotland’s housing provision. As is the case with home ownership and public rental, private rental can be an affordable, enduring and attractive housing option in Scotland as it is in many other countries. Our shared aim as letting agents is to support and enable the long term growth of the private rented sector.

LetScotland would wish to comment on the following sections of the Housing (Scotland) Bill:

- Part 3 – Private Rented Housing; and
- Part 4 – Letting Agents.

Part 3: Private Rented Housing

This part provides for the transfer of the sheriff’s existing jurisdiction to deal with matters relating to private rented housing to the First-tier Tribunal (which is to be created under the Tribunals Bill, currently before the Parliament). In particular, it transfers all non-criminal actions relating to regulated tenancies and some actions relating to the repairing standard, the right to adapt houses and landlord registration. Ministers are to be given a power to transfer certain actions relating to houses in multiple occupation. Part 3 also contains some further adjustments to private rented housing legislation, making changes to the landlord registration system and creating some third party rights in relation to enforcing the repairing standard.

Q7. Do you have any comments on the proposals for transferring certain private rented sector cases from the sheriff courts to the new First-tier Tribunal?

LetScotland generally welcomes these proposals, subject to it remaining focussed on and achieving what is intended - the need is for the system to be more responsive and for decisions to be delivered more quickly. We believe the Tribunal will need to be well-resourced with a panel made up of suitable people experienced in the PRS. We are of the view that if tenants were empowered with better knowledge about their rights and responsibilities there would be a diminished number of cases resulting in hearings at the tribunal.

Q8. Do you have any views on the adjustments to private rented housing legislation, which are intended to enhance local authorities’ discretionary powers to tackle poor conditions in the private rented sector?

The intention here is a welcome one. Most landlords will wish to invest in improving their property – LetScotland believes that an approach focussed on encouragement rather than enforcement will probably always being more effective. Again, empowering tenants with knowledge about how their circumstances may ease the release of grant money to carry out improvements would add value to this process and assist with what is frequently a cumbersome process for landlords and tenants.
Q9. Do you have any comments on the Scottish Government’s intention to bring forward provisions at Stage 2 to provide additional discretionary powers for local authorities to target enforcement action at an area characterised by poor conditions in the private rented sector?

As part of our core mission, LetScotland wants to advance the case for a successful PRS, and a key part of that objective has to be improving conditions in the PRS housing stock. So, we concur with the Scottish Government’s ambition to improve housing stock generally. However, to achieve that goal, any new powers introduced must be enforceable across all tenures. Further, they must provide for effective prioritisation, focusing on areas or sectors most in need rather than those properties which may be more easily identified but ultimately less urgent.

Part 4: Letting Agents

This part of the Housing Bill establishes a registration system for letting agents. As well as setting up a register, it sets out various offences, provides for the publication of a code of conduct and gives the First-tier Tribunal the power to issue letting agent enforcement orders in relation to breaches of that code. It also confers on Ministers a power to transfer the existing jurisdiction of the sheriff in relation to disputes between letting agents and landlords or tenants.

Q10. Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?

LetScotland supports the creation of a register of letting agents.

The Register should include all businesses which let and manage private rented residential property in Scotland. However, we would not support simply replicating the processes and principles established for the Property Factors Register. Whilst it has improved that sector, this system is not robust enough in our opinion for the letting and management sector, and considerable consideration needs to be given to the detail of implementation for our sector.

A strong Code of Practice is needed. Along with the other representative organisations, we welcome the planned consultation in preparing the Code.

Registration should include:

- an annual renewal (not every 3 years)
- a legally binding commitment each year to possessing:
  - adequate professional indemnity insurance
  - appropriate client money protection
  - a ring-fenced client money bank account
  - an annual audit of client accounts
  - membership of an ombudsman scheme to ensure an easily available redress mechanism for tenants and landlords.

Depending on the registration processes put in place there could be a requirement for the agent to produce annual documentation to confirm the above. It may be more appropriate to consider the registration process to be more the issuing of a licence approving the Letting Agent.
Q11. *Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?*

See the above comment about ombudsman services in response to Question 10; under these schemes redress is readily available to customers of such organisations at no cost to the claimant.

**Additional comment**

The more one looks at the regulation of landlords, letting agents and the processes they employ to provide good quality housing stock, the more apparent it becomes to LetScotland that tenants are not, generally, as well-resourced as all the other stakeholders.

The whole process of providing housing is one in which housing providers and their support suppliers need to be qualified: landlords are registered, letting and managing agents will be, and housing associations are well regulated. The support services all these businesses use (such as electricians, gas fitters, fire safety testers, EPC providers) are all qualified and certificate their work.

As any new tenant enters the market place, the initial experience may involve searching for a property in their desired location, then initiating a process about which they may have little knowledge or experience. The principle way in which tenants learn about the process of renting a property usually comes from their first contact with a letting agent or landlord. There are various websites to support tenants once they are in residence, but there is little support for would-be tenants prior to that first interaction with a letting agent or landlord or a friend.

All tenants will eventually “register” in the process of occupying property and paying council tax, up till then they have no real identity to the letting industry in the private rented sector in particular.

It has been suggested that in many areas of the PRS, it is difficult to identify a complete listing of all the letting agents and landlords operating in Scotland.

Tenants seeking accommodation from the Council and Housing Associations in the Edinburgh area can access Edindex. This is operated by the City of Edinburgh Council and participating registered social landlords (RSLs - housing associations/partnerships and cooperatives) as a means of enabling tenants to identify and access properties. Edindex can be accessed via the council’s web site or [http://keytochoice.scotsman.com/](http://keytochoice.scotsman.com/).

Whilst we do not necessarily support Edindex’s weighty 15-page application process, it is interesting to note that the first two pages focus on the applicant’s name, UK residency status, and immigration status. Applicants are given a “reference number” to enable them to proceed with applications for property.

The establishment of a Scottish Tenants Association or similar subscription scheme could offer tenants reassurance and empowerment by providing access to information and services such as access to certificates of identity and accredited registered landlords and letting agents.

This would act both as a cross-check against the owner of the property, the property itself and any manager involved. It could also be developed to ensure that all tenants were equipped with suitable ID, such as a UK National Insurance numbers and that they have passed any required tests such as the immigration exam used in the Edindex process.

It is generally acknowledged as inappropriate for landlords and letting agents to perform the duties of the UK Border Agency.
The Renting Scotland website is another good example of what this scheme’s website or organisation might look like - [https://rentingscotland.org/](https://rentingscotland.org/). This is an extremely well-designed, online resource.

If the scheme was to be managed by the Scottish Government and included a membership/reference process for tenants to provide a tenant ID, then the whole system of landlord, letting agent, property, local authority would be cross-referenced. We would suggest it be funded by the Scottish Government and operated by a management board made up of current and new stakeholders, with no one particular member having more control or influence than another.

**Tenure reform**

Whilst we appreciate this is not part of the current legislative process, the prospect of tenure reform has been alluded to previously and is constantly being referred to in other discussion groups and arenas. LetScotland believes that the necessity for tenure reform will potentially diminish with the implementation of the detail of the Housing Bill.

If there is continuing uncertainty on future tenure reform, many institutional investors will wait until that hesitation is removed before making final investment decisions. This could have a significant and detrimental effect on housing supply.

Our membership is predominantly urban letting agents and managers all of whom use the short assured tenancy (SAT) as the norm.

Most agents and landlords will offer a lease length between 6 and 12 months to a new applicant – however, it is usually the tenant that will opt for the shorter term. The tenant wants to get to know the letting support they will receive once they move in and want to be sure that they are happy in their new community. Thereafter, the letting will normally continue on an appropriate legal basis to suit both sides.

Most landlords and letting agents will relate many examples of tenancies which have lasted for years - until such time normally when the tenant says they want to move on. The experience in the industry is that students, migrant workers, and many others do not seek or require long leases.

Member firms variously inform us of that landlord terminations of leases equate with around one to ten percent of all lease terminations. The reasons for doing-so are split broadly evenly between properties being put on the market for sale; tenancy problems; or where a landlord intended reoccupation.

The empowerment of tenants in their rights and responsibilities will strengthen their resource to deal with their landlords over matters which may currently lead them to accept poor service or standards. This should be changed as required within the Housing Bill. If tenure reform is to be considered we would advocate a new form of lease to reflect the benefits of the Scottish Secure Tenancy (SST) as used by RSLs and adapt it for use in the private sector. We would strongly recommend that any new lease option should be created in such a way that the PRS wants to use it, although is not compelled to do so.

LetScotland would recommend retention of the existing SAT.

**Conclusion**

The reason for raising this latter point is that the new register of letting agents must take into account the constantly changing nature of the industry; the diversity of the property, the investor and the tenant.
Long-term investment by private landlords is very similar to pension fund investment in housing, requiring professional management to provide a return to the investor and the financing commitments involved. The housing market cannot afford the further delays that might ensue if the Housing Bill is distracted by potential reform of tenure.

Through the Landlord Registration Scheme and the requirement for extensive paperwork and certification in running an investment property both the private investor and the institutional investor are going to look to the professional manager to carry out these duties for them. We see this happening already; any and all measures taken now need to have the foresight to cater for a substantially larger professionally managed PRS in the future.

For the future, a strong and successful PRS requires:

- flexibility in tenure over a wide range of types of tenants;
- security for both landlord and tenant;
- provision of quality housing with efficient services from the property managers; and
- a financial environment in which investors will wish to supply the housing stock needed.

We believe the Housing (Scotland) Bill is a significant opportunity to build on recent success for the private renting sector in Scotland.

LET SCOTLAND

31 JANUARY 2014
March 2014

Dear Maureen

HOUSING (SCOTLAND) BILL – EVIDENCE SESSION, 12 MARCH

I undertook to write to the Committee with further information on the provisions in the Housing Bill that relate to passing on costs to residents under the new mobile home licensing system.

Site licence costs

Under section 54 of the Bill, a local authority would be able to charge a fee for a site licence. A local authority would not be able to charge a fee that is more than the amount it considers represents the reasonable costs it incurs in deciding on a site licence application. A local authority could also charge different fees for different types of application; for example, it could choose to set a lower licence fee for small sites. The Bill would not prevent a site owner from passing on the cost of a site licence to residents, through the pitch fees they pay.

Our research suggests that a licence fee would cost around £600. Under the Bill as currently drafted a licence would run for 3 years, so for a site with 20 units the cost of the licence fee (if passed on) would add around £10 a year to a resident’s pitch fee. The majority of sites have 11 to 50 residents, and for a site with 40 residents the cost of the licence fee would add around £5 a year to a resident’s pitch fee. I believe this is a reasonable amount for a resident to pay for the greater protection they will receive under the new licence system.

Section 54 of the Bill would also give Ministers two powers to safeguard residents if, for example, licence fees were found to be excessive. The first of these is a power to set out the matters a local authority can take into account when setting the licence fee. The second is a power to set a maximum licence fee level, which a local authority would not be able to charge more than.
Enforcement costs

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 very sympathetic to the argument that the costs of, for example, issuing an improvement notice to a site owner should not be able to be passed on to residents. I am looking at the possibility of whether it would be possible to amend the Bill to prevent that happening.

I hope this information is of assistance to the Committee.

Kind regards

Margaret Burgess

MARGARET BURGESS
Delegated Powers and Law Reform Committee

18th Report, 2014 (Session 4)

Housing (Scotland) Bill

Published by the Scottish Parliament on 26 February 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meetings on 21 January and 18 and 25 February the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Housing (Scotland) Bill at stage 1 (“the Bill”). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

OVERVIEW OF BILL

3. This Bill was introduced by the Scottish Government on 21 November 2013. The Infrastructure and Capital Investment Committee is the lead Committee.

4. Very broadly, the Bill makes provision about abolition of the right to buy, the allocation of social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes. It also provides for the transfer of jurisdiction from the sheriff courts to the First-tier Tribunal for Scotland (to be established in the Tribunals (Scotland) Bill) in cases involving private rented sector housing disputes.

DELEGATED POWERS PROVISIONS

5. The Committee considered each of the delegated powers in the Bill. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

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1 Housing (Scotland) Bill [as introduced] available here: [http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41s4-introd.pdf)

2 Housing (Scotland) Bill Delegated Powers Memorandum available here: [http://www.scottish.parliament.uk/S4_Bills/Housing_DPM_final.pdf](http://www.scottish.parliament.uk/S4_Bills/Housing_DPM_final.pdf)
- Section 4(2) – Power to prescribe persons of a description or type who social landlords must include in their allocation policy. (Inserts new subsection (3B) in section 21 of the Housing (Scotland) Act 1987)

- Section 7(2) – Power to prescribe maximum period preceding an application for housing during which a social landlord may take account of certain circumstances, and to prescribe 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(4) in the Housing (Scotland) Act 1987)

- Section 7(2) – Power to modify the circumstances under which social landlords may make an applicant ineligible for the allocation of housing. (Inserts new section 20B(7) in the Housing (Scotland) Act 1987)

- Section 12(c) – Power to make provision about the procedure to be followed by social landlords in connection with a review of a decision to seek recovery of possession of a property. (Inserts new section 36(4C) in the Housing (Scotland) Act 2001)

- Section 21 – Power to transfer civil cases relating to houses in multiple occupation from the sheriff to the First-tier Tribunal

- Section 23(1)(a) – Power to specify persons who may make an application to the Private Rented Housing Panel in respect of the repairing standard. (Inserts new section 22(1B) in the Housing (Scotland) Act 2006)

- Section 24(7) – Power to make further provision about the procedure for the making or determination of applications under section 22(1A) of the 2006 Act (third party applications). (Amends paragraph 8(1) of schedule 2 to the 2006 Act)

- Section 26(2)(b) – Power to prescribe the information which is to be contained in the public register of letting agents in relation to each person on the register

- Section 27(2)(f) – Power to prescribe further information that must be supplied in an application for registration in the register of letting agents

- Section 30(4) – Power to modify the material that must be taken into account when deciding if a person is a fit and proper person to be entered on the register of letting agents

- Section 32(2)(c) – Power to specify any additional type of document or communication in which a registered letting agent must include their letting agent registration number
• Section 47(1) – Power to provide that the functions and jurisdiction of the sheriff in relation to actions between letting agents and landlords or tenants are transferred to the First-tier Tribunal

• Section 51(3) – Power to modify the meaning of “letting agency work” in relation to Part 4 of the Bill

• Section 54 – Power to make regulations concerning the charging of fees for site applications. (Inserts section 32C into the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”))

• Section 56 – Power to change the time period for which a site licence is valid. (Inserts section 32J into the 1960 Act)

• Section 61 – Power to make an order varying the material a local authority must have regard to in applying the fit and proper person test. (Inserts section 32O into the 1960 Act)

• Section 66 – Power to make regulations about the appointment of an interim manager. (Inserts section 32Y into the 1960 Act)

• Section 77 – Power by order to disapply the right conferred under section 11 of the Land Tenure Reform (Scotland) Act 1974 (“the 1974 Act”) to redeem a heritable security after 20 years. (Inserts subsections (3D) to (3F) in section 11 of the 1974 Act)

• Section 83 – Ancillary provision

• Section 85(3) – Commencement

• Schedule 1, paragraph 26 – Rules as to procedure (Court of Session) (Amends section 104 of the Rent (Scotland) Act 1984)

6. The Committee agreed to write to Scottish Government officials to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at the Annex.

7. The Committee’s comments and, where appropriate, recommendations on those delegated powers in the Bill are detailed below.

Powers to issue guidance

(i) 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).

(ii) 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).

(iii) 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).

Powers conferred on: the Scottish Ministers
Powers exercisable by: guidance
Parliamentary procedure: none

Provisions
(i) Section 4(2)

8. Section 21 of the Housing (Scotland) Act 1987 (“the 1987 Act”) concerns rules made by social landlords regarding the priority of allocation of houses. New subsection (3B), inserted by section 4(2) of the Bill, confers power on the Scottish Ministers to make regulations prescribing persons of a description or type who social landlords must include in their rules governing the priority of allocation of housing. In addition, section 4(2) also inserts new subsection (3A), which requires a social landlord, in making or altering its rules governing the priority of allocation of houses, to have regard to (a) any local housing strategy for its area, and (b) any guidance issued by the Scottish Ministers.

(ii) Section 7(2)

9. Section 7(2) of the Bill inserts new section 20B in the 1987 Act. Section 20B(1) provides that a social landlord may impose a minimum period before an applicant is eligible for the allocation of housing, if certain circumstances apply. The circumstances are set out in subsection (5) and include antisocial behaviour, rent arrears, tenancy abandonment and making a false statement in applications for housing.

10. Section 20B(4) provides that Ministers may by regulations prescribe the maximum period preceding the application for which a social landlord may take account of any of the circumstances in subsection (5), and the maximum period that a landlord may make an applicant ineligible for the allocation of housing as a result of the circumstances in subsection (5). The regulations may set different maximum periods for different circumstances.

11. In addition, new section 20B(3) requires a social landlord, in considering whether to impose a requirement as to the minimum period before an applicant is eligible for the allocation of housing, to have regard to any guidance issued by the Scottish Ministers. Guidance may be issued on the same matters as may be prescribed in regulations under subsection (4), i.e. the maximum period preceding an application for housing during which a social landlord may take account of certain circumstances, and the maximum period for which a landlord may make an applicant ineligible for the allocation of housing as a result of the circumstances in subsection (5).
(iii) Section 8(1)

12. Section 8 of the Bill makes various amendments to the provisions in the Housing (Scotland) Act 2001 (“the 2001 Act”) on the grant of short Scottish secure tenancies, to extend the circumstances for granting such a tenancy to include where a tenant or applicant has acted in an antisocial manner or has harassed another person. Section 8(1) inserts new section 34(9) in the 2001 Act, which provides that a landlord must have regard to any guidance issued by the Scottish Ministers regarding the creation of a short Scottish secure tenancy on the new antisocial behaviour grounds.

Comment

13. In light of the potential significant effects of the exercise of each power on individuals, the Committee queried whether the Scottish Ministers intended to publish the guidance.

14. Further, in relation to the first 2 powers, the Committee sought an explanation from the Scottish Government of the intended interaction between the powers to make guidance and the powers to make regulations conferred by each section. The Government clarified the policy intention to give social landlords discretion and flexibility with regard to their rules on allocation of housing, and on eligibility periods. It therefore intends to rely primarily on the power to issue guidance to social landlords in these matters. The response explains that Ministers plan only to exercise the powers to make regulations if some groups of prospective tenants are being consistently overlooked in allocation policies, or if landlords are not having appropriate regard to the guidance on eligibility periods.

15. The Scottish Government’s response also acknowledges the potentially significant effects on individuals of the matters which the guidance may relate to. It indicates in each case that the Scottish Government will consult widely on draft guidance, and that the finalised guidance will be published on the Scottish Government website, where it will be available to tenants, prospective tenants and landlords.

16. The Committee notes, however, that there are no requirements in the Bill for consultation on, or publication of, the guidance. Whilst the Committee notes the current Government’s clear commitment to consultation and publication, the Committee requires to consider how the powers might be exercised from time to time by future administrations. In this case, the proposed guidance will supplement the law on allocation of and eligibility for social housing, and on the nature of the tenancies which may be offered to prospective tenants.

17. The Committee reports that it is content with the powers in principle, and is satisfied that they are exercisable by guidance. The Committee is also content, in light of the Scottish Government’s explanation, that it is appropriate in the circumstances for sections 4(2) and 7(2) to confer powers to make regulations as well as guidance.

18. The Committee also 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
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.

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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<td>Power exercisable by:</td>
<td>regulations</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>negative procedure</td>
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**Provision**

19. Section 41 provides for the Scottish Ministers, by regulations, to set out a code of practice which makes provision about the standards of practice of persons who carry out letting agency work. Before finalising the code, the Scottish Ministers must consult on a draft of it under section 41(3).

20. The code of practice will have two principal legal effects. Firstly, consideration of whether a person has complied with the code of practice forms part of the fit and proper person considerations applied to applications for registration (section 30 of the Bill). Where the Scottish Ministers are satisfied that a person is no longer a fit and proper person, their registration may be revoked (section 35).

21. Secondly, where the First-tier Tribunal, on an application by a tenant or landlord, determines that a letting agent has failed to comply with a code of practice, it must issue an enforcement order under section 43. Failure to comply with such an enforcement order without reasonable excuse constitutes a criminal offence.

**Comment**

22. The Committee noted that the consequences of failure to comply with the code are similar to the consequences of failure to comply with the code of conduct under the Property Factors (Scotland) Act 2011, to which the affirmative procedure applies. It asked the Scottish Government to explain why it is considered appropriate for the regulations setting out the letting agent code of practice to be subject to the negative procedure.

23. The Scottish Government’s response distinguishes the Property Factors (Scotland) Act on the basis that it was the result of a Private Member’s Bill, and accordingly the Scottish Government was not directly involved in choosing the Parliamentary procedure to which that code of conduct was subject. It repeats the Government’s view that the requirement in the Bill for consultation on the code of conduct prior to it being finalised means that the negative procedure affords sufficient Parliamentary scrutiny.

24. The Committee does not consider that the requirement for consultation of itself renders the negative procedure appropriate. Further, the Committee is of the view that, irrespective of the origin of the Bill for the Property Factors (Scotland) Act, Parliament took the view that the affirmative procedure was the
appropriate level of scrutiny for the code of conduct under that Act. In this case, where the legal consequences as regards revocation of registration and enforcement are similar to those for property factors, the Committee sees no reason to depart from that level of scrutiny.

25. The Committee therefore asks 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 Conduct are such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of the power in section 41(1) than the negative procedure.

26. The Committee asks the Scottish Government to comment on this matter further in its response to this report.

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).

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision
27. Part 5 of the Bill creates a new licensing regime for permanent residential mobile homes sites. The relevant provisions are inserted in the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”). 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.

28. Section 32N(2) gives an indicative list of matters which the regulations may make provision for or in connection with. These are largely procedural matters, although not exclusively so. They include the circumstances in which the reasons for a local authority’s decision on a licence or transfer application must be given (subsection (2)(f)), and the determination and consequences of an appeal (subsection (2)(i)).

Comment (Appeals)
29. The reason given in the DPM for taking the power is that it is a power to set out procedures and time limits in relation to the site licensing system, and that this level of procedural detail is best dealt with through regulations. The Committee notes however that the power, as drafted, is not restricted to enabling provision to be made about procedural matters. In particular, subsection (1)(d) enables provision to be made in relation to appeals generally, and not merely in relation to the procedure for appeals.
30. The Scottish Government has indicated to the Committee that, in addition to making provision about procedures and timescales for appeals, it may in its view also be necessary to make provision about the effects and consequences of an appeal. For example, where a local authority has decided not to renew a licence, and the licence holder appeals, the Government considers that provision will need to be made on the status of the licence while such an appeal is underway, and on what would happen if such an appeal was successful.

31. The Scottish Government accordingly informed the Committee that Ministers will consider further whether the drafting in section 60 of the Bill needs to be refined, as the intention would be to use the power to make provision as to effects and consequences of appeals, not just in relation to appeal procedures.

32. The Committee welcomes the Scottish Government’s commitment to consider the drafting of section 60 further, and asks the Scottish Government to confirm its conclusions on the matter (including whether or not an amendment is proposed) in its response to this report.

33. The Committee adds that, in its view, section 60 should be redrawn to reflect more clearly the proposed purpose of new section 32N(1)(d) of the 1960 Act, which is to make provision about the procedure for, and the determination, consequences and effect of, an appeal, rather than to make provision about appeals generally.

Comment (Reasoned decisions)

34. Section 32N(2)(f) expressly enables provision to be made in regulations about the circumstances in which the reasons for a local authority’s decision on a licence or transfer application, or its decision to transfer a licence in the absence of an application, must be given.

35. The Bill inserts various provisions in the 1960 Act regarding the giving of reasons. Under section 32D (licence applications) a local authority is required, before refusing to issue or renew a licence, to provide an applicant with the reasons why it is considering refusing the application, and to give the applicant at least 28 days to make written representations in response. Similar requirements apply where a local authority is considering transferring a licence of its own accord under section 32G. However, there is no such requirement for the giving of reasons or seeking representations before a local authority refuses an application under section 32E to transfer a licence.

36. In each of the three cases, there is no requirement on the face of the Bill to give reasons after the decision is made. A local authority will only be required to give reasons after its decision in the circumstances provided for in regulations made under section 32N(1), if any. By contrast, new section 32L of the 1960 Act (which concerns revocation of a licence) requires a local authority to give reasons for its decision to revoke a licence after the decision is made, in addition to the requirement to give reasons and seek representations during the consideration period.

37. The Committee considers that the giving of reasons is a significant aspect of procedure. In this case, the reasons for a local authority’s decision could
be expected to inform the decision of anyone with a right to appeal under new section 32M of the 1960 Act regarding whether to exercise that right. The Committee accordingly asked the Scottish Government why it is considered appropriate that the giving of reasons is subject to provision made in delegated legislation, rather than set out on the face of the Bill, and why the negative procedure is considered appropriate.

38. The Scottish Government’s response indicates that the policy is not to place a duty on a local authority to provide reasons for all of its decisions. For example where a licence application is granted, the giving of reasons may not be necessary. In the Government’s view, this is an area of administrative procedure and therefore something best covered in regulations, rather than set out on the face of the Bill.

39. The Committee accepts that provision about the giving of reasons can, in some circumstances, properly be made in subordinate legislation and that the negative procedure could be considered appropriate for the making of procedural rules, which may include provision about the giving of reasons for a local authority’s decision. However, in this particular case, the Committee notes the apparent discrepancy between the provisions in the Bill for the giving of reasons under new sections 32D (licence applications) and 32G (licence transfer without application), and the provisions under new section 32E (transfer applications).

40. The discrepancy appears to be that there are no requirements on the face of the Bill for the giving of reasons under section 32E, or for written representations to be sought. Furthermore, the giving of reasons in such cases is subject only to provision which may or may not be made in subordinate legislation under section 32N(1). This is in contrast to the position under new sections 32D and 32G. The Committee is accordingly concerned in relation to these provisions that the appropriate balance may not have been struck between the provision made on the face of the Bill, which is a matter for the Parliament, and the provision which may be made by the Scottish Ministers in the exercise of delegated powers.

41. The Committee asks the Scottish Government to explain, in its response to this report, why the absence of requirements under new section 32E (application to transfer a site licence) of the 1960 Act (i) to provide an applicant with the reasons why the local authority is considering refusing an application, and (ii) to permit an applicant to make written representations in response, is considered appropriate. In this regard, the Committee is mindful that the giving of reasoned decisions contributes to ensuring that the determination process meets the requirements of Article 6(1) ECHR. The Committee also notes the contrast between the position under section 32E and the requirements under new sections 32B (licence applications) and 32G (licence transfer without application) of the 1960 Act.

42. Similarly, the Committee asks the Scottish Government to explain why it is considered appropriate that the giving of reasons under section 32E is subject only to provision which may or may not be made in subordinate legislation under section 32N(1) (inserted by section 60).
43. These questions reflect the Committee’s concern that an appropriate balance may not have been struck between the provision made on the face of the Bill and the provision which may be made in the exercise of delegated powers under the Bill.

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

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<td>order</td>
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<td>Parliamentary procedure:</td>
<td>affirmative procedure</td>
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Provision

44. Sections 63 and 64 of the Bill insert new sections 32R, 32S and 32V into the 1960 Act. These provisions set the maximum fine on conviction of operating a caravan site without a licence (£50,000), the maximum fine on conviction of breaching licence conditions (£10,000), and the maximum fine on conviction of failure to comply with an improvement notice (£10,000). New section 32T of the 1960 Act gives the Scottish Ministers the power to amend these maximum fine levels, through an order subject to the affirmative procedure.

Comment

45. The reason given in the DPM for taking the power in new section 32T is to enable adjustment of the maximum fines imposed in line with inflation and other relevant factors. However, the power is not expressed as being restricted in that way.

46. A comparative power in section 226 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) enables Ministers to amend enactments passed after 1 April 1996 to substitute a new sum for a maximum fine specified in such an enactment. That power enables the substitution of a new sum only where Ministers consider that that sum is justified by inflationary changes, or to reflect the fact that the standard scale which applies to other (lesser) offences is being increased.

47. The Committee asked the Scottish Government whether, in the absence of express restrictions similar to those in the 1995 Act, the power taken in section 32T accurately reflects the policy intention. In its response, the Scottish Government explained that there may be reasons why Ministers might wish to adjust the level of maximum fines in the future other than to reflect changes in inflation or other fine levels. It gives the example of a potential sharp increase in prices in the mobile home sector, which would also require fine levels to be raised to continue to provide suitable sanction. The Scottish Government accordingly considers that restriction of the power in new section 32T would be inappropriate.

48. However the Committee remains concerned that the power is drafted more widely than is necessary to achieve the stated policy intention. It considers that the factors which may cause the Scottish Ministers to wish to vary the maximum fine for these offences should be capable of specification on the face of the Bill. This would allow the Parliament, in scrutinising the Bill, to consider
whether variation of the maximum fine on these grounds could be justified in policy terms.

49. The 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 Parliament. The Committee accordingly considers that the power in section 32T should be restricted to permit variation of the maximum fine only where it appears to the Scottish Ministers that particular circumstances apply. These circumstances should reflect the specific policy intention in taking the power.

50. To that end, the Committee recommends that the Bill provide for the power in section 32T(1) to be exercised only where the Scottish Ministers consider it appropriate in light of inflationary changes, or where they consider that other relevant factors apply. The Bill should set out what these other relevant factors are. The Committee offers no view on what the relevant factors might be, this being a policy matter for consideration by the lead committee.

51. The Committee accordingly asks the Scottish Ministers to consider bringing forward a suitable amendment at Stage 2. The Committee asks the Scottish Government to comment on this matter further in its response to this report.
Correspondence with the Scottish Government

On 21 January 2014, the Delegated Powers and Law Reform Committee wrote to the Scottish Government as follows:

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

Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: none

1. Section 21 of the Housing (Scotland) Act 1987 (“the 1987 Act”) concerns rules made by social landlords regarding the priority of allocation of houses. In addition to the power conferred on the Scottish Ministers to make regulations, section 4(2) of the Bill also inserts new subsection (3A), which requires a social landlord, in making or altering its rules governing the priority of allocation of houses, to have regard to (a) any local housing strategy for its area, and (b) any guidance issued by the Scottish Ministers.

2. The power to issue guidance to which a social landlord must have regard is not discussed in the delegated powers memorandum as it is not a power to make subordinate legislation.

3. The Committee therefore asks the Scottish Government:

- For an explanation of the purpose of the power in section 21(3A)(b) of the 1987 Act, as that provision is inserted by section 4(2) of the Bill?
- In particular, whether it is expected that Ministers will use the power to make guidance regarding the same matters as could be prescribed in regulations under new section 21(3B) – and if so, what considerations will inform the choice of guidance or regulations?
- Whether it intends to publish the guidance, in light of the potentially significant effect on individuals of a social landlord’s rules on housing allocation?

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
Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: none

4. The Bill inserts new section 20A(3) into the 1987 Act which requires a social landlord, in considering whether to impose a requirement as to the minimum period before an applicant is eligible for the allocation of housing, to have regard to any guidance issued by the Scottish Ministers. The power conferred on Ministers is to issue guidance on the same matters as may be prescribed in regulations under section 20A(4) of the 1987 Act.

5. The provision in Section 20B(3) of the 1987 Act, as inserted by section 7(2) of the Bill, confers power on the Scottish Ministers to issue guidance to which a social landlord must have regard in considering whether to impose a requirement as to the minimum period before an applicant is eligible for the allocation of housing (where the circumstances in section 20B(5) apply).

6. The provision confers power on the Scottish Ministers to issue guidance on the same matters as may be prescribed in regulations under section 20A(4) of the 1987 Act (as inserted by section 7(2) of the Bill).

7. The Committee therefore asks the Scottish Government:

   • In what circumstances is it envisaged that guidance will be issued, as opposed to regulations being made?

   • Whether it intends to publish the guidance, in light of the potentially significant effect on individuals of a social landlord’s rules on eligibility periods?

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

Power conferred on: the Scottish Ministers
Power exercisable by: guidance
Parliamentary procedure: none

8. Section 8(1) of the Bill amends section 34 of the Housing (Scotland) Act 2001 on the creation of short Scottish secure tenancies. It inserts new subsection (9), which provides that a landlord must have regard to any guidance issued by the Scottish Ministers regarding the creation of a short Scottish secure tenancy on the new antisocial behaviour grounds. As before, the power to issue guidance is not discussed in the delegated powers memorandum, nor is it explained in any of the supporting documents accompanying the Bill.
9. The Committee therefore asks the Scottish Government the following:

- What is the purpose of the power to issue guidance in section 34(9) of the Housing (Scotland) Act 2001 (inserted by section 8(1) of the Bill)?

- Why is it considered appropriate for the power to be exercised by way of guidance rather than in subordinate legislation?

- Whether it intends to publish guidance issued under this power?

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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10. Section 41 of the Bill provides for the Scottish Ministers, by regulations, to set out a code of practice which makes provision about the standards of practice of persons who carry out letting agency work. Before finalising the code, the Scottish Ministers must consult on a draft of it under section 41(3). The Delegated Powers Memorandum explains that it is considered appropriate for the code to be set out in regulations rather than on the face of the Bill, as it may require a detailed set of requirements to be developed.

11. The Bill proposes that compliance with the code of practice will have important legal consequences. Failure to comply could lead to revocation of a letting agent’s registration under section 35, or imposition of a letting agent enforcement order under section 43. Failure to comply with a letting agent enforcement order, without reasonable excuse, is an offence in terms of section 46.

12. Failure to comply with the code of conduct issued under section 14 of the Property Factors (Scotland) Act 2011 has similar legal consequences in relation to property factor registration and enforcement, but the order bringing that code into force is subject to the affirmative procedure.

13. The Committee therefore asks the Scottish Government to explain why it is considered appropriate for the regulations setting out the letting agency code of practice under section 41(1) to be subject to the negative 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 into the 1960 Act

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

14. New section 32N of the Caravan Sites and Control of Development Act 1960 ("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 a transfer, 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 a licence transfer, and to revoke a licence. Subsection (2) gives an indicative list of matters which the regulations may make provision for or in connection with.

15. The power allows Ministers to set out procedures and time limits in relation to the site licensing system and that this level of procedural detail is best dealt with through regulations. The power is to be subject to negative procedure. It would appear, however, that the power, as drafted, is not restricted to enabling provision to be made about procedural matters. In particular, subsection (1)(d) enables provision to be made in relation to appeals generally, and not merely in relation to the procedure or time limits for appeals. While the list in subsection (2) indicates some matters relating to appeals about which provision may be made, the power is not restricted to that extent.

16. There is also no requirement on the face of the Bill for a local authority to give reasons for its decisions to determine a relevant permanent site application or an application for consent to transfer a licence under section 32E, or its decision to transfer a licence under section 32G.

17. The Committee therefore asks the Scottish Government the following questions:

- Regarding appeals, if the power in section 32N is intended to enable provision to be made about the procedure and time limits for appeals, why is it drawn more widely than that?

- What sort of provision regarding appeals is it anticipated the power will be used to make?

18. Section 32I of the Bill requires a local authority to notify its decisions under the licensing regime (to determine applications or to transfer licences). However, an authority is only required to give reasons for its decisions in the circumstances provided for in regulations made under section 32N(1), if any. The giving of reasons is a significant aspect of procedure, and could be expected to inform the decision of anyone with a right to appeal under section 32M regarding whether to exercise that right.
19. The Committee therefore asks the Scottish Government the following questions:

- Why is it considered appropriate that these circumstances are subject to provision made in delegated legislation, rather than set out on the face of the Bill?
- Why is the negative procedure considered to provide an appropriate level of scrutiny for the exercise of such a power?

Section 63 – Power to vary maximum fine.
Inserts section 32T in the 1960 Act

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: affirmative procedure

20. Sections 63 and 64 of the Bill insert new sections 32R, 32S and 32V into the Act 1960 Act. These provisions set the maximum fine on conviction of operating a caravan site without a licence, the maximum fine on conviction of breaching licence conditions, and the maximum fine on conviction of failure to comply with an improvement notice. New section 32T of the 1960 Act gives the Scottish Ministers the power to amend these maximum fine levels, through an order subject to the affirmative procedure.

21. The reason given in the Delegated Powers Memorandum for taking the power in new section 32T is to enable adjustment of the maximum fines imposed in line with inflation and other relevant factors. However, although subject to affirmative procedure, the power is not expressed as being restricted in that way.

22. A comparative power in section 226 of the Criminal Procedure (Scotland) Act 1995 enables Ministers to amend enactments passed after 1 April 1996 to substitute a new sum for a maximum fine specified in such an enactment. That power enables the substitution of a new sum only where the Ministers consider that that sum is justified by inflationary changes, or to reflect the fact that the standard scale which applies to other (lesser) offences is being increased.

23. The Committee therefore asks the Scottish Government:

- Whether it considers that it might be appropriate for similar restrictions to apply to the exercise of the power in section 32T?
- And, in the absence of such restrictions, whether it considers that the power taken in section 32T reflects the policy intention in taking such a power?
On 28 January 2014, the Scottish Government responded as follows:

**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.**

The purpose of section 21(3A)(b) of the 1987 Act, as inserted by section 4(2) of the Bill, is to enable Scottish Ministers to issue guidance to social landlords on how the landlords make and alter the rules they apply when allocating houses to tenants. Because of the significant effect that social landlords’ rules on allocation can have on individuals, the Scottish Government intends to issue such guidance before commencing the provisions of section 4. Before doing so, it will consult social landlords, tenants and other stakeholders on draft guidance. Subject to the outcome of the consultation, the Government expects the guidance to cover issues such as:

- Definition of unsatisfactory housing conditions
- Factors to consider in assessing whether persons have housing needs which are not capable of being met by housing options which are available
- Identification of groups to which a social landlord will give priority
- Definition of property and related issues such as evidence of ownership, issues relating to properties that have been rented out and ability to access a property.

The Scottish Government hopes that this guidance will help social landlords to make rules on allocations that provide a basis for them to respond to the housing needs of local people and to ensure that affordable housing goes to those who need it most. It would only make regulations in respect of the same matters as the guidance covered if it appeared that the guidance was not achieving its desired effect and if, for example, some groups of prospective tenants were being consistently overlooked in social landlords’ rules. This approach reflects the Scottish Government’s wish to give social landlords discretion and flexibility in these matters and to use the regulation making power only where it appears that guidance is not being successful. The guidance will be published on the Scottish Government website, so that it will be available to tenants, prospective tenants as well as landlords.

**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.**

Because of the significant effect that a social landlord’s rules on eligibility periods can have on individuals, the Scottish Government intends to issue guidance to social landlords on this matter before commencing the provisions of section 7. Before doing so, it will consult social landlords, tenants and other stakeholders on draft guidance. It would only make regulations in respect of this if it appeared that landlords were not having appropriate regard to the guidance when imposing a requirement as to the minimum period before an applicant is eligible for the
allocation of housing. This approach reflects the Scottish Government’s wish to
give social landlords discretion and flexibility in this matter to use the regulation
making power only where it appears that the guidance is not being successful.
The guidance will be published on the Scottish Government website, so that it will
be available to tenants, prospective tenants as well as landlords.

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.

The purpose of section 34(9) of the Housing (Scotland) Act 2001, as inserted by
section 8(1) of the Bill, is to allow the Scottish Government to issue guidance to
social landlords to assist them in determining the type of circumstances where a
Short Scottish Secure Tenancy on the new antisocial behaviour ground, inserted
as paragraph 2A of schedule 6 to that Act by section 8(4) of the Bill, may or may
not be appropriate.

The Scottish Government does not wish to be prescriptive about how social
landlords use this new Short Scottish Secure Tenancy for antisocial behaviour.
Therefore, it considers it more appropriate for the power to be exercised by way of
guidance rather than subordinate legislation. The Scottish Government does
however wish to encourage best practice and may wish to highlight particular
factors that landlords should take into account when considering the use of the
new tenancy. Guidance will give social landlords more flexibility to address
antisocial behaviour in their communities than would regulations. There is already
a power to issue guidance as to what might be appropriate housing support
services for the purposes of section 34 of the Housing (Scotland) Act 2001 at
section 34(8).

The Scottish Government intends to issue such guidance before commencing the
provisions for the new Short Scottish Secure Tenancy for antisocial behaviour,
inserted as paragraph 2A of schedule 6 of the Housing (Scotland) Act 2001.
Before doing so, it will consult social landlords, tenants and other stakeholders on
draft guidance. The guidance will be published on the Scottish Government
website, so that it will be available to tenants, prospective tenants, as well as
landlords.

Subject to the outcome of the consultation, the Government expects the guidance
to cover issues such as:

- applying the policy consistently
- actions taken by the tenant to address their behaviour or the behaviour of
  their household/visitors
- evidence (level and quality of evidence of antisocial behaviour); and
- the provision of housing support services by landlords.
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.

The Committee asked the Scottish Government to explain why it is considered appropriate for the regulations setting out the letting agency code of practice under section 41(1) to be subject to the negative procedure.

As the Committee mentions, the consequences of failure to comply with the code are similar to provisions in the Property Factors (Scotland) Act 2011, to which affirmative procedure applies. The Property Factors (S) Act 2011 was a private member’s Bill and the Scottish Government therefore had no direct influence over the procedure it adopts for its Code of Practice. Under section 41(3) of the Housing Bill, the Scottish Ministers must consult on a draft Code of Practice for Letting Agents before finalising that Code. Given these consultation requirements the Scottish Government is of the view that negative procedure is sufficient.

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 into the 1960 Act.

This power allows Ministers to make regulations relating to appeals under the reformed site licensing system the Bill would introduce. These regulations would cover the procedure and timescales relating to such appeals, but the Scottish Government believes it is also likely to be necessary to make provisions about the effect and consequence of such appeals. For example where a local authority has decided not to renew a licence, and the licence holder appeals, provision will need to be made on the status of the licence while such an appeal is underway, and what would happen if such an appeal was successful. However, in light of the Committee’s comments, Ministers will consider further whether the drafting in section 60 needs full refinement, as the intention would be to use the power to make provision as to effects and consequences of appeals, not just in relation to appeal procedures.

The Committee has also asked about the provisions in the Bill that will require local authorities to give reasons for their decisions under the new site licensing regime (under sections 32I and 32N, which would be inserted into the 1960 Act by sections 55 and 60 of the Bill). For background, in relation to providing reasons section 55 of the Bill would insert new section 32D(4) into the 1960 Act. This would require a local authority, before refusing to issue or renew a licence, to provide an applicant with the reasons that it is considering for refusing an application, and giving the applicant at least 28 days to make written representations in response.

However the Scottish Government does not want to place a duty on a local authority to provide reasons for all of its decisions. For example, in cases where a local authority has granted a licence, or consented to the transfer of a licence, it would be unnecessary and disproportionate to require it to provide reasons, at least unless they are requested. It is the Scottish Government’s view that this is an area of administrative procedure, and therefore something best covered in regulations, rather than set out on the face of the Bill. Negative procedure seems to the Scottish Ministers to provide an appropriate level of scrutiny for such matters, given the limited intention for use of the power.
Section 63 – Power to vary maximum fine. Inserts section 32T in the 1960 Act.

Section 32T of the 1960 Act, which would be inserted by section 63 of the Bill, gives Scottish Ministers the power to amend fine levels in relation to specific offences related to mobile home site licensing. The Scottish Government has considered the Committee’s suggestion that it restrict the provision in a manner similar to that under section 226 of the Criminal Procedure (Scotland) Act 1995. However, the Scottish Government believes that there could be reasons Ministers might wish to adjust the level of maximum fines other than to reflect changes in inflation or other fine levels.

For example, it may be that the prices of mobile homes sharply increase, meaning that fine levels might also need to be raised to continue to provide a suitable sanction. Given the greater level of scrutiny that the affirmative procedure would provide, the Scottish Government believes that restriction of this provision is inappropriate.
Housing (Scotland) Bill: The Committee considered its approach to the delegated powers provisions in this Bill at Stage 1 and agreed to seek further information from the Scottish Government.
Housing (Scotland) Bill: Stage 1

11:03

The Convener: Item 3 is consideration of the delegated powers in the Housing (Scotland) Bill at stage 1.

The committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that these questions be raised in written correspondence, and the responses received will help to inform a draft report on the bill. The committee will have the opportunity to consider the responses at a future meeting before the draft report is considered.

Section 21 of the Housing (Scotland) Act 1987 relates to rules made by social landlords regarding the priority of allocation of houses. In addition to the power conferred on the Scottish ministers to make regulations, section 4(2) of the bill also inserts new subsection (3A) into section 21 of the 1987 act to require a social landlord,

“In making or altering its rules governing the priority of allocation of houses”,

to

“have regard to ... any local housing strategy ... for its area, and ... any guidance issued by the Scottish Ministers.”

The power to issue guidance to which a social landlord must have regard is not discussed in the delegated powers memorandum as it is not a power to make subordinate legislation.

Does the committee agree to ask the Scottish Government for an explanation of the purpose of the power in section 21(3A)(b) of the Housing (Scotland) Act 1987, as that provision is inserted by section 4(2) of the bill; in particular, whether it is expected that ministers will use the power to make guidance regarding the same matters as could be prescribed in regulations under new section 21(3B) of the 1987 act and, if so, what considerations will inform the choice of guidance or regulations; and whether the Scottish Government intends to publish the guidance, in light of the potentially significant effect on individuals of a social landlord’s rules on housing allocation?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): It might be useful to make the observation that, as a committee, we seem to be saying to the Government fairly regularly that, if it is to produce guidance, that guidance should be published. If other members are of the same mind as I am, this might be a useful opportunity simply to say that that will be our position generally, so that the Government can take some account of that from here on in.
Of course, I agree with the proposition that the convener has put.

The Convener: Thank you for that observation.

Are members content that we ask those questions?

Members indicated agreement.

The Convener: The bill also inserts in the 1987 act new section 20A(3), which requires a social landlord, in considering whether to impose a requirement as to the minimum period before an applicant is eligible for the allocation of housing, to have regard to any guidance issued by the Scottish ministers. The power that is conferred on ministers is the power to issue guidance on the same matters as may be prescribed in regulations under section 20A(4) of the 1987 act.

The provision in section 20B(3) of the 1987 act, as inserted by section 7(2) of the bill, confers on the Scottish ministers the power to issue guidance on the same matters as may be prescribed in regulations under section 20A(4) of the 1987 act, as inserted by section 7(2) of the bill.

Does the committee agree to ask the Scottish Government in what circumstances it is envisaged that guidance will be issued, as opposed to regulations being made; and whether the Scottish Government intends to publish the guidance, in light of the potentially significant effect on individuals of a social landlord’s rules on eligibility periods? Stewart Stevenson’s point about guidance was well made, but I will not invite him to make it again. Are we content to ask those questions?

Members indicated agreement.

The Convener: Section 8(1) of the bill amends section 34 of the Housing (Scotland) Act 2001 on the creation of short Scottish secure tenancies. It inserts new subsection (9), which provides that a landlord must have regard to any guidance issued by the Scottish ministers regarding the creation of a short Scottish secure tenancy on the new antisocial behaviour grounds. As before, the power to issue guidance is not discussed in the delegated powers memorandum, nor is it explained in any of the supporting documents that accompany the bill.

In the absence of such explanation, does the committee agree to ask the Scottish Government what the purpose is of the power to issue guidance in section 34(9) of the Housing (Scotland) Act 2001, as inserted by section 8(1) of the bill; why it is considered appropriate for the power to be exercised by way of guidance rather than in subordinate legislation; and whether the Government intends to publish guidance that is issued under that power?

Members indicated agreement.

The Convener: Section 41 of the bill provides for the Scottish ministers, by regulations, to set out a code of practice that makes provision about the standards of practice of persons who carry out letting agency work. Before finalising the code, the Scottish ministers must consult on a draft of it under section 41(3). The delegated powers memorandum explains that it is considered appropriate for the code to be set out in regulations rather than on the face of the bill, as it may require a detailed set of requirements to be developed. Although that could be considered reasonable, consideration of the choice of parliamentary procedure may be appropriate.

The bill proposes that compliance with the code of practice will have important legal consequences. Failure to comply could lead to revocation of a letting agent’s registration under section 35, or the imposition of a letting agent enforcement order under section 43. Failure to comply with a letting agent enforcement order without reasonable excuse is an offence under section 46.

Failure to comply with the code of conduct issued under section 14 of the Property Factors (Scotland) Act 2011 has similar legal consequences in relation to property factor registration and enforcement, but the order that brings that code into force is subject to the affirmative procedure. Does the committee therefore agree to ask the Scottish Government to explain why it is considered appropriate for the regulations that set out the letting agency code of practice under section 41(1) of the bill to be subject to the negative procedure?

Members indicated agreement.

The Convener: New section 32N of the Caravan Sites and Control of Development Act 1960 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 a transfer 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 a licence transfer or to revoke a licence. Subsection (2) of new section 32N of the 1960 act gives an indicative list of matters that the regulations may make provision for or in connection with.

The power allows ministers to set out procedures and time limits in relation to the site licensing system and provides that that level of procedural detail is best dealt with through regulations. The Scottish Government considers the negative procedure to be appropriate.
However, it would appear that, as drafted, the power is not restricted to enabling provision to be made about procedural matters. In particular, paragraph (d) of subsection (1) of new section 32N enables provision to be made in relation to appeals generally and not merely in relation to the procedure or time limits for appeals. Although the list in subsection (2) indicates some matters that relate to appeals about which provision may be made, the power is not restricted to that extent.

In addition, there is no requirement on the face of the bill for a local authority to give reasons for its decision to determine a relevant permanent site application or an application for consent to transfer a licence under new section 32E of the 1960 act, or for its decision to transfer a licence under new section 32G.

Does the committee therefore agree to ask the Scottish Government, regarding appeals, why, if the power in new section 32N of the 1960 act is intended to enable provision to be made about the procedure and time limits for appeals, it is drawn more widely than that; and what sort of provision regarding appeals it is anticipated that the power will be used to make?

Members indicated agreement.

The Convener: New section 32I of the 1960 act, as inserted by the bill, requires a local authority to notify its decisions under the licensing regime to determine applications or to transfer licences. However, an authority is required to give reasons for its decisions only in the circumstances that are provided for in regulations that are made under new section 32N(1) of the 1960 act, if any. The giving of reasons is a significant aspect of procedure and could be expected to inform the decision of anyone with a right to appeal under section 32M about whether to exercise that right.

Does the committee therefore agree to ask the Scottish Government why it is considered appropriate for those circumstances to be subject to provision that is made in delegated legislation rather than set out on the face of the bill; and why the negative procedure is considered to provide an appropriate level of scrutiny for the exercise of such a power?

Members indicated agreement.

The Convener: Sections 63 and 64 of the bill insert new sections 32R, 32S and 32V into the Caravan Sites and Control of Development Act 1960. Those provisions set a maximum fine of £50,000 on conviction for operating a caravan site without a licence; a maximum fine of £10,000 on conviction for breaching licence conditions; and a maximum fine of £10,000 on conviction for failure to comply with an improvement notice.

New section 32T of the 1960 act gives the Scottish ministers the power to amend those maximum fine levels, through an order that would be subject to the affirmative procedure. The reason that is given for taking that power is to enable the maximum fines that are imposed to be adjusted in line with inflation and other relevant factors. However, although it would be subject to the affirmative procedure, the power is not expressed as being restricted in that way.

A comparative power in section 226 of the Criminal Procedure (Scotland) Act 1995 enables ministers to amend enactments passed after 1 April 1996 by substituting a new sum for a maximum fine that is specified in such an enactment. That power enables the substitution of a new sum only when ministers consider that that sum is justified by inflationary changes, or to reflect the fact that the standard scale that applies to other, lesser offences is being increased.

Does the committee therefore agree to ask the Scottish Government whether it considers that it might be appropriate for similar restrictions to apply to the exercise of the power in new section 32T of the 1960 act? In the absence of such restrictions, does the Government consider that the power that is taken in section 32T reflects the policy intention in taking such a power?

Members indicated agreement.
Dear Maureen,

**Housing (Scotland) Bill: Financial Memorandum**

The Finance Committee issued a call for evidence on the Housing (Scotland) Bill’s Financial Memorandum (FM) on 11 December 2013 giving a deadline of 31 January 2014 for responses. A total of thirteen responses were received and these are attached.

*Short Scottish Secure Tenancies: provision of housing support*

The FM estimates that the cost of providing housing support to individuals who have their tenancies converted to short Scottish Secure Tenancy on the basis of antisocial behaviour will be £764,000 per year across Scotland.

Some local authorities have questioned whether these assumptions provide an accurate reflection of costs at a local level. North Lanarkshire Council’s view is that the assumptions “should be viewed with some caution since it is based on national costs and statistics from earlier years as well as assumptions on the type and provider of support”. South Lanarkshire Council makes a similar point stating that, with regard to the assumptions made in the FM, “we believe there are some limitations with them, and in particular, with the data used to support them”.

The City of Edinburgh Council’s response sets out its own estimate of the potential annual cost of providing housing support, estimating that cost at £270,000. This estimate is based on two assumptions. The first is that all tenants with Scottish Secure Tenancies who receive a final warning over their antisocial behaviour will convert to a SSST with support. The second is that where a homelessness assessment has been carried out and there has been a history of significant
antisocial behaviour within the previous three years, a SSST with support would be appropriate. The response does, however, also note that its estimate “is dependent on any Scottish Government guidance”.

**Costs relating to the establishment of the Private Rented Sector tribunal**
The 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.”

The City of Edinburgh Council also comments 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.”

**Third party applications to the Private Rented Housing Panel**
Some responses addressed the discretionary power to enable local authorities to make an application to the Private Rented Housing Panel (PRHP) in respect of the repairing standard.

The Association of Local Authority Chief Housing Officers (ALACHO) comments that “it is particularly difficult to estimate the costs of any increased duties arising from the measures in the Bill especially those pertaining to new duties towards the private rented sector.” In relation to third party applications, ALCAHO notes “that several ALCAHO 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.” Similar comment was made by the City of Edinburgh Council.

South Lanarkshire Council states 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 considers it important that “further work is carried out to establish resource requirements” to support councils in relation to this power.

**Landlord registration**
Table 2 of the FM sets out (at page 43 of the Explanatory Notes) that the costs to other bodies, individuals or businesses arising from Part 4 of the Bill will be in the form a registration fee set at £250 per letting agent on a three year basis. Paragraph 192 of the Bill identifies that this level of fee would result in income to the Scottish Government of £180,000 in the first year of operation of the register with a similar fee for re-registering meaning a similar level of income in the fourth year of the register. This is based on an analysis of UK wide data that suggests there are around 719 letting agents operating in Scotland.
However, in its response, the Royal Institute of Chartered Surveyors (RICS) comments that the number of letting agents businesses is likely to be “much higher” than may be suggested in the FM. The response from the City of Edinburgh Council would appear to support this comment given that it states there are “currently 774 letting agents registered” through its own Landlord Registration Scheme.

The RICS response notes that to realise the desired outcome of introducing a registration system “it is absolutely vital that there is a consistent approach to enforcement of the proposed registration arrangements and associated code of practice.”

The FM states that the estimate of costs to other bodies, individuals and businesses does “not include any potential training costs or costs to alter business practices that a letting agent may have to undertake to comply with a code of practice” and that the estimate may therefore be subject to change. RICS sets out its view that the provisions of the Bill “have been designed to eliminate poor or mal practice and raise standards in the sector” and that “the raising of standards can only be achieved through ongoing training”. On that basis, RICS suggests that the estimate will be subject to change “unless the Scottish Government is willing to remunerate the costs of training all letting agent business staff, which would likely eclipse the monies accumulated from the three-yearly £250 per business registration fee”.

**Mobile home licensing**
Angus Council has commented on the provisions in relation to the licensing of mobile home sites with permanent residents, noting that the Bill “does not address the issue of ‘holiday’ sites” and that it “is also currently unclear where migrant worker sites sit”. The Council notes that to police licensing and planning permission issues can be very difficult and resource intensive and that it is “not convinced that the Bill has sufficient cost efficient tools and penalties to deter and tackle misbehaviour” until legislation is introduced to address holiday and migrant worker sites.

**Conclusion**
Your committee may wish to consider the above information along with the attached submissions in its evidence session with the Minister.

Yours sincerely,

Kenneth Gibson MSP
Convener
Introduction
1. Angus Council welcomes the opportunity to comment as part of the consultation with the Financial Committee’s scrutiny of the Financial Memorandum.

Consultation
2. Angus Council did take part in the Scottish Government consultation exercises which preceded the Bill, and we did make comments on the financial assumptions made.
3. We believe that our comments on the financial assumptions have been accurately reflected in the Financial Memorandum.
4. We had sufficient time to contribute to the consultation exercise.

Costs
5. The Bill will have financial implications for us, but we believe that the assumptions being made are reasonable.
6. The estimated costs and savings set out within the Financial Memorandum and projected over 15 years for each service sound reasonable. However, we are concerned with the potential cost implications of Part 5 – mobile home sites with permanent residents. The Bill only deals with permanent sites and does not address the issue of “holiday” sites. The boundaries between the two in practical terms are very often blurred, as many sites have a mix of permanent and so called holiday lets. It can be very difficult (and therefore resource intensive) to police licensing and planning permission issues on the ground. It is also currently unclear where migrant worker sites sit within these classifications – our belief is that they should be included as permanent sites, but again, this has cost implications in terms of administration for local authorities.
7. In Angus, breaches of planning permission and breaches of site licence are quite common, so we are not convinced that the Bill has sufficient cost efficient tools and penalties to deter and tackle misbehaviour until further legislation is introduced which also addresses holiday and migrant worker sites.
8. We are confident that we will be in a position to meet the financial costs that will be associated with the Bill with the exception of Part 5, mobile home sites with permanent residents where there could be a risk financially as we have explained in question 5.
9. The Financial Memorandum accurately reflects the uncertainty associated with the estimates and the timescales over which such costs would be expected to
arise, again with the exception of Part 5, mobile home sites with permanent residents.

**Wider Issues**

10. We believe that with the exception of part 5, the Financial Memorandum does for the most part capture associated costs with the Bill. However, there it is likely that there would be additional costs to the council to take action where there are breaches of site licence until further new legislation is introduced.

11. We believe that for the most part there will be no direct costs associated with this part of the Bill, with the exception of Part 5 – mobile home sites with permanent residents. However; at the moment it would be difficult to quantify any future costs that might arise until the Bill comes into force.

**Conclusion**

12. Angus Council welcomes the opportunity to work with The Scottish Government to help improve housing in Scotland. We have high quality housing stock which will meet the SHQS by 2015, have the fourth lowest rents, and have a low level of borrowing. We therefore have a track record of managing our business for the benefit of our customers in a way that delivers real housing outcomes for both tenants and the wider community. We believe that the new Housing Bill will strengthen our position without imposing too many additional costs. However we are concerned that there could be resource issues for local authorities, particularly with Part 5, mobile home sites with permanent residents. If further legislation was introduced which addressed the wider issues around holiday and migrant worker sites, this would help to clarify the sector within Angus and elsewhere, and Angus Council would be in a better position to assess cost implications in the round.
Introduction and General Comments
1. As the representative body for Local Authority Chief Housing Officers in Scotland, ALACHO welcomes the opportunity to respond to the Finance Committee questionnaire on the Financial Memorandum to the Housing (Scotland) Bill. ALACHO has been actively involved in all aspects of the pre-Bill consultation process, in particular the deliberations of ARHAG (the Scottish Government led Affordable Rented Housing Advisory Group) which considered the affordable housing allocations and tenancy provisions of the Bill, the consultation on Housing Tribunals, the Private Rented Sector Strategy Group, and the future of the Right to Buy consultation document, all of which made significant recommendations subsequently reflected in the provisions of the Bill.

Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
2. Yes, on both counts.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
3. We are content that our comments have been reflected in the FM to the Bill.

Did you have sufficient time to contribute to the consultation exercise?
4. Yes. Having been involved in the consultation process from inception we are content with the time allowed. Indeed we would commend Scottish Government both for the time allowed and the inclusive way in which consultation was undertaken.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
5. As a representative body the Bill has no direct financial implications for ALACHO. The financial implications will be experienced by the 32 Scottish local authorities which make up our membership. As noted above, we are content that the costs of implementing the provisions of the Bill have been given reasonable consideration and that where individual councils have concerns over their particular circumstances, that they will bring these to the attention of the Finance Committee through their response to this questionnaire. We also understand that local authority directors of Finance are also responding through COSLA.
Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

6. Having been involved in earlier consultations on each aspect of the Bill, and having had the opportunity to comment on potential costs as appropriate, ALACHO is broadly content that the estimates of costs and savings set out in the FM are reasonable, albeit within the constraints of course of 15 year estimates, over which time frame much can and will change.

7. It should be acknowledged however that for local authorities it is particularly difficult to estimate the costs of any increased duties arising from measures in the Bill especially those pertaining to new duties towards the private rented sector, so this will need to be kept under careful review e.g. in relation to the proposal to allow third party (i.e. local authority) application to an expanded PRHP on the repairing standard, or any requirement to police the activities of letting agents. With regard to the former 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.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

8. As noted above there are no significant resource implications for ALACHO arising from the provisions of the Bill. We would however draw attention to our observations in response to question 5 above. Undoubtedly further work will be required for local authorities to collate the costs involved in complying with any new duties relating to the private rented sector, some of which may only be established in practice.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

9. ALACHO understands that many of the provisions are based on estimates of cost and timescales, often in a context where empirical data has not hitherto been collected. We also understand the variable nature of some types of service provision and associated outcomes. In this context, we are broadly content that a reasonable attempt has been made to identify costs and timeframes over which they will arise. However, given the acknowledged uncertainty around some of the estimates, the key issue for ALACHO is that costs are kept under review and resource support made available to councils adversely affected. This is particularly important in the current environment where council HRA revenues are being reduced considerably as a consequence of welfare reform provisions such as the bedroom tax.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

10. Whilst we believe the FM reasonably captures the costs associated with introducing the Bill, as noted in response to Question 7 above, it is being introduced at a time where Scottish Local Authorities are experiencing serious pressure on their housing budgets. The FM can be no more than a best guess at this stage, albeit an
informed guess. As noted above it is vital that costs are monitored on a regular basis. We are certain that councils will do this and bring any significant unintended or unforeseen costs of implementation to the attention of government.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

11. As noted elsewhere in our response, ALACHO believes there could well be unforeseen costs associated with the Bill, depending on future circumstances and the take up of provisions within the Bill (e.g. the extent to which councils decide to pursue third party appeals on behalf of private sector tenants). It is difficult to quantify these costs at present, for the reasons described at various points above. Such costs however are likely to impact not only councils but other agents also e.g. private sector landlords and letting agents will undoubtedly face costs in complying with a new regulatory regime, or in engaging with the new tribunal system.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. East Dunbartonshire Council has responded to a number of consultations in relation to the Housing Bill. However the Council has not so far responded to financial assumptions within the Bill.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Please see above – not so far.

Did you have sufficient time to contribute to the consultation exercise?
3. The Council contributed extensively on the Housing Bill proposals, and we feel that we had sufficient time to comment on the consultations. Tenants remain dissatisfied with the removal of introductory tenancies from the Bill though.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
4. At a time of great financial pressure and efficiency savings any legislative implications and most of the changes outlined will have workload and therefore financial implications. Where policies such as allocations policies have to be reviewed, changed and consulted upon this will have financial implications which cannot be regarded as negligible. It is welcomed that estimated costs and long term projections of implications are outlined in the consultation.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?
5. Unable to comment as do not have the resources to analyse future workloads that far ahead. The information outlined appears reasonable but comments regarding negligible costs do not appear to be accurate.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
6. Unsure if future financial costs can be met and unable to estimate what the costs may be.
Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

7. Unable to estimate the impact of the legislation proposed.

Wider Issues

Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. Housing staff and legal staff involved with Right to Buy applications are likely to encounter a surge of applications (many may not proceed but loss of right will increase enquiries and applications). The legislation will also incur workload pressures and financial costs that will be more difficult to absorb and cannot be regarded as negligible when legislation is enacted.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. Yes but unable to quantify.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. No.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. N/A

Did you have sufficient time to contribute to the consultation exercise?
3. N/A

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
4. There are no direct financial implications for Homes for Scotland. The ‘Private Rented Housing’, ‘Private Housing Conditions’ and ‘Letting Agents’ parts of the Bill may impact some of our members who act as private landlords but we do not wish to raise any concern with the level of costs.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?
5. Yes

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
6. N/A for Homes for Scotland.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
7. No comment.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. No additional comments
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. No additional comments.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. Yes. North Ayrshire took part in most of the consultation exercises and commented on the financial assumptions, where appropriate.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Yes.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
4. Yes, the only significant financial implications of the Bill for North Ayrshire Council relate to the abolition of Right To Buy and we believe that these have been accurately reflected.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?
5. Yes.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
6. The main financial impact of the Bill for North Ayrshire is the abolition of Right To Buy. We believe that the impact can be managed within our long term financial plans for the Housing Revenue Account.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
7. Yes.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. Yes.
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. At this stage we do not foresee any additional future costs associated with this Bill.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes, we were fully involved in the consultation exercise and where financial implications could be quantified full comment was made.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. The Financial Memorandum is generalising all comment gained through the consultation exercise therefore it is difficult to assess, however in general it looks as if all comments have been taken into account when reviewing the potential financial impact.

Did you have sufficient time to contribute to the consultation exercise?

3. Sufficient time is usually given in relation to any consultation. However difficulties can arise in relation to the availability of resources to undertake the detailed analysis required.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

4. In relation to Part 1, Right to Buy, the assumptions made are in agreement to those reflected in our response. In relation to other areas within the Bill no monetary value was given but there was a belief that there would be a potential increase in costs associated with the introduction of the legislation.

5. The Financial Memorandum has tried to identify these costs and have recognised that there will be some cost increases associated with the legislation.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

6. The estimates costs and savings contained within the Financial Memorandum have been based upon averages over the whole sector. It is not possible to accurately assess the actual impact of the changes in costs (if any) until the legislation is introduced and changes pertaining to the legislation as a whole incorporated into current workloads are assessed. It is therefore too soon to assess the accuracy of the projected cost outlined in the Financial Memorandum.

7. The most significant cost on local authorities is set out in paras 70-73 in relation to the provisions for short SSTs and the associated need to provide housing support services. The cost is estimated to be £764k per annum across all local
authorities. However this should be viewed with some caution since it is based on national costs and statistics from earlier years as well as assumptions on the type and provider of support that may not be an accurate reflection of costs at a local level.

8. In general the FM appears to provide estimates only of set-up and annual costs without any reference to a projection over 15 years.

*If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?*

9. Until changes are implemented it is difficult to accurately assess the costs associated with this. If actual costs of implementation look to be adverse then some assistance should be given by the Scottish Government to ease the burden during the implementation phase and also for any recurring costs.

*Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

10. The Financial Memorandum reflects that the costs stated are estimates and recognises that a number of assumptions surrounding the changes in relation to both actual costs and volumes can change and inevitably have an effect on the estimates costs currently identified.

**Wider Issues**

*Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?*

11. The Financial Memorandum looks as if most costs have been identified but again it will not be known until the implementation stage if there are indeed any hidden costs associated with its introduction and implementation.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

12. It would not be possible to quantify these future costs until the subordinate legislation was known and in place.
**Consultation**

*Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?*

1. Yes, Perth and Kinross Council made comments on the consultation exercises which support the development of the Bill.

2. Although a response to the consultation on “Affordable Rented Housing: Creating flexibility and better outcomes for communities” was submitted it was not possible to comment on costs until further information was available.

3. However, we did respond positively to the consultation in 2012 on the Scottish Governments proposals for the Future of the Right to Buy (RTB), providing confirmation that Perth and Kinross Council had no financial impact following the reduction in RTB house sales.

*Do you believe your comments on the financial assumptions have been accurately reflected in the FM?*

4. Yes

*Did you have sufficient time to contribute to the consultation exercise?*

5. Yes

**Costs**

*If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?*

6. The main financial impact of the Bill will be the provision of additional housing support costs which will be required for households who have acted in an “anti-social” manner to enable them to successfully convert from a SSST to a full Scottish Secure Tenancy. Based on existing information Perth and Kinross Councils share of the Scottish estimate is £11,000 (1.5% of the Scottish total cost - £764,000).

7. However, the estimate in the financial memorandum of £764,000 is based on the assumption of housing providing 25% of the support with the other 75% being met by social work and the NHS as they are also providing services to these households. In addition, the assumption used for the average cost of housing support per person per year is based on 2004 average cost of support to homeless people then uprated for inflation. We consider the new expanded group of people who will have a history of anti-social offending, are likely to need higher housing support. (This is based on existing housing support costs for people with this background who have a cost of £3,500 per year, an additional 20% above the average used in the financial memorandum.)
8. The combination of these comments will not result in significant material changes in the level of costs for Perth and Kinross. However, when developing estimates for Scotland these factors require to be reconsidered and used to refine assumptions where appropriate.

**Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?**

9. The financial memorandum estimates that abolishing Right to Buy will be cost neutral. This is consistent with the modelling undertaken by Perth and Kinross Council. The Council's HRA Business Plan and budgets were adjusted in 2012 to exclude capital receipts from RTB with additional net income offsetting the impact on rents.

10. However, the financial model developed in the financial memorandum may need to be reconsidered as the assumption of rents rising by inflation plus 1.5% each year for the next 30-50 years would result in unaffordable rents for other local authorities.

11. As highlighted in question 5 the assumptions for the estimated cost of housing support for SSST households should be reconsidered for the following two factors:

12. Average cost of housing support per person per year. £2,970 average may need to be increased to reflect the support needs for people with antisocial behaviour. Perth and Kinross have identified existing costs of £3,500 per person per year for a comparable group of people.

13. The proportion of the support provided by housing landlords being 25%. Social Work support is also a Council service and these costs should be included in the estimate.

**If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?**

14. It would be appropriate for the Government to approve additional funding to local authorities to deliver the policy objectives.

**Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

15. The Financial Memorandum highlights the high level of uncertainty and assumptions used in the development of estimates. The two best examples which are relevant are:

- 16. Right To Buy – a range of 9 scenarios have been modelled due to the uncertainty of costs and rents in the future.
- 17. Housing Support Costs – The estimate provides a range between a best (£764,000) and very high (£3.055million). The information in the financial memorandum for this main cost details the range of assumptions and the sources used.
Wider Issues

Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

16. Yes, the main cost elements of the Bill have been identified, although the rate of change in the economy and public sector may result in unforeseeable costs at the moment becoming a reality in the future. Changes in public services, the economy, welfare reform, interest rates and demographics all will have a bearing on the future cost implications of the Bill.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

17. It is not possible to anticipate future subordinate legislation and or other associated implications of the Bill, and therefore no costs can be estimated.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Renfrewshire Council submitted responses on the following consultations:
   - Consultation on a Strategy for the Private Rented Sector 2012
   - Affordable Rented Housing: Creating More Flexibility for Landlords and Better Outcomes for Communities 2013
   - The Future of Right to Buy in Scotland 2012
   - Better Dispute Resolution in Housing: Consultation on the Introduction of a New Housing Panel for Scotland 2013

2. Comments were made on financial assumptions for the Right to Buy consultation.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

3. Yes.

Did you have sufficient time to contribute to the consultation exercise?

4. Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

5. In the main the costs for the local authority have been accurately reflected.

6. There will though be some costs in terms of staff training and updating public information including leaflets and website information. For example the FM identifies no costs to local authorities in the creation of a PRS tribunal. However as the provider of housing advice services, the local authority will need to train relevant staff and update existing information to reflect the new changes.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

7. Yes.
If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
8. Yes.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
9. Yes—the Council recognises there is a degree of uncertainty and that the FM reflects this.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
10. Yes

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
11. Yes, there may be future costs associated with the bill through subordinate legislation. For example the proposed Code of Conduct for Letting Agents may require some letting agents to do things that they do not already do (for example, provide tenants or landlords with particular information). Until more detail is known, such costs cannot be quantified.
RICS Scotland

1. A global organisation, the Royal Institution of Chartered Surveyors (RICS) is the principal body representing professionals employed in the land, property and construction sectors. In Scotland, the Institution represents over 11,000 members comprising chartered surveyors (MRICS or FRICS), Associate surveyors (AssocRICS), trainees and students.

2. Our members practise in sixteen land, property and construction markets and are employed in private practice, central and local government, public agencies, academic institutions, business organisations and non-governmental organisations.

3. As part of its Royal Charter, RICS has a commitment to provide advice to the government[s] of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

4. RICS Scotland comprises many working professional group boards and forums relating to the aforementioned sectors, and recently initiated the member-based RICS Scotland PRS Forum.

5. This Call for Evidence was circulated to members of the forum for their assessment of the Bill’s provisions, and their views have been collated within this response.

6. RICS Scotland tenders this submission having recently provided oral evidence to the Scottish Parliament’s Infrastructure and Capital Investment Committee on the Housing (Scotland) Bill’s provisions for letting agent registration.

RICS Regulation

7. This Call for Evidence was discussed, at length, with RICS Regulation.

8. RICS Regulation monitors, inspects and advises Members and Regulated Firms to uphold our professional, ethical and business standards, as well as against specific schemes.

9. RICS Regulation takes a risk-based approach to monitoring and regulation of its schemes. In line with better regulation principles, our regulatory activities are transparent, proportionate, accountable, consistent and targeted.
10. RICS Regulation reports to a Regulatory Board which is at arms’ length from RICS. The Board has a mix of independent and RICS members, with an independent Chair, all appointed by an independent selection process.

11. The Regulatory Board is accountable to RICS Governing Council.

12. RICS Scotland and RICS Regulation welcomes the opportunity to comment on these Housing Bill proposals, and the comments below should be taken in the above context.

**Overview of the Bill**

13. RICS Scotland acknowledges that the provisions set forth in part 4 of the Housing (Scotland) Bill are a result of stakeholder consultation on the PRS Strategy: *A Place to Stay, A Place to Call Home*. In regard to letting agents, the strategy outlined three options:

- Option 1 - expand the existing landlord registration system to include all letting agents,
- Option 2 – mandatory registration of all agents, a code of practice and mechanism for resolving disputes
- Option 3 - introduce a legal obligation that all agents must be a member of a recognised professional or trade body.

14. Following consultation with relevant sector participants, including RICS, before publishing this bill, Scottish Government Ministers instructed officials to pursue ‘Option 2’.

15. RICS Scotland supported, and continues to pursue, the foundation of ‘Option 3’.

16. Whilst ‘Option 2’ falls short of the more consistent and targeted regulation of ‘Option 3’ that RICS Scotland supports, we recognise this development as a step in the right direction.

17. For option 2 to realise desired policy outcomes, in terms of raising professional standards and reducing consumer detriment, it is absolutely vital that there is a consistent and effective approach to enforcement of the proposed registration arrangements and associated code of practice.

18. This submission considers part 4 – Letting Agent Registration - of the Housing (Scotland) Bill only.

**Cost Implications of Letting Agent Registration**

19. RICS Scotland is of the impression that a fee for a letting agent registration, on an individual or business basis, may not be appropriate.
20. Registration for a property factor, as a result of the Property Factors (Scotland) Act - which this particular element of the Housing (Scotland) Bill is founded - is free; thus ensuring no one is inhibited from being a property factor.

21. If registration for letting agents is to progress, it should be as equal, open and accessible as the property factors’ registration.

22. “Paragraph 192 of the Financial Memorandum (FM) provides an illustration of a three-yearly fee level of £250 per letting agent business, with no fees initially prescribed in relation to requests to amend existing details on the register. The FM states that “the total estimated income to the Scottish Government would be approximately £180,000 in the first year”. This figure can therefore also be read as the cost to the letting agent sector in Scotland.”

23. The illustrative text above indicates that a letting agent business would pay £250 for ‘inclusion’ in the register, generating approximately £180,000 for the Scottish Government. However, this figure would have to be split over the three-year period, thus the income generation would stand at approximately £60,000 per annum (though this figure does not take into account the monies obtained through new letting agent businesses).

24. RICS Scotland believes the exact figure of letting agent businesses is extremely hard to count, particularly as there are many individuals managing their own properties, or a few for friends, family, colleagues or associates that have been referred to who do it as a “favour”, side-line or a very small home run business. It is likely, from anecdotal experience provided by our members, that the number is much higher than this.

25. In order to obtain the exact number of letting agent businesses, a visible policing force – ensuring registration is undertaken by all practicing letting agents - and compressive guidance for tenants outlining, at least, the requirement of letting agent registration would be required.

26. Consideration of further comprehensive guidance for landlords should also be required in considering the possible high number of friends or family members who run accommodation as “favour”. This could add to the financial implications of the Bill’s provision.

Training Costs (relevant to question 8)

27. “The FM does, however, go on to note that the estimate “does not include any potential training costs or costs to alter business practices that a letting agent may have to undertake in order to comply with a code of practice”. It goes on to say, in relation to the estimate, that “Therefore, this may be subject to change”. (paragraph 219)"
RICS Scotland is of the belief that the Housing (Scotland) Bill provisions have been ‘designed’ to eliminate poor or mal practice and raise standards in the sector.

RICS Scotland believes that the raising of standards can only been achieved through ongoing training, or Continuous Professional Development (CPD), of market participants in order to ensure letting agent business staff are knowledgeable and compliant with any legislative changes.

If training of letting agent businesses staff is not undertaken, then standards will not necessarily be raised.

If training is necessary, as part of the code of practice, then as far as the costing estimates for letting agents business are concerned, the text “Therefore, this may be subject to change” is incorrect – the costing estimates will be subject to change, unless the Scottish Government is willing to remunerate the costs of training all letting agent business staff, which would likely eclipse the monies accumulated from the three-yearly £250 per business registration fee.

RICS members in Scotland have to undertake 20 hours of CPD to ensure they are aware of new best practice methods and procedures and recent legislative changes. This is one reason why RICS Scotland, and other sector bodies, endorsed ‘Option 3’.

Costs of Professional Body Membership

RICS considers the current approach to regulation in residential property market in Scotland, England, Wales, and Northern Ireland is inconsistent, fragmented, confusing for consumers and burdensome on business.

RICS proposes that all Governments, at Westminster, Holyrood and in the devolved administrations, should take a joined up approach to regulation covering all aspects of the residential property market – new build; second hand sales, and lettings/block management, with principles based regulation targeted where the risks are greatest and having the following three distinct elements:

- legislation/standards;
- enforcement; and,
- redress.

Such an approach is merited in this market as it is about a basic human requirement – the provision of shelter.

RICS consumer surveys indicate that consumers want more consistent and targeted regulation of residential agents.

Others support this approach including NFOPP, Ombudsman Services, The Property Ombudsman, Which?, the Law Society, and Shelter.
38. Recent RICS impact assessment research shows there is a robust business case for such an approach. Published in February 2013, this Economic and Equality Impact Assessment outlines the costs and benefits of bringing all lettings agents in Scotland, England, Wales, and Northern Ireland within scope of the Estate Agents Act 1979 and enacting Section 22 of that Act (statutory minimum professional standards, which RICS considers should be NVQ level 3 or above for all agents).

39. The summary figures from this research in the table below indicate that the benefits (around £21m per annum) will outweigh the costs (initial costs of £46m, and ongoing costs of £0.64m per annum) in less than 2.5 years.

<table>
<thead>
<tr>
<th>Items</th>
<th>Costs</th>
<th>Benefits</th>
<th>Net</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total one off</td>
<td>£45,814,000</td>
<td>(£45,814,000)</td>
<td></td>
</tr>
<tr>
<td>Total annual</td>
<td>£639,000</td>
<td>£21,073,000</td>
<td>£20,434,000</td>
</tr>
<tr>
<td>Payback period</td>
<td></td>
<td></td>
<td>2.2 years</td>
</tr>
</tbody>
</table>

40. These summary costs and benefits figures are based on a methodology, compliant with relevant Government guidance for impact assessment work, and included consultation with business practitioners and consumer organisations to test and further inform the initial desk research. A copy of the full report is available to download from: www.rics.org/uk/knowledge/research/research-reports/regulation-of-sales-and-letting-agents-report/

41. It should be noted that the summary costs and payback period outlined in this table above are for UK-wide regulation. Taking Scotland’s share of the population (approximately 8.3%)³, the cost figure would be considerably lower with a shorter payback period.

42. RICS stands ready to provide further detailed commentary on this research report if that would be helpful.

43. RICS' proposed approach to regulatory reform mirrors the now well established approach in the financial services market. The benefits of introducing clear, consistent, and targeted regulation covering all aspects of the UK residential property market will include:

- consolidated and reduced legislation/regulations;
- a simplified regulatory framework – easier for consumers and businesses to understand;
- reduced costs associated with business compliance; and

³ http://www.bbc.co.uk/news/uk-scotland-24866266
- enhanced consumer protection.

44. RICS Regulation has considerable knowledge and experience of developing and enforcing standards for property professionals, including those operating in residential agency. RICS has developed a brief options paper outlining possible alternative ways in which RICS could undertake such a role and would be willing discuss these options further with the Committee and the Scottish Government.

45. RICS Scotland believes that should the Scottish Government progress letting agent registration, consideration of letting agents that are regulated by professional bodies, such as RICS, should be exempt from the payment of registration, as this will be another costing scheme of which they would have to sign up to.

**Redress Mechanism**

46. RICS Scotland agrees that a redress mechanism is required – but it will all come down to the details.

47. RICS Scotland would not have an issue with a nominal charge, £25 as an example, for dispute body applications. This could deter vexatious cases and “serial complainers”

48. The dispute body members would not only have experience in the sector, but also have to undertake regular training to ensure they fully understand new legislative provisions that affect the sector, and the possible impact of their decisions.
FINANCE COMMITTEE CALL FOR EVIDENCE
HOUSING (SCOTLAND) BILL: FINANCIAL MEMORANDUM
SUBMISSION FROM SOUTH AYRSHIRE COUNCIL

Consultation
1. No
2. N/a
3. N/a

Costs
4. The costs are accurately reflected.
5. Para 72 on housing support only assumes 25% of the costs will be incurred as there is an assumption that the majority of housing support services are already being provided. This cannot be certain and the actual costs incurred may be higher.
6. Any new duties prescribed by legislation should be 100% funded by the Scottish Government.
7. Yes.

Wider Issues
8. We are not aware of other costs.
9. There could be potential future costs but they would not be able to be quantified until the subordinate legislation was detailed.
Introduction and General Comments

1. South Lanarkshire Council welcomes the opportunity to respond to the Finance Committee questionnaire on the Housing (Scotland) Bill’s Financial Memorandum. We have responded to the pre-Bill consultation process and have also played an active role in stakeholder discussions of the Housing Policy Advisory Group.

2. We are broadly supportive of the Bill’s provisions and aims and believe the legislation will have a positive impact on both safeguarding social housing and to help improve housing conditions of the Private Rented Sector (PRS). However, the current financial climate poses a considerable challenge to resource allocation within specific (diminished) budgets.

3. In view of the future abolition of RTB, we, in this financial year, may already be seeing an impact of the policy change where the expected RTB sales budget for 2013/14 is £2m, and current actual is £2.4m – with an outturn of £3.5m expected by the end of this financial year. Taking these figures into account, we are expecting a ‘spike’ in RTB sales every year prior to the policy being fully implemented in approximately three years’ time.

4. There is one area of the Bill where we do perceive a potential significant additional resource investment to be made by local authorities. The discretionary powers for local authorities to apply as a third party to the Private Rented Housing Panel (PRHP), where the private landlord has failed to comply with the Repairing Standard, could have considerable resource implications (aside from giving authorities ambitious new duties to enforce). For this reason, we believe it is necessary to exercise some caution in terms of the assumption inherent in the FM that local authorities can reasonably carry out this new role without identified new resources.

Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

5. South Lanarkshire Council has extensively commented on the financial assumptions made in the following consultations (which proceeded the introduction of the Bill in November 2013) –

- Homes Fit for the 21st Century;
- The Future of Right to Buy (RTB) in Scotland;

1 For more detail please see our answers to Question 5 and 6 in this response
• Affordable Rented Housing: Creating flexibility for landlords & better; outcomes for communities;
• Consultation on a PRS Strategy for Scotland; and
• Through dialogue with stakeholders at the Housing Policy Advisory Group where specific policy areas to be included in the Bill were discussed.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
6. Largely, yes – but see specific comments detailed below.

Did you have sufficient time to contribute to the consultation exercise?
7. Yes, South Lanarkshire Council felt we had an appropriate amount of time to contribute to the consultation exercise.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
8. For this question we have focussed our attention on the policy areas that the Financial Memorandum (FM) outlines that are likely to have cost implications for South Lanarkshire Council.

9. Taking each of relevant provisions in turn –

RTB
10. South Lanarkshire Council believes abolishing the RTB will remove continuing uncertainty in terms of future levels of supply of social rented housing. The change will also support local authorities to meet the continuing duty to provide permanent accommodation to homeless households and to help develop the supply of affordable rented housing in line with wider strategic objectives. In our response to the The Future of RTB in Scotland we outlined that the loss of RTB income will require changes to our Business Plan which could include generation of additional income from other sources – including increased borrowing or a reduction in our Housing Investment Programme, etc. More specifically, we are aware that –

• While 2012 figures for South Lanarkshire Council RTB sales reveal they have reduced very significantly over the last decade (RTB receipts then accounted for 2% of funding for the Business Plan compared with 23% in 2004/5); and
• Recent evidence suggests that the policy change is already having an impact and that a ‘spike’ in RTB sales preceding the abolition of the policy is likely (and that it is assumed that there will be a doubling of the 60 sales to 20 sales in 2014/15 to 2016/17).

11. From the date that the abolition of RTB is introduced, we expect that –

• The loss of the capital receipt from RTB sales will be partly offset by the continuing rental income stream from the houses remaining in stock; and
• That the modelling from the Scottish Government indicating ending RTB would be, at worst, cost neutral (taking into account the rental stream retained, against income from sales receipts lost) looks accurate.
**Allocation of Social Housing**

12. South Lanarkshire Council regularly reviews and updates the Housing Allocation Policy to ensure it is responsive to local needs and demands and makes best use of available council stock. For this reason, we generally agree with assumptions in the FM that new additional costs associated with the new provisions are unlikely for local authorities.

**Creation of a SSST (to grant and to convert from SST);**
**Grant SSSTs for homeowners;**
**Extension of SSST term;**
**Further one off extension of SSST for 6 months; and**
**SSST reasons to tenants for repossession.**

*SSST* – qualifying period for assignation, sublet, succession and joint tenancy

13. South Lanarkshire Council, in earlier consultation responses, have highlighted the issue where local authorities are given new duties without allocation of new resources to help fund their operation; in some instances leaving a financial burden on the council. The FM identifies a number of cost assumptions based on the above provisions that require local authorities to increase the extent of housing support for tenants –

- That housing support is already provided to tenants in SSSTs.
- Since June 2013, homeless households have been assessed for their housing support requirements as part of a new housing support duty.

14. While the financial implications of these assumptions appear to be largely reflected within the FM, we believe there are some limitations with them, and in particular, with the data used to support them –

- That the housing support costs outlined in the FM are based on 10 year old Supporting People figures uprated for ‘inflation’.
- That the savings assumptions are based on limited five year old research which indicates that “around 50% of perpetrators will desist from antisocial behaviour to keep their tenancy secure” – also with the assumption outlined in the FM that ASB will stop when their tenancy is converted from a SST to a SSST (or when new tenants are provided with a SSST).

15. We would also emphasise that in light of the continuing pressures, it is extremely difficult to identify new resources to meet the extended housing support requirements.

**Transfer of PRS dispute cases from civil courts to a tribunal**
**Tacit approval of landlord registration applications (after 12 months)**
**Third party application of the Repairing Standard**
**Enhanced Enforcement Areas**

16. The majority of the Bill’s provisions relating to the PRS will not have a negative financial impact on local authorities. However, we agree with the FM that there are some costs associated with –
• Tacit approval after 12 months if council’s require to ask for an extension (to a sheriff) of the 12 month registration period.
• Gathering evidence for a third party application of the repairing Standard on, for example, property condition, and the processing of an application and defending an appeal by a landlord (for more detailed information relating to costs for this provision please see our answer to Question 5 below).

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?
17. In relation to the costs and savings that we anticipate will impact on our organisation, these have been dealt with in our response to Question 4 above.

18. With regard to the 15 year projections in relation to the third party application to the repairing standard in view of an expanded PRHP it should be noted 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 the approach could increase flexibility to address poor standards in the PRS, we have some reservations (outlined below) regarding the resourcing of it.

19. The FM states that there should not be a significant cost burden to local authorities for implementing this provision but it appreciates that gathering evidence on property condition, processing of applications and defending a case (on appeal of a decision in court) will give significant, ambitious and new duties to local authorities in which they will have to enforce. In light of no new resources for local authorities, we propose that the Scottish Government clarifies whether councils could be left with a continuing (and potentially increasingly costly) responsibility to oversee the support and defence of applicants who would come under this new jurisdiction.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
20. There is always a challenge of meeting new legislative provisions with existing resources or being able to source new funds from additional borrowing. For some time now, however, South Lanarkshire Council have been planning to take into account the financial impact that, for example, the abolition of RTB would bring. In this respect, there are a number of the Bill’s provisions that we have no major concerns with and where the financial costs associated with them can be met.

21. However, in respect to the discretionary powers for local authorities to apply as a third party to the PRHP, there could be a continuing and costly responsibility for councils to ensure the support required to meet the provision is made available to the tenant. We believe it is necessary to exercise some caution in terms of the assumption inherent in the FM that local authorities can reasonably carry out this new role without identified new resources. Indeed, the feedback from local authorities mentioned in the FM notes general concern in this regard. It is important, therefore, that further work is carried out to establish resource requirements and that consideration is given to what actions could be put in place to help the PRHP to support councils who have duties to carry out third party reporting.
Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

22. South Lanarkshire Council understands that introduction of a number of the provisions – particularly those relating to increased housing support provision surrounding SSST changes – are based on estimates and understand the variable nature of this type of service provision. As outlined earlier in this response (Question 4), we do question how accurate the use of (approximately) 10 year old housing support cost data is in calculating these costs. Likewise, for the cost ‘savings’ element of these provisions, it is assumed that ASB stops in approximately 50% of cases when a tenancy is converted from a SST to a SSST (where that assumption is based on limited research).

Wider Issues

Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

23. Whilst we believe the FM reasonably captures the costs associated with introducing the Bill, it arrives at a time where Scottish Local Authorities have constrained budgets and very limited additional resources to implement new provisions; or to revise existing services and make changes to policies, practices and procedures.

24. However, we believe caution should be exercised in view of future local authority resourcing of the third party reporting provision to the PRHP (see comments to Question 5 and 6) where there looks to be a expectation that councils can reasonably be excepted to fund it without additional resources.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

25. None at present.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. The City of Edinburgh Council (the Council) submitted consultation responses in relation the Future of Right to Buy and Better Dispute Resolution in Housing.

The Future of Right to Buy

2. The Council’s response to this consultation indicated that the abolition of Right to Buy would result in an estimated loss of capital income of approximately £2.8 million per year. However, it was also estimated that rental income from retained properties would generate approximately £0.27 million per year which could be used to help offset additional borrowing required as a result of the loss of capital receipts.

Better Dispute Resolution in Housing

3. The Council’s response to this consultation raised concerns with how additional mediation services would be funded, especially if these services were to remain free to all users.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

4. The financial implications of the abolition of Right to Buy for local authorities have been accurately reflected in the financial memorandum (FM) which suggests that the short term cost of additional borrowing to cover the loss of capital receipts will be offset by a gain in rental income over the long term.

5. The issues regarding the expansion of mediation services are not relevant to the Housing (Scotland) Bill (the Bill) as the expansion of services is to be pursued out with legislation.

Did you have sufficient time to contribute to the consultation exercise?

6. Both consultation responses had to be submitted in draft subject to approval by Council Committee. Council committee cycles mean that, depending on the publication date of the consultation, the standard 12 week period for Scottish Government consultations does not always allow sufficient time for a comprehensive response to be developed and approved by elected members before the consultation closes.
Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

7. The Council agrees with many of the assessments contained within the Financial Memorandum. Below are the areas where the Council believes there may be additional financial implications that have not been accurately reflected in the Financial Memorandum.

Part 2 – Social Housing

Short Scottish Secure Tenancies (SSST) - Duty to Provide Housing Support

8. The FM estimates that the provision of additional support to households that have been given a SSST on the grounds of antisocial behaviour will cost £764,000 per year across all local authorities. Analysis of antisocial behaviour cases in Edinburgh that are likely to result in the provision of an SSST and require support suggest that this is an under estimate of the cost.

9. In attempting to assess the financial impact of this, City of Edinburgh Council has assumed that all Council tenants with Scottish Secure Tenancies (SSTs) who receive a final warning over their antisocial behaviour will have their tenancy converted to a SSST with support. On this basis, the number of additional SSSTs with support would be approximately 116 per year. Clearly this is dependent on any Scottish Government guidance however, if we were to adopt the above approach, based on average support costs, the financial impact could be up to £230,000 per year.

10. In addition, it is estimated that, each year in Edinburgh, there are approximately 20 cases where a homelessness assessment has been carried out, there has been significant antisocial behaviour within the previous three years, and where under the new provisions of the Bill, a SSST with support would be appropriate. The cost of delivering support packages to these households would be approximately £40,000 per year.

11. Based on these assumptions, the annual cost of providing housing support to meet the provisions of the Bill is estimated to be £270,000 per year for the Council. Based on this analysis, the costs across Scotland could be significantly higher than identified in the FM.

Part 3 – Private Rented Housing

Transfer of Responsibility to Hear Civil Cases Relating to PRS to Scottish Tribunals

12. The FM does not identify any costs for local authorities associated with the establishment of a Private Rented Sector first tier tribunal. However, 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.
Tacit Approval of Landlord Registration Applications

13. The FM estimates that where a decision cannot be made on an application for landlord registration within 12 months, tacit approval of the application will be granted and the landlord will be able to operate legally. If a local authority is unable to make a decision within 12 months, they may apply for an extension. The FM estimates that each appeal for an extension will cost between £500 and £1,000. The Council estimates that there will be approximately 10-20 such cases in Edinburgh each year. Based on FM figures, this will result in an annual cost to the Council of between £5,000 and £20,000. This is based on an assumption that tacit approval will not apply to cases where the landlord has failed to fully provide the information necessary for a decision to be made within the 12 month period.

14. The Bill states that tacit approval will be granted for 12 months rather than the usual three year licence period. If Landlords with tacit approval are required to re-apply after the initial 12 month period, this will generate a small increase in licensing fee income for the Council.

Third Party Referral to the Private Rented Housing Panel

15. The FM identifies no costs for local authorities arising from third party referrals to the Private Rented Housing Panel (PRHP). Although the powers are welcome and will allow the Council to support tenants to challenge their landlord and increase standards in the sector, it is anticipated that this could generate a significant increase in enquiries to the Council. Where local authorities decide to make use of the powers, a significant amount of officer time will be required to investigate and build cases on behalf of the tenants that are being represented.

Part 4 – Letting Agents

16. Although letting agents are not currently required to register, most operating in Edinburgh do apply through the Landlord Registration Scheme as all landlords have a responsibility to use a fit and proper agent and this is determined by the local authority. There are currently 774 letting agents registered in Edinburgh. If the determination of fitness and propriety transfers to the national registration scheme, there will be no reason for letting agents to register locally resulting in a loss of income of up to £30,000 per year.

17. In addition, landlords are obliged to name any agent working on their behalf on their registration application. They do this by entering their agent’s landlord registration number. If letting agents were no longer registered locally, the Council’s IT would have to be updated to deal with the new system.

Part 6 – Private Housing Conditions

18. The FM identifies no costs for local authorities relating to additional powers relating to private house conditions, however the Council has concerns that costs associated with making use of these powers and difficulties with recovering costs from owners are deterring local authorities from making full use of these powers.
Powers for Local Authorities to Pay for a Share of Scheme Costs
19. While the powers included in the Bill build on those already available through the Housing (Scotland) Act 2006 and there is no duty for local authorities to use these powers, 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.

20. Case studies from Dundee City Council and Glasgow City Council which have both made use of powers to pay for missing shares in mixed ownership buildings suggest that recovering missing shares once work has been carried out is time consuming and labour intensive. There is also a risk that the money may not be recovered.

Work Notices & Maintenance Plans
21. Increasing local authority powers to issue work notices and maintenance plans provides a useful tool to help improve conditions in the private sector. However, making use of these powers will be resource intensive and increase pressure on existing resources.

Do you consider that the estimated costs and savings set out in FM and projected over 15 years for each service are reasonable and accurate?
22. The answer to question 4 outlines areas where the Council feels the FM under estimates or does not identify anticipated costs for local authorities.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
23. The majority of costs associated with the Bill will be met through existing resources, through internal efficiencies and prioritisation of existing budgets and services.

24. With relation to the power for local authorities to cover the cost of certain shares for communal repairs and maintenance, it is unclear whether local authorities will be able to cover the upfront costs to allow repair work to progress. It would be helpful for the Scottish Government to establish a national fund that local authorities could access to facilitate shared repairs. Money could be paid back once recovered from the owner/s.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
25. Yes.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
26. The costs to the Council have been reflected in the FM and expanded in question 4 above.
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

27. No future costs associated with subordinate legislation have been identified.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. Yes. Our comments focussed on the proposed changes to Right to Buy entitlement and we thought that overall this would be beneficial. However we did recognise that house sales income does benefit our capital investment plans and that this would have to be revisited in the event that RTB is abolished.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Yes this is the case.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
4. Generally yes, although we did express a concern about the possibility of a surge in sales, particularly from tenants with a preserved right to buy during any notice period.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?
5. Yes.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
6. Generally yes, particularly where the proposals will help local authorities in delivering important services.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
7. Yes.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill?
If not, which other costs might be incurred and by whom?
8. Yes.
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. There may be future costs associated with some of the private sector aspects of the legislation and growing public expectations about the role that local authorities should play in these matters; such as managing private sector landlord registration and private sector house conditions.
Background
1. The Committee reported on the delegated powers in the Housing (Scotland) Bill\(^1\) on 26 February in its 18th report of 2014.

2. Very broadly, the Bill makes provision about abolition of the right to buy, the allocation of social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes. It also provides for the transfer of jurisdiction from the sheriff courts to the First-tier Tribunal for Scotland (to be established in the Tribunals (Scotland) Bill) in cases involving private rented sector housing disputes.

3. The response from the Scottish Government to the Committee’s report is reproduced at the Annex.

Response from Scottish Government

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).

\(^1\) Housing (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41s4-introd.pdf
4. Sections 4(2), 7(2) and 8(1) all confer powers on the Scottish Ministers to issue guidance to which social landlords must have regard.

5. The Committee considered that the guidance issued under the above sections could have significant effects on the individuals it relates to and therefore welcomed the Scottish Government’s commitment to both consult on, and publish the guidance.

6. However, in welcoming this commitment, the Committee expressed its view that the consultation and publication of guidance made under these sections should be set out as a requirement on the face of the Bill. This would ensure that future administrations continue to consult upon and publish the guidance made under these provisions.

7. In its response to the Committee’s stage 1 report, the Scottish Government agrees to bring forward amendments at stage 2 which would make the consultation and publication of guidance issued by Scottish Ministers under sections 4(2), 7(2) and 8(1) a requirement.

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.

8. Section 41 provides for Scottish Ministers, by regulations, to set out a code of practice which makes provision about the standards of practice of persons who carry out letting agency work. Before finalising the code, the Scottish Ministers must consult on a draft of it under section 41(3).

9. The code of practice will have two principal legal effects. Firstly, consideration of whether a person has complied with the code of practice forms part of the fit and proper considerations applied to applications for registration. Where the Scottish Ministers are satisfied that a person is no longer a fit and proper person, their registration may be revoked.

10. Secondly, where the First-tier Tribunal, on an application by a tenant or landlord, determines that a letting agent has failed to comply with a code of practice, it must issue an enforcement order under section 43 of the Bill. Failure to comply with such an enforcement order without reasonable excuse constitutes a criminal offence.

11. The Committee noted that the consequences of failure to comply with the code of practice are similar to the consequences of failure to comply with the code of conduct under the Property Factors (Scotland) Act 2011, to which the affirmative procedure applies.

12. The Committee also considered that the failure to comply with the code of practice could have significant legal consequences for individuals and was therefore of the view that the affirmative procedure would provide a more suitable level of Parliamentary scrutiny than the negative procedure which is currently proposed.

13. The Scottish Government’s response acknowledges the Committee’s concern and outlines the Government’s proposed solution. In doing so, the Government cites the example of the Wildlife and Natural Environment (Scotland) Act 2011 which provides for Codes of Practice relating to non-native species and deer management.
In this case the first Code of Practice to be established is to be laid before Parliament and subject to the affirmative procedure. Following consultation, any subsequent changes to the Code would then be subject to the negative procedure. Furthermore, if a completely new code were to be produced, this would be subject to the affirmative procedure, again, following consultation.

14. The Government informs the Committee of its intention to bring forward amendments at stage 2 which would apply this form of Parliamentary procedure to the code of practice for letting agents to be made under section 41 of the Bill.

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).

15. The Committee’s consideration of Section 60 can be broken down into two main areas – appeals and reasoned decisions.

Appeals

16. New section 32N of the Caravan Sites and Control of Development Act 1960 ("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 caravan 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.

17. Section 32N(2) gives an indicative list of matters which the regulations may make provision for or in connection with.

18. The reason for taking the power, as set out in the Delegated Powers Memorandum, is to set out procedures and time limits in relation to the site licensing system. The Committee noted, however, that the power is drafted more widely than this. In particular, subsection (1)(d) enables provision to be made in relation to appeals generally, and not merely in relation to the procedure for appeals.

19. In response to a query prior to the publication of the Committee’s report, the Scottish Government indicated that, in addition to making provision about procedures and timescales for appeals, it may in its view also be necessary to make provision about the effects and consequences of an appeal.

20. The Government therefore agreed to consider whether the drafting of the power should be altered in order to better reflect its intended use.

21. In its report, the Committee welcomed this commitment and stated its view that section 60 should be redrawn to reflect more clearly the proposed purpose of new section 32N(1)(d) of the 1960 Act.

22. In response to the Committee’s report, the Scottish Government informs the Committee of its intention to bring forward amendments at stage 2 which will clarify that the new section 32N(1)(d) "relates to the procedure (including timescales) to be followed in relation to the issuing, renewal and transfer of licences, and the
procedure (including timescales) for, and the determination, consequence and effect of, an appeal.'

Reasoned decisions

23. Section 32N(2)(f) expressly enables provision to be made in regulations about the circumstances in which the reasons for a local authority's decision on a licence or transfer application, or its decision to transfer a licence in the absence of an application, must be given.

24. The Bill inserts various provisions in the 1960 Act regarding the giving of reasons. Under section 32D (licence applications) a local authority is required, before refusing to issue or renew a licence, to provide an applicant with the reasons why it is considering refusing the application, and to give the applicant at least 28 days to make written representations in response. Similar requirements apply where a local authority is considering transferring a licence of its own accord under section 32G. However, the Committee noted that, in contrast, there is no such requirement for the giving of reasons or seeking representations before a local authority refuses an application under section 32E to transfer a licence.

25. Furthermore, the giving of reasons in such cases is subject only to provision which may or may not be made in subordinate legislation under section 32N(1). Again, this contrasted with what is provided for in sections 32D and 32G.

26. In considering this matter, the Committee was mindful that the giving of reasoned decisions contributes to ensuring that the determination process meets the requirements of Article 6(1) of ECHR.

27. In its report, the Committee therefore expressed concern that the correct balance may not have been struck between the provisions made on the face of the Bill and those which will be made in the exercise of delegated powers under the Bill. The Committee therefore asked the Scottish Government for further explanation of these matters.

28. In responding to the Committee's report, the Government informs the Committee of its intention to bring forward amendments at stage 2 which would insert a requirement, where a local authority is considering refusing consent for an application under section 32E, for the local authority to give reasons and to provide a period in which the applicant could make written representations.

29. Furthermore, the Government agrees to bring forward amendments which would impose more consistent requirements on local authorities to give reasons for decisions made under the new licensing regime, including decisions made under section 32E.

30. However, the Government remains of the view that while the principle that reasons should be provided for decisions is an important one and appropriate to be on the face of the Bill, the details of how and when reasons are given are administrative in nature and should therefore be set out in subordinate legislation.
Section 63 - Power to vary maximum fine. (Inserts section 32T in the Caravan Sites and Control of Development Act 1960)

31. Sections 63 and 64 of the Bill insert new sections 32R, 32S and 32V into the 1960 Act. These provisions set the maximum fine on conviction of operating a caravan site without a licence (£50,000), the maximum fine on conviction of breaching licence conditions (£10,000), and the maximum fine on conviction of failure to comply with an improvement notice (£10,000). New section 32T of the 1960 Act gives the Scottish Ministers the power to amend these maximum fine levels, through an order subject to the affirmative procedure.

32. The Committee was concerned that section 32T gave Ministers unlimited discretion to vary the maximum fine for conviction in respect of the offences listed. The Committee considered that the circumstances under which a maximum penalty for an offence might be varied are matters for Parliament. Accordingly it took the view that this power should only be exercised where Ministers consider it appropriate in light of inflationary charges or where other relevant factors, to be set out on the face of the Bill, apply.

33. The Committee therefore recommended that the Government could provide for this by bringing forward a suitable amendment at stage 2.

34. In its response to the report, the Government expresses its view that in order to avoid fine levels becoming outdated, the Scottish Ministers should be given the power to raise the maximum fine levels. A proposal to raise fine levels could be prompted by a wide range of factors, including inflation, a significant increase in the price of mobile homes, or other changes that increase the income and profits generated through running a mobile home site.

35. The Government considers that as any variation of the maximum fine would be subject to the affirmative procedure, and therefore require the approval of the Parliament, this provides a suitable level of safeguard and scrutiny for any change in fine levels.
ANNEX

Correspondence from the Scottish Government, dated 24 March 2014

18. The Committee also 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 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.

Scottish Government response:

The Scottish Government is content with this proposal and intends to bring forward amendments at Stage 2, to address the recommendations in paragraph 18 of the Committee’s report.

25. The Committee therefore asks 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 Conduct are such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of the power in section 41(1) than the negative procedure.

26. The Committee asks the Scottish Government to comment on this matter further in its response to this report.

Scottish Government response:

We note that the Committee remains of the view that the affirmative procedure is a more suitable level of Parliamentary scrutiny for the exercise of the power in section 41(1). The Scottish Government recognises the significant consequences for letting agents of failure to comply with the Code and, having considered the matter further in light of the Committee’s remarks, proposes a way forward which both reflects the severity of these consequences and ensures a proportionate level of Parliamentary scrutiny.

There are few precedents for codes of practice with Parliamentary procedure. The Committee has quoted the example set by the Property Factors (Scotland) Act 2011. The Wildlife and Natural Environment (Scotland) Act 2011 (“the 2011 Act”) provides a further example. This, unlike the Property Factors (Scotland) Act 2011, was a Scottish Government Bill. Sections 15 and 27 of the 2011 Act set out provisions for Codes of Practice relating to non-native species and deer management. The associated procedure for both Codes is that after consultation, the first Code of Practice is to be subject to affirmative procedure with any future changes to the Code being made by negative procedure, following consultation. However, a completely new Code would also be subject to affirmative procedure, following consultation. The relevant sections are attached here for ease of reference: http://www.legislation.gov.uk/asp/2011/6/section/15 (non-native species) and http://www.legislation.gov.uk/asp/2011/6/section/27 (deer management).
The Scottish Government considers that the procedural arrangements in the 2011 Act for Codes of Practice represent a reasonable and proportionate way of proceeding for the Letting Agents Code of Practice and intends to bring forward amendments at Stage 2 to provide for this type of procedure to apply to the Letting Agents Code of Practice.

32. The Committee welcomes the Scottish Government’s commitment to consider the drafting of section 60 further, and asks the Scottish Government to confirm its conclusions on the matter (including whether or not an amendment is proposed) in its response to this report.

33. The Committee adds that, in its view, section 60 should be redrawn to reflect more clearly the proposed purpose of new section 32N(1)(d) of the 1960 Act, which is to make provision about the procedure for, and the determination, consequences and effect of, an appeal, rather than to make provision about appeals generally.

Scottish Government response:

The Scottish Government will seek to amend the drafting of section 60 of the Bill, so that it is clear that the power relates to procedure (including timescales) to be followed in relation to the issuing, renewal and transfer of licences, and the procedure (including timescales) for, and the determination, consequences and effect of, an appeal.

41. The Committee asks the Scottish Government to explain, in its response to this report, why the absence of requirements under new section 32E (application to transfer a site licence) of the 1960 Act (i) to provide an applicant with the reasons why the local authority is considering refusing an application, and (ii) to permit an applicant to make written representations in response, is considered appropriate. In this regard, the Committee is mindful that the giving of reasoned decisions contributes to ensuring that the determination process meets the requirements of Article 6(1) ECHR. The Committee also notes the contrast between the position under section 32E and the requirements under new sections 32B (licence applications) and 32G (licence transfer without application) of the 1960 Act.

Scottish Government response:

We thank the Committee for raising this point. We note that new section 32E does not contain a requirement, where the local authority is considering refusing consent, to give reasons and a period for the applicant to make representations. This is in contrast to sections 32D(4) and 32G(3), which include such provisions. On reflection having regard to the balance between the Bill and the delegated powers, instead of leaving such procedure in relation to applications to transfer to regulations under section 32N(1), we will seek to amend the Bill to insert such a provision into section 32E.
42. Similarly, the Committee asks the Scottish Government to explain why it is considered appropriate that the giving of reasons under section 32E is subject only to provision which may or may not be made in subordinate legislation under section 32N(1) (inserted by section 60).

43. These questions reflect the Committee’s concern that an appropriate balance may not have been struck between the provision made on the face of the Bill and the provision which may be made in the exercise of delegated powers under the Bill.

Scottish Government response:

We again thank the Committee for highlighting some areas of inconsistency in the Bill relating to the provisions of reasons for appeals. We will seek to amend the Bill so that the requirement to provide reasons for its decisions is applied more consistently in situations where a local authority decides:

- not to grant a licence;
- not to renew a licence;
- not to consent to the transfer of a licence;
- to transfer a licence where there has been no application;
- to revoke a licence.

We remain of the view that, while the principle that reasons should be provided for decisions in the situations above is an important one and appropriate to be on the face of the Bill, the details of how and when that is done is an area of administrative procedure, and therefore best covered in regulations.

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

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: affirmative procedure

49. The 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 Parliament. The Committee accordingly considers that the power in section 32T should be restricted to permit variation of the maximum fine only where it appears to the Scottish Ministers that particular circumstances apply. These circumstances should reflect the specific policy intention in taking the power.

50. To that end, the Committee recommends that the Bill provide for the power in section 32T(1) to be exercised only where the Scottish Ministers consider it appropriate in light of inflationary changes, or where they consider that other relevant factors apply. The Bill should set out what these other
relevant factors are. The Committee offers no view on what the relevant factors might be, this being a policy matter for consideration by the lead committee.

51. The Committee accordingly asks the Scottish Ministers to consider bringing forward a suitable amendment at Stage 2. The Committee asks the Scottish Government to comment on this matter further in its response to this report.

Scottish Government response:

The existing fine levels in the 1960 Act have become very outdated, and would not be an effective sanction for site owners who are convicted of breaching licence conditions or of running a site without a licence. The Bill therefore sets increased fine levels that reflect the seriousness of these offences. However to avoid these fine levels becoming outdated, the Bill would allow Ministers, with the express approval of Parliament, to raise these maximum fine levels. This is to ensure the fine levels remain at a level that is an appropriate sanction for these offences.

Such raising of the fine levels could be promoted by a wide range of factors, including inflation, a significant increase in the prices of mobile homes (and therefore the profit to be made in selling them), or other changes that increase the income and profits generated through running a mobile home site. We believe that the fact that any increase would be through an Order subject to the affirmative procedure, and would therefore require the active approval of Parliament, provides a suitable level of safeguard and scrutiny for any increase in fine levels.
Present:
Richard Baker  
Mike MacKenzie  
Stuart McMillan (Deputy Convener)

Nigel Don (Convener)  
Margaret McCulloch  
Stewart Stevenson

Apologies were received from John Scott.

**Housing (Scotland) Bill:** The Committee considered the Scottish Government's response to its Stage 1 report and agreed to write to the Minister for Housing and Welfare regarding certain delegated powers within the Bill.
Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 1 April 2014

[The Convener opened the meeting at 11:32]

Housing (Scotland) Bill: Stage 1

11:33

The Convener: Agenda item 3 is consideration of the Scottish Government’s response to the committee’s stage 1 report on the bill. Members have seen the briefing paper and the response from the Scottish Government. Do members have any questions or comments?

There being none, do members agree to write to the minister to reiterate the committee’s view that it is unusual for a bill to confer by subordinate legislation an unrestricted power on the Scottish ministers to vary the maximum fine that may be imposed on conviction for an offence?

Members indicated agreement.

The Convener: Do members agree to reiterate the committee’s view that the circumstances in which a maximum fine may be varied are matters for the Parliament to set out in primary legislation? If so, do members also agree to ask the minister to reconsider amending section 32T of the Caravan Sites and Control of Development Act 1960, as inserted by section 63 of the bill, to provide that the power may be exercised only in circumstances to be provided for in the bill?

Members indicated agreement.

The Convener: Are we content to note the response and, if necessary, to reconsider everything else after stage 2?

Members indicated agreement.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I think that this is one of those cases in which, at the very least—this is not what we are asking for—we should have on the parliamentary record the thinking that is behind the Government’s current position, if it maintains that position.

The Convener: Thank you. We now move on to item 4, which we will deal with in private.

11:34

Meeting continued in private until 11:55.
Housing (Scotland) Bill: The Minister for Housing and Welfare (Margaret Burgess) moved S4M-09749—that the Parliament agrees to the general principles of the Housing (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 97, Against 0, Abstentions 13).

Housing (Scotland) Bill: Financial Resolution: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-09578—that the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Housing (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

The motion was agreed to (DT).
14:30

On resuming—

Housing (Scotland) Bill: Stage 1

The Deputy Presiding Officer (John Scott): Good afternoon, everyone. The first item of business this afternoon is a debate on motion S4M-09749, in the name of Margaret Burgess, on the Housing (Scotland) Bill. We are tight for time, so if members could stick to their times, that would be great.

The Minister for Housing and Welfare (Margaret Burgess): I am delighted to open this stage 1 debate on the principles of the Housing (Scotland) Bill.

I thank the Infrastructure and Capital Investment Committee for its scrutiny of the bill and its stage 1 report on it. I also thank the Finance Committee and the Delegated Powers and Law Reform Committee for their consideration of the bill and their contribution to the lead committee’s scrutiny of it. I am particularly grateful to all our stakeholders for the considered views that they offered to the lead committee and their responses to the numerous Scottish Government consultations that helped to shape the policy objectives of the bill. The Infrastructure and Capital Investment Committee recognised that those consultations were comprehensive and inclusive.

I welcome the Infrastructure and Capital Investment Committee’s conclusion that the bill provides

“a package of measures which will contribute to the improvement of housing in the social, private rented and owner-occupied sectors.”

That captures well what the Government wants to achieve through the bill.

The Infrastructure and Capital Investment Committee made a number of detailed recommendations and comments in its report and called on the Government to consider and respond to them during the later stages of the bill’s parliamentary scrutiny. The Government is still reflecting on some of those issues, but we will set out our position on all of them in our response to the report.

In this debate, I want to focus on the principles of the bill and what we want to achieve through it, but I will also address some of the more significant points that the committee raised.

I will start with the provisions to end the right to buy. The Scottish Government is committed to increasing the supply of social housing, which is why we want to end the right to buy. By doing that, we will keep homes in the social rented sector,
increase choice for tenants and people in need of housing, and help social landlords to manage their stock more effectively.

I am pleased that the measure has been widely supported. In fact, the majority of stakeholders have told us that the right to buy should end sooner than three years after royal assent, as the bill currently provides for. That has been endorsed by the committee. In light of that, we have looked again at the length of the period and considered whether it strikes the right balance between moving quickly to safeguard homes for rent and giving tenants a fair opportunity to exercise their right to buy should they wish to do so. We have concluded that a period of two years from royal assent strikes a better balance, and we will therefore lodge an amendment at stage 2 to that effect.

James Kelly (Rutherglen) (Lab): I am not opposed to the right-to-buy proposals in the bill, but how does the minister see the abolition of the right to buy tackling the number of people on housing waiting lists, currently 155,000, bearing in mind that the Government's own figures suggest that it will make only a dent in reducing those lists—1,500 houses a year?

Margaret Burgess: As I said, the principle that we propose in the bill is to safeguard the social houses that we currently have. The bill is a way of doing that. It goes in conjunction with the Government's target to increase our supply of affordable housing and to ensure that we build a further 30,000 affordable houses by the end of this session. I remind the member that we are building more houses for social rent now than were built under any previous Administration of this Parliament. We will continue to do that and will safeguard the houses that we already have by ending the right to buy.

The bill includes a range of measures to help social landlords to meet housing need and to support local communities by giving them more flexibility in how they manage and allocate their housing stock. There is general support from the committee for those measures. I agree with the committee's recommendation that the Government should publish guidance to help landlords to use their increased flexibility and we are more than happy to undertake that we will do so, for example, to provide further clarity on how the antisocial behaviour measures are intended to work in practice.

I am also aware of the very different views that stakeholders have on section 5 of the bill, which will allow landlords to take age into account when they allocate social housing. The provision was included in the bill because landlords told us during the consultation that the measure would enable them to allocate individual properties in such a way that new tenants were helped to sustain their tenancies to the benefit of themselves and their communities. However, others have expressed concern that the provision introduces the possibility of allocations being discriminatory. I place on record that that is not the Government's intention; indeed, the section includes explicit safeguards against that possibility. However, I respect the different positions that stakeholders have taken on the issue.

At a recent meeting of my housing policy advisory group, the opposing arguments were explored and debated. From that discussion, it was clear to me that everyone is united in wanting to achieve the best outcomes for communities and for those in housing need. I am now considering carefully everything that has been said on the matter and hope to set out the Government's position in my response to the committee's stage 1 report on the bill.

There has been widespread support for the transfer of private rented sector cases from the sheriff to a tribunal. The move will enable greater specialism and access to justice in such cases, given that we have heard that both landlords and tenants can be reluctant to use the courts. There is significant interest in the operational detail of the tribunal, for example in relation to access and representation. Such detail will largely be set by secondary legislation.

Some representatives of the social rented sector expressed disappointment that cases relating to that sector are not being transferred to the tribunal. The Government believes that improved specialism and procedures enabled by the Courts Reform (Scotland) Bill will improve how cases that arise in the social sector are dealt with, but we will of course continue to keep the impact of those reforms under review through continuing engagement with stakeholders. That will include my attending regular housing policy advisory group meetings where I can hear about the issues first hand. The group includes representatives of social rented tenants, the Chartered Institute of Housing, the Association of Local Authority Chief Housing Officers, the Convention of Scottish Local Authorities, the Scottish Federation of Housing Associations and Shelter Scotland.

The bill introduces rights for third parties to report to the Private Rented Housing Panel. Those rights will strengthen local authority powers to tackle poor conditions in the private rented sector for the benefit of individuals and communities across Scotland. Again, there is widespread support for that policy. We intend to strengthen the provision further by lodging stage 2 amendments that will give local authorities a new power of entry in respect of enforcement of the repairing standard. That will give all local authorities in
Scotland powers to tackle substandard housing, wherever it arises in their areas. We believe that that approach will be a more effective way of tackling such problems than the proposals for enhanced enforcement areas. I know that local authorities have expressed concerns about the potential cost to them of those new powers, but a key feature of the provision is that they are discretionary. In effect, they offer local authorities an additional tool for tackling substandard housing in a targeted way when they are satisfied that the cost of intervening is justified by the benefits to tenants and communities.

Improving safety standards in private sector housing has received almost unanimous support from stakeholders. As part of our sustainable housing strategy, we intend to look later this year at safety standards across all tenures of housing. At stage 2, I intend to lodge an amendment that will provide for a regulation-making power in respect of making changes to the repairing standard for private landlords. I also expect non-Government amendments to be lodged at stage 2 that would require electrical safety checks and the installation of carbon monoxide detectors in private rented housing. I want to see the detail of such amendments before I commit to supporting them, but I am sympathetic to such proposals and hope that we can amend the bill in that regard.

The committee made the case for smoke detectors to be hardwired. I agree that that should be the standard for private rented homes, but I do not think that we need to legislate for it. Under section 20 of the Housing (Scotland) Act 2006 there is a requirement for any alarm that has been installed or replaced since September 2007 to be hardwired. Given that alarms need to be replaced at the end of the manufacturer’s recommended lifespan, which is usually between five and 10 years, the desired result will be achieved without the need for further legislation.

If there are concerns on that point, they can be picked up through the work that we intend to do on cross-tenure standards, which I have mentioned. If necessary, we can address them through the new regulation-making power that we propose to introduce at stage 2.

The Scottish Government is committed to improving standards in the letting agent industry, an industry that serves a rapidly expanding private rented housing sector. The provisions in the bill are intended to give tenants and landlords confidence in a consistent standard of service and easy access to a dispute-resolution service.

The bill will achieve those twin aims by setting up a statutory register of letting agents, developing a statutory code of practice and creating a new means of redress for tenants and landlords to the new first-tier tribunal. I was pleased to note the broad support for our proposals at the committee’s evidence-taking sessions.

James Kelly: I ask the minister to provide some clarification on the regulation of letting agents. Under the bill, if a letting agent performs unsatisfactorily, can they be removed from the register?

Margaret Burgess: Yes. I will cover that later. A letting agent who does not perform and does not follow the statutory code of practice can be reported to the first-tier tribunal and can be removed from the register if they do not comply with the code. Also, if they do not pass the fit-and-proper person test, the Scottish Government can remove them from the register.

Let me be clear that the provisions that we are introducing on letting agents will have teeth and we intend to use those teeth to ensure that the reputation of the sector is improved.

Patrick Harvie (Glasgow) (Green): The minister says that the regulation of letting agents will have teeth. It is clear that the detail of how it will work will be in the code of practice. The committee has recommended that the bill should be used to outline the issues that the code will cover. Does the minister agree with that recommendation? If not, it is hard to see why we should allow the negative procedure to be used to approve the code of practice rather than the affirmative procedure, which would at least give the Parliament some power of scrutiny.

Margaret Burgess: As I said, we are still considering the committee’s report and will respond to it. The code of practice will be worked up with stakeholders. We have listened to concerns and will introduce amendments at stage 2 to require training for letting agents as a condition of registration. We are considering a number of measures to strengthen the provisions even before the code of practice is worked up.

We expect the code to cover issues such as professional standards, ethics, professional indemnity and complaints-handling procedures. We are also considering how the enforcement measures in the bill—which may cover what Patrick Harvie mentioned—can be made more robust. We will address that through amendments at stage 2.

Our approach to reforming the mobile homes site licensing system has also been welcomed by the committee. We have listened to what the committee and industry have said on that and will lodge stage 2 amendments on it.

When I gave evidence on the bill to the committee, I said that the Government was sympathetic to calls for tenants of a registered social landlord to be balloted before their landlord
became part of a group structure with another RSL.

We asked stakeholders for their views on that, and I am grateful that more than 40 took the trouble to respond at short notice. I am now considering their views and hope to set out the Government’s definitive position on the matter in our response to the stage 1 report.

As the committee recognised, the bill is about improving housing across all tenures. It will help us to deliver better outcomes for communities, safeguard the interests of consumers and support improved quality across all sectors of housing.

I look forward to working with members across the chamber to secure those objectives as we continue to take the bill through Parliament.

I move,

That the Parliament agrees to the general principles of the Housing (Scotland) Bill.

14:44

Maureen Watt (Aberdeen South and North Kincardine) (SNP): The Infrastructure and Capital Investment Committee has carried out comprehensive scrutiny of the Housing (Scotland) Bill, which, as is ever the case with housing bills, contains a wide variety of proposals. I will cover briefly how we viewed some of the key provisions in the bill. I am sure that my colleagues on the committee will pick up on some of them in more detail as the debate progresses.

First, I extend the committee's thanks to all the housing stakeholder groups and individuals who provided oral and written evidence on the bill. It is always hugely encouraging for us to witness the passion and commitment of organisations that genuinely want to see tangible improvements made to social and private rented housing in this country.

I offer particular thanks to the social housing tenants groups, the housing association representatives and the officials and councillors from West Dunbartonshire Council for meeting the committee informally in Dumbarton in February as part of Parliament day. It was particularly helpful for us to hear at first hand the practical experiences of both tenants and those who manage and operate social housing. We also held a formal meeting in the evening in Dumbarton, which I believe is a first for a committee of the Scottish Parliament. We were very pleased to see an excellent turnout from members of the public, who also participated in a question-and-answer session with members and witnesses on housing issues.

It is clear that the most prominent element of the bill is the proposal to abolish the right to buy social rented houses in Scotland. We heard strong evidence from local authorities, housing associations, tenants groups and others that the policy has had its day and that ending the right to buy will help to stop affordable rented housing being lost from the social housing sector. We heard that it will help RSLs to maintain the supply of affordable rented housing stock and make it easier for them to carry out more effective strategic and financial planning.

Based on that evidence, the majority of the committee agreed with the proposal to abolish the right to buy. I know that Alex Johnstone will have no problem with my indicating that he was the only committee member who disagreed with the proposal.

Having taken the decision that abolishing the right to buy is the correct way to proceed, the majority of the committee also reached the view that the proposed three-year notice period before its implementation is too long. That reflected the strong views heard in evidence that the sooner the abolition comes into effect, the better. We are of the view that a notice period of one year is adequate to allow people who have a right to buy to decide whether that is the right option for them. I was pleased to hear that the minister has moved to two years and look forward to hearing at stage 2 her views on why she has gone for two years rather than one.

As well as proposing the abolition of the right to buy, the bill proposes a range of provisions that will impact on the management of social housing in Scotland. It will help to increase the flexibility that landlords have when allocating houses and give them more tools to tackle antisocial behaviour.

The committee is content with those provisions, which reflect the broadly positive views that we heard in evidence. However, we have highlighted the need for clear guidance on the detail of how certain provisions should work in practice and the factors that will be taken into account in their implementation.

Section 5 of the bill was the subject of concern among some of the stakeholders who gave evidence. That section repeals provisions that prevent social landlords from taking account of an applicant's age unless properties are specifically designed or adapted for a particular age group.

Concerns were expressed that the measure has the potential to be discriminatory towards certain age groups, particularly young people. We were reassured that councils would carry out equality impact assessments when developing their allocations policies and would have to justify their decisions objectively. Nonetheless, the committee calls on the Scottish Government to consider how
effective and consistent monitoring might be carried out so that there is no consequential discrimination against any age group. I would welcome the minister's comments in that regard.

During 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. Others saw that such a proposal was riddled with difficulties. The committee’s view is that there is no clear indication that it would be appropriate to introduce those measures at present.

Part 3 of the bill deals with the private rented sector. The committee agrees with the evidence that supported the bill’s transfer of private rented sector cases to the first-tier tribunal. Many considered that it would help to reduce costs and make the process easier for both tenants and landlords.

The committee heard that many also wanted that type of tribunal to be available for social sector rented cases, but it supports the idea that the private rented sector should be prioritised. The committee also supports the Scottish Government’s commitment to monitor the progress of the private rented sector tribunal in order to decide whether further changes could be made for social rented sector cases at a later date.

Throughout its evidence taking, the committee sought views on proposals that were made by the Electrical Safety Council to improve the physical standard of private rented housing. Those proposals were supported by many other organisations that provided evidence. They state that for all private rented accommodation there should be mandatory five-yearly checks of electrical installations and any supplied electrical appliances; mandatory provision of suitable mains-powered smoke alarms; and mandatory installation of carbon monoxide alarms. I note the minister’s comments in her opening remarks, which we will address at stage 2.

Part 4 of the bill provides for the registration of letting agents, which was widely supported by those who gave evidence. 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, given the evidence that it heard, the committee recommends that the Scottish Government considers how it might include in the text of the bill more detail—as Patrick Harvie said—of what those regulations might cover. That could include professional conduct, qualifications and training and financial obligations.

The committee also recommends that the Scottish Government should consider an initial registration period of one year before an agent progresses to three-year registration as proposed in the bill. The committee heard that it is not clear how many letting agents operate in Scotland and is of the view that the Scottish Government should take an active role in considering how unregistered letting agents might be identified.

Part 5 of the bill deals with mobile homes. The committee welcomes the proposed range of measures, which are designed to help to address some of the problems that are experienced by permanent residents of mobile and park homes. A key proposal is to introduce a fixed site-licence renewal period and a fee for the administration of the licensing scheme.

Evidence suggests that there is a great deal of concern about the potential impact on residents should a site lose its licence. Some site owners feel that the fixed three-year renewal period for licences should be replaced with a more flexible arrangement. The committee recommended an awareness campaign to ensure that residents and site owners are provided with accurate information about the intentions and potential impacts of the new licensing regime.

The committee also recommended an awareness-raising exercise among local authorities to enhance understanding of mobile and park home site regulations and to embed the need for a consistent approach to inspections and enforcement. The committee welcomed the introduction of a fit-and-proper-person test for site owners to help to ensure the security of residents. It called on the Scottish Government to consider the feasibility of a shared fit-and-proper-person register to ensure that non-compliant owners cannot move between authority areas while continuing to employ non-compliant behaviours on their sites. The committee believes that that would add greatly to the protection of site residents throughout the country.

The committee was concerned that fines to site owners for non-compliance with licensing requirements might, as the bill is currently drafted, be passed on to residents. However, it is reassured that the Scottish Government intends to lodge an amendment on that at stage 2.

Part 6 of the bill seeks to ensure that local authorities have a range of powers to tackle poor conditions in the private sector, and we welcome the principle behind the missing share provision in the bill, which will allow local authorities to step in where an owner is unwilling or unable to pay or cannot be found or identified.

As the minister said, part 7 of the bill deals with proposals in relation to the Scottish Housing Regulator. I was pleased by the minister’s response on that issue in her opening remarks and I note her comments on it.
In conclusion, the Infrastructure and Capital Investment Committee welcomes the Housing (Scotland) Bill because it provides a package of measures that will contribute to the improvement of housing in the social, private rented and owner-occupied sectors. The committee therefore recommends that the Parliament agree to the general principles of the bill.

14:55

**Mary Fee (West Scotland) (Lab):** Scottish Labour believes that the Housing (Scotland) Bill as introduced is a missed opportunity to tackle the housing challenges that Scotland faces. Under the control of the Scottish Government, housing is facing the biggest crisis seen in Scotland since the end of world war two. The bill contains no new or radical proposals to tackle the problems forced on the SNP and it exposes the vision and leadership lacking in the stewardship of the housing minister and her colleagues in the Scottish Cabinet. Further, the bill demonstrates that there is a clear need for a long-term action plan.

The measures in the bill do not go far enough to merit the praise that we will no doubt hear from members on the Government benches. Instead of a bold vision to build the new houses that Scotland urgently needs, we have proposals that tinker around the edges of the serious issues that have resulted in over 155,000 people across Scotland being on social housing waiting lists. I will go into some specific aspects of the bill shortly, but I ask that when the minister makes her closing remarks she gives us a bit more detail on how the Government intends properly to enforce the registration of lettings agents; explains, over and above the announcement last week, how the bill will tackle energy efficiency; and, importantly, explains what steps will be taken to ensure that young people will not be discriminated against if age becomes a factor in housing allocation.

I was pleased to hear the minister say in her opening remarks that a two-year period is now being considered before introducing the abolition of the right to buy. However, as Maureen Watt said, the committee recommended that the period be reduced to one year, so I would be grateful if the minister could explain why she is moving to the view that the timescale should be two years.

Part 2 of the bill attempts to address some of the social problems associated with the social housing supply, but it is again a missed opportunity to tackle them head on. Shelter Scotland and Scotland’s Commissioner for Children and Young People warned in committee that there could be disadvantaged groups if age is taken into consideration. As the minister knows, Shelter has set up an online petition on the issue and I am sure that her inbox will be filling up as a result of young people signing it. It would have been more beneficial for the minister if the age proposal had been in the original consultation; it was not, hence the anger from SCCYP, Shelter and other organisations working with young people. I know that some councils currently use age as a criterion in allocating housing. For example, only half a mile from where I live, flats have been prioritised for elderly tenants, which is having a positive effect in the area.

Although we recognise that the provision could have benefits, we want to ensure that section 5 does not have serious implications in relation to equality legislation or for young people, who could be denied a quality home. The Government must provide solid and watertight guidance for local authorities and registered social landlords in the event that they use such powers. If the proposals remain as they are, we would like a code of practice to be implemented, as well as effective monitoring, to ensure that discrimination does not take place.

The antisocial behaviour elements of the bill must be backed by checks and balances to ensure that the provisions are not misused. During the evidence sessions, we heard that there is a need for the Government to clarify what evidence can be used, the extent to which it can be trusted and how issues can be remedied. We want to ensure that any measures are used in an effective
manner that ends the misery that many communities endure and that, at the same time, work is done with those who are responsible to change their behaviour.

Garry Burns and Paul Brown expressed frustration with the types of evidence that can be used in relation to short Scottish secure tenancies and the historical period over which incidents that tenants were involved in can be taken into account. I know from my time as a councillor—as will other members—that resolving issues in the first place is far more beneficial and more cost effective, if that works for both parties. There is a hard-working ASSIST—advice, support, safety and information services together—team in Renfrewshire and mitigation should always be the first option.

The reasonable preference provisions must be used to house people who are in dire need. The current preference groups are outdated and must be brought in line with current practice, but further clarification of "unmet housing need" is required. Given that we have an ageing population, there will be a number of elderly people who are living in homes that have not been suitably adapted and it is only right that preference is given to our elderly to improve their health, wellbeing and mobility.

In relation to succession for carers, we do not want unpaid carers to be left homeless in the event that they do not meet the new qualifying period. That could have great emotional cost for them and it could cost the social landlord that would have to rehouse them.

The Scottish Government must be careful about legislating on social housing and then passing on the responsibility for implementing those provisions to local authorities. The committee was warned that that could lead to legal challenges. Margaret Burgess and the Government must take responsibility for that.

I turn to part 3 of the bill. Scottish Labour supports the transfer to first-tier tribunals. We know what is happening in sheriff courts across Scotland. To improve criminal justice and housing-related action, we need to reduce the burden on local sheriff courts, but representation in tribunals is an issue that needs further clarification. I know from the time that I have spent sitting on tribunal panels that they are more plain spoken and much less imposing than courts, but when a tenant needs advocacy, that must be guaranteed.

We support the committee’s recommendations on electrical safety, smoke alarms and carbon monoxide alarms, and we look to the Government to make the necessary amendments at stage 2.

The registration of letting agents is to be supported, but we want to ensure that there are processes in place for identifying unregistered agents. Registration is one of a number of steps that the Government has put in place over recent years. We want to ensure that no tenants, or possible tenants, are ripped off. As those letting agents that have been lacking in ethics may continue to operate under the radar, it is a must that such agents are regulated. We also need to know what sanctions will be available for anyone who is found to be working outside the registration process.

If the Government is to place the responsibility for regulation on local authorities, they must not be burdened with the costs associated with that.

Part 5 of the bill deals with the licensing of mobile home sites with permanent residents. It is clear that some issues need to be addressed at stage 2. The committee has called on the Government to clarify some of those issues, such as the fixed term for a licence, the adverse effect on funding, the use of renewal instead of review and the passing on of fines for non-compliance to residents.

We know that housing conditions in the private rented sector are far short of what we would call acceptable. The measures in part 6 of the bill do not go far enough in tackling poor conditions. Proposals for energy efficiency in private rented homes appear to have been overlooked, and we want that issue to be dealt with at stage 2.

On part 7, there are questions to be asked of the Government on how it intends to consult with sector stakeholders on the proposals for the Scottish Housing Regulator to transfer RSL assets in the event of insolvency.

We have some real concerns that the passage of the bill will not solve any of the problems that have resulted in the current housing crisis. With fewer houses being built in Scotland than at any time since the end of world war two, we need a bold and ambitious statement of intent from the Scottish Government and the bill falls far from that standard.

15:05

Alex Johnstone (North East Scotland) (Con): I rise to speak on the Housing (Scotland) Bill on what I believe will go down in history as a dark, dark day for liberty and democracy in Scotland. However, before I get on to my main subject, I will run through the bill in fairly short order. A great deal in the bill is desirable and will find my support, although I may move to amend some of the characteristics in it.

The proposal to use age criteria in social housing allocation policy is an important change that I support. In fact, I have already discussed with the minister how such a change might be
used to develop other strategies, particularly in relation to veterans, and she has given me assurances that that will be considered, although not within the framework of the bill. I am disappointed, however, that Shelter and one or two other organisations have sought to interpret the proposal to use age criteria in allocation policy in a way that does not conform with my reading of the bill. The Scottish Federation of Housing Associations today published a strong defence of the policy that we should take seriously.

I am also concerned that there is no proposal for probationary tenancies. The fact that probationary tenancies were consulted on and found a great deal of support among landlords is one that we should have taken more seriously. As a consequence I may seek to amend the bill at stage 2.

The proposal to move from the sheriff court to first-tier tribunals to deal with private rented housing disputes received a great deal of support. In fact, the suggestion that the social rented sector should be treated the same way was enthusiastically received. It is my understanding that, once the proposal is in place, the Government will consider whether it can be extended at a later date.

The approach taken by the Government to landlord and letting agent registration is to be commended. The work that is being done between organisations and the Government has meant that there is genuine support in the industry for the proposed regulatory framework. Ultimately, that is what will make it a success. If those who are being governed choose to be governed and regulated in that way, we will have positive outcomes.

I also welcome the provisions in part 6, which will allow us to tackle poor conditions.

From that, I must go to the subject of right to buy. Right to buy was a transformational policy. It had the effect of creating stable, mixed-tenure communities that contributed to strong, stable societies in many parts of Scotland. The opportunity that many took to become homeowners changed lives and will continue to change lives. The suggestion has been made on many occasions that we should not sell those houses because they are required in the social rented sector, yet if we look at the facts we see that there are some very big holes in that argument.

To qualify for the right to buy, someone has to be a long-term tenant, and those who are denied the right to buy will most likely remain tenants. The fact is that the houses that will not be available to buy in the future are unlikely to come back on to the market in year one. The provision will not increase the number of houses available.

The minister has referred to the timescale for taking away the right to buy, saying that she has decided on a two-year timescale rather than the three years in the bill. I want to ensure that everyone who wishes to buy their home gets that opportunity but, at this stage, I am not going to suggest that two years provides any less of an opportunity than three.

I am concerned that those in protected areas will not have the opportunity to buy their homes and, given the rights that are being protected for those who do not live in such areas, I want to ensure that there is some kind of quid pro quo for those in protected areas, and I will be consulting and taking legal advice on whether the issue is properly covered in the bill.

The fact is that the bill creates a problem that did not exist before it was introduced. According to the latest yearly figures, only 1,500 houses were bought by their tenants, which suggests that right to buy has been withering on the vine. By moving to end it, the Government has opened a window of opportunity for the hundreds of thousands of Scots who still have that right. The likely outcome of the legislation is that demand for right to buy will peak over the next two years, which means that many houses that might have remained in the social rented sector will be removed from it. I see the abolition of the right to buy as a vindictive and politically motivated move that, at the end of the day, will simply be counterproductive.

The Presiding Officer (Tricia Marwick): We move to the open debate. I ask for speeches of six minutes, and I remind members that we are very tight for time.

15:11

Gordon MacDonald (Edinburgh Pentlands) (SNP): Edinburgh has the largest private rented sector in Scotland. The 51,000 registered homes in the sector represent just less than a quarter of the housing stock, and the figure is expected to rise to over 30 per cent by 2018, compared with only 12 per cent across Scotland. Given the large size of Edinburgh’s private rented sector, many of my constituents find that the only way they can put a roof over their heads is by taking up a tenancy through either a private landlord or a letting agency.

What will the bill offer the many families with a private sector tenancy? I believe that three parts of it will be of interest to my constituents: part 3, which creates a tribunal to deal with disputes; part 4, which regulates letting agents; and part 6, which tackles private housing conditions. The creation of a new housing tribunal for the private rented
sector has been welcomed by the Chartered Institute of Housing, which stated that it was

"a new, specialist and more modern approach to dispute resolution"

and that

"Neither tenants nor landlords in the"

private rented sector

"see the current sheriff court system as user friendly or efficient".

The Law Society of Scotland has also approved of

"the transfer of the sheriff's jurisdiction to the first tier tribunal",

a change that will result in 700 cases per year being removed from the sheriff court system.

Although the aim of part 3 is to provide better access to justice for tenants and landlords where disputes arise, Inclusion Scotland has highlighted that

"some private tenants may be reluctant to take issues to the tribunal because of fear of reprisals by landlords; that there will need to be exemptions to any tribunal fees for those who cannot afford to pay; and that certain people with protected characteristics, including disabled people, may need support to participate effectively in proceedings."

Part 3 will also allow local authorities to report a landlord to the Private Rented Housing Panel for failing to comply with the repairing standard that landlords are required to meet in order to rent out their property. Previously only tenants could refer a landlord to the panel, but many were reluctant to do so for fear of losing their tenancy.

Part 4 might go some way towards alleviating some of Inclusion Scotland's concerns with regard to landlords by establishing a mandatory register of letting agents, with those applying to be on the register required to meet a fit-and-proper-person test. The aim of such a test, which already exists in the landlord registration scheme, is to weed out anyone who has committed any offence involving fraud, dishonesty, violence, drugs, discrimination, firearms or sexual offences or who has failed to comply with housing legislation.

This section will also create a statutory code of practice and a dispute resolution procedure for letting agents and tenants. The committee recommends that the Scottish Government considers how it might include details in the bill relating to professional conduct, qualifications needed to be a letting agent, training for staff and how their financial obligations should be handled.

Part 6 ensures that local authorities have a range of powers to tackle poor conditions in the private sector. The last Scottish house condition survey that looked at this issue in detail estimated that there were £223 million-worth of essential improvements outstanding in the private rented sector across Scotland.

The bill provides a discretionary power to local authorities in order to support owners of communal blocks to carry out repairs by allowing the council to pay the missing share and recovering the outstanding sum later from the owner who is either unable or unwilling to pay. How effective that will be will depend on the individual local authority's view on its available funding, the difficulty in recovering outstanding money and the timescale for that recovery.

In Edinburgh, the council is owed £22 million by up to 3,500 property owners for work that was carried out to their homes under the statutory notice system that previously existed. People need time to repay repair costs. However, the suggested 30-year repayment period is excessive and will mean that local authorities might consider not making use of the discretionary power. That will not help the many families and individuals who live in poor housing conditions and I therefore hope that the minister will consider the committee's recommendation 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."

If accepted, that change will, I hope, encourage local authorities to make use of the power in order to assist private rented sector tenants to have their homes improved.

Finally, the ending of the right to buy was supported by 83 per cent of all respondents, including 81 per cent of councils, 92 per cent of registered social landlords, 73 per cent of individuals and 75 per cent of tenants groups. A newspaper today carries the headline, "Scots Tories warn of 'rush' if right to buy ends". If that could be the outcome, we should ensure that the lead-in period is reduced further, from the two-year period that was announced by the minister to one year, in order to protect what is left of our social housing.

15:17

Mark Griffin (Central Scotland) (Lab): There is not a lot to disagree with in the bill before us. It is extensive and it contains a number of areas about which there is broad agreement. The proposals represent a step forward, but there are areas that could be strengthened in order to give more protection to tenants and communities and there are areas where we feel that the bill represents a missed opportunity.

John Mason (Glasgow Shettleston) (SNP): The member repeats what his front-bench colleague said about there being a missed opportunity, but she did not tell us what any
missed opportunities were, other than more money. Does he have any examples?

Mark Griffin: I will set out three areas in my speech: the bill’s good points; where I think that it can be improved; and where it represents a missed opportunity.

By giving local authorities the power to enforce repairs and maintenance in the private sector, the Government has taken away the opportunity for a landlord to issue a notice to quit or to harass a tenant who simply exercises their right to live in an adequately maintained home. That is not to say that every, or even many, landlords would behave in that way, but there is certainly a fear among some tenants and communities of rocking the boat and suffering at the hands of an angry landlord.

Giving social landlords more flexibility to allocate houses in a more sensible way, using local knowledge, can create more sustainable communities, but that should be accompanied by clear guidance so that young people in particular are not discriminated against when it comes to allocating individual properties.

The transfer of jurisdiction for civil cases relating to the private sector from the sheriff court to the first-tier tribunal should reduce the costs and the timescale for disputes to be resolved, and will also allow highly skilled members of the tribunal to build substantial experience in dealing with housing matters. It will be interesting to see how that progresses and whether—as was suggested during evidence sessions—it will be rolled out to the social sector.

Those are examples of where the bill is strong on improving tenants’ rights and creating stronger communities, but there are also weaknesses that I hope the Government will address at stage 2. The Government has taken steps to mitigate the impact of the right to buy with the introduction of social landlords and their ability to budget, access capital from financial institutions and plan any improvement programmes or new house-building programmes. That goes some way towards explaining why so few local authority houses have been built over the past few years. However, I do not understand the inclusion of a three-year window to allow even more social housing stock to be lost to the private sector. The period has now been changed to two years, but the bill team argued that a three-year timescale was felt to be fair and reasonable due to potential issues with the European convention on human rights.

Bruce Crawford: Will the member take an intervention on that specific point?

Mark Griffin: I will take a brief intervention.

Bruce Crawford: Will Mr Griffin please tell me where, in the 2011 Labour manifesto, it is suggested that the right to buy should be removed?

Mark Griffin: I have long been a supporter of the removal of the right to buy and think that the Government has taken the right step. I have said that it should have been done a long time ago. I had hoped that Mr Crawford would welcome the consensus in most of the chamber on the removal of the right to buy, and I will say why the timescale for that should be reduced.

Most of us agree that the right to buy should go because of the impact that it has had on social housing stock and the ability of landlords to improve or increase the housing stock. The Government should be working towards what it feels is the minimum time period in which the right to buy can be abolished. We should take an evidence-based approach to find the shortest time possible in which to abolish it and just get on with it.

Another area in which the Government could strengthen the bill at stage 2 is its provisions on antisocial behaviour. I might be wrong, but I think that this is the first time that a Government minister has mentioned antisocial behaviour in this session, although it is a massive issue that has not gone away. The Government must set out how it feels that short Scottish secure tenancies will add to local authorities’ ability to deal with antisocial behaviour instead of simply moving the problem around different communities.

I will conclude with the areas that I think have not been adequately covered.

The Presiding Officer: You are in your last 30 seconds, Mr Griffin.

Mark Griffin: When the Housing (Scotland) Bill is debated in Parliament, our communities will expect a recognition of the fact that house building is at its lowest level for decades and a plan for how to increase house building to make up the shortfall of 160,000 homes. The other issue, which was highlighted by my colleague Mary Fee, is the massive disparity between the rents that are charged to private tenants for homes that were previously local authority stock and the rents that are charged to the tenants of current local authority stock.
The social rented sector has rigorous oversight, which is much less true of the private rented sector, despite the fact that they have similar tenants. The Scottish Federation of Housing Associations takes up that point on paragraph 2.3 of page 2 of one of its briefing notes to the committee:

“However, we note that there is nothing in this Bill that will bring the private rented sector anywhere near the levels of the social rented sector in terms of the regulation of management or of physical property standards.”

However, I accept that we are moving in the right direction.

We need to see improvements in electrical safety in the private rented sector. I was taken aback when I first heard that a majority of accidental fires are caused by electricity. I had assumed, as perhaps others did, that the major cause of such incidents was gas. Therefore, I am very happy to endorse the committee’s recommendation at paragraph 168, about which the minister spoke positively.

It has been suggested that increased private tenancy security could lead to a tenant investing more in their property for the longer term and playing more of a part in the community than has often been the case. That is another area worth exploring.

On the private rented sector, I throw in my continuing concern about the Belgrove hotel in my constituency, which does not fall neatly into any of the categories that we are discussing. As a result, 140 vulnerable tenants do not get the protection of being a part of the social rented sector or the protection that we hope to give to private tenants in the future. I am not expecting an answer on that issue today, but the minister knows of my concerns and I believe that the matter concerns her, too.

To return to specific issues in the social rented sector, I have mentioned group structures. At times, it seems that smaller associations are being gobbled up through merger or acquisition. Should tenants always get to vote on such a merger or acquisition if they are joining a group? Local understanding and accountability are in danger of being lost, so I am glad that the Government has a positive view on the matter and that it is consulting on the issue.

I am not sure how much can be changed by legislation, but I am concerned by some of the things that I have heard about the relationship between the Scottish Housing Regulator and associations. It is important to get the balance between operating at the right distance and maintaining a relationship. Sometimes that relationship was too close, but I wonder whether it
is now too distant. We could do with an improved attitude and a better working relationship.

The SFHA referred to that issue in its briefing for the debate. For example, it asked for a requirement

"for the SHR to publish, following consultation, a consolidated Code of Regulatory Practice that addresses all of its methods for intervening in the affairs of social landlords, including those that are not publicly reported and those that do not involve the use of statutory intervention powers."

I wonder whether the regulator is too keen on larger groups of associations, with the consequential loss of local involvement that inevitably follows.

On allocation policies, I wonder how far we can go in taking local connections into account. We are dealing with some complex family structures these days, and I frequently get cases where school, work, childcare and access are all being juggled with difficulty, and the request is for rehousing in the immediate local area. In some cases, that might never be possible, because larger homes are not available, but swinging the policies in that direction, where community involvement is available, would be valuable.

15:30

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Like previous speakers, I find most of what is in the bill acceptable. The real issue is what is missing from it. The headlines will be captured by sections 1 and 2, on the abolition of the right to buy, and I do not object to that, but there is a danger of overstating the effect of that measure. There is a danger that, if that measure is not implemented quickly, it may have unintended consequences. It is a mistake to believe that the policy will be a panacea for the chronic shortage of affordable social rented housing. That is the danger to which I refer.

There have been many outstanding affordable housing developments in recent times, and I am pleased, if I may get a plug in, to be officially opening one in Leith tomorrow that has been named by the Chartered Institute of Housing as one of the best affordable housing developments in the United Kingdom.

However, it is increasingly difficult for housing associations to build social rented houses in the numbers that are required, because of the reductions in the level of housing association grant. Any housing association will tell us that the reinstatement of the HAG was welcome to some extent but it has not gone nearly far enough. There will be a declining number of social rented houses. That is the problem that confronts the Minister for Housing and Welfare. She always makes comparisons with previous Administrations regarding affordable housing in general.

There are a number of further points relating to the bill's social rented housing provisions. First, on allocations, I note that the Chartered Institute of Housing said that the new criteria would not make much difference at all. The underoccupancy criterion is welcome, although I worry about people in overoccupied social rented housing, who seem to have very little opportunity to move, certainly in Edinburgh.

Antisocial behaviour is a massive problem, as we all know from our constituency surgeries, emails and so on, and many witnesses have said that the proposals in the bill would not have a significant effect on that, although we have to hope that the increasing opportunities for using the short SST will be helpful in that regard. Nobody wants to have to evict anybody but, in certain circumstances, eviction has to be an option. Presumably it will be easier with a short SST than with the standard SST.

The age issue has been the most controversial. Like Mary Fee and other members, I think that the important thing is to have a code of practice and effective monitoring. There are worries from Shelter and the children's commissioner that we must take seriously. In particular, we should track the percentage of young people who are getting tenancies. That has increased considerably since the 2012 homelessness legislation kicked in.

Mary Fee said that the measures could be positive. She mentioned the flats that have been prioritised for elderly people in her area. We had a block of flats in Leith that was successful with older people. The percentage of tenancies going to homeless people was the same as it had been previously, but the regulator said that that had to be stopped. There probably needs to be a change in the law if we want that to be an option.

The biggest missed opportunities are in the private rented sector. I welcome the provisions on the tribunal and on letting agents, although the points about enforcement and identification that James Kelly and Mary Fee made are important. When it comes to landlord registration, there is just a minor change, in section 22. The problem is that landlord registration has become a largely bureaucratic exercise, but action on the antisocial behaviour of private tenants and on the failure of landlords to take responsibility for common repairs could be dealt with to some extent through a beefed-up landlord registration system.

I will move on to some other issues concerning the private sector, and they are all to do with amendments to the 2006 act. I note that the repairing standard and the Private Rented Housing Panel were created by that act. It is good
that there will be an amendment about electrical safety checks and a beefing up of the repairing standard.

I note that the City of Edinburgh Council has suggested that it is not just local authorities that should be able to make a report on the repairing standard; neighbours who are affected by issues concerning privately rented property and—crucially—neighbouring home owners when a landlord is not contributing to common repairs should also be able to do so. Landlords not contributing to common repairs are a massive problem in my constituency, or parts of it, anyway, and that is an interesting suggestion from the council.

The City of Edinburgh Council has other interesting and important suggestions when it comes to common repairs more generally. Sections 73 and 74 contain minor changes to work notices and maintenance orders, but the council proposes that all owners who have common parts to their property be required to develop a plan to ensure maintenance of the common parts and that an annual roof inspection be included in that, along with a payment plan and the appointment of a responsible person or agent to manage the plans. That suggestion should be considered for future amendments.

Finally, there is the issue of widening the scope for where a missing share can be paid. That is already possible in certain circumstances under section 50 of the 2006 act, but the City of Edinburgh Council suggests that there be more flexibility so that there is not a 30-year repayment period, that charging orders are secured by priority ranking—

The Presiding Officer: I ask you to bring your remarks to a close.

Malcolm Chisholm: —and finally that there is a fund that local authorities can access to facilitate shared repairs. There are major issues in Edinburgh about that, and I hope that the Government will seriously consider the council’s proposals.

15:36

Jim Eadie (Edinburgh Southern) (SNP): The provision of good-quality, affordable housing is something that we all want to see for ourselves, our families and our communities, and although legislation alone cannot deliver that, I believe that the Housing (Scotland) Bill together with the unprecedented levels of investment will take us closer to achieving that ambition for all our citizens.

The centre-piece of the bill is of course the abolition of the right to buy, which will retain thousands of homes in the social rented sector over the coming decade. The right to buy legislation, which was introduced by a Conservative Government in the early 1980s, was controversial. I remember it being opposed by a dynamic and forward-thinking director of Shelter Scotland by the name of Margo MacDonald. It is fitting that we recall that in the week in which tributes have been paid in the chamber to Margo’s massive contribution to Scottish public life.

There has been near unanimity in the Infrastructure and Capital Investment Committee on the issue, although we should recognise the lone dissenting voice of Alex Johnstone, who sought to keep the spirit of Margaret Thatcher and the concept of a property-owning democracy alive throughout our deliberations. However, the weight of the body of evidence that we received from across civil society was overwhelming in its opposition to the right to buy.

The situation was summed up best in the evidence session in Dumbarton by Jennifer MacLeod of the Highland and Argyll and Bute tenants network, who rightly contrasted the right to buy with the right to rent. Reflecting on her experience in her community, she stated:

“...I could see the reduction in the number of houses that were available for rent. We have a right to rent as well as a right to buy. Over the years, the right to buy has done great damage to the amount of housing stock that is available, and I am glad that it is finishing.”

I have another reason to be grateful to Jennifer MacLeod. Asked by me later in the evidence session whether she would like to contribute her views on the issue of secure tenancies, she replied in a wonderful Highland accent:

“No. I just happened to be looking at you ... Gazing in wonder.”—[Official Report, Infrastructure and Capital Investment Committee, 24 February 2014; c 2671, 2688.]

I replied that I did not know whether to be flattered or concerned by that statement.

A further insight into the right to buy comes from Charles Moore in his authorised biography of Margaret Thatcher, in which he states:

“The policy had its disadvantages. The most notable were the gradual build-up of a housing shortage, which in 1979 had not existed, and the stoking, for the future, of a housing bubble.”

Although the impact of a housing bubble was not felt in Scotland to the degree that it was felt south of the border, his comment is nonetheless a sobering antidote to the rose-tinted memories of Alex Johnstone and others on the Conservative benches.

Many people took advantage of the opportunity to buy their council house, often at a significant discount, but that was at the expense of diminishing the council housing stock, reducing

...
the number of good-quality homes for families who could not afford to buy and who found themselves stuck in the less-desirable properties. The bill addresses that inequity.

There are a number of ways in which the bill can be further strengthened. One is to give households containing pregnant women and children the right to challenge being placed in homeless temporary accommodation of a very poor standard. I intend to lodge an amendment at stage 2, with the support of Shelter Scotland, to address that issue so that households containing children or expectant mothers have a legislative right to challenge local authorities that place them in poor-quality accommodation.

Another issue that has been referred to is introducing carbon monoxide safety requirements for properties that are in the private rented sector. I am grateful to Shelter Scotland for its support on that issue, on which I will lodge an amendment at stage 2. Shelter Scotland has rightly said that it wants to see “carbon monoxide alarms become mandatory in all privately rented property in Scotland.”

I want further progress on that and I will work with members across the chamber to achieve that change to the bill.

Shelter has highlighted the possibility, which has been referred to, of age discrimination against future tenants who come within the bill’s ambit. I welcome the minister’s clear commitment this afternoon to reflect further on the range of views that have been expressed during the bill’s passage through Parliament. I draw attention to the fact that the committee received a range of evidence on the issue. There was a clear division between local authorities and registered social landlords on the one hand and Shelter Scotland, Scotland’s Commissioner for Children and Young People and organisations that act on behalf of homeless people on the other. It is clear that much more exploration and discussion of the issues is needed before any final conclusions can be reached.

Like Malcolm Chisholm, I have received representations from the City of Edinburgh Council. I encourage Scottish Government ministers and officials to engage in constructive dialogue with the council to address issues such as extending the power to make third-party referrals to the Private Rented Housing Panel; the enforcement of landlord contributions to common repairs; increasing the flexibility for local authorities to determine the length of a repayment period when covering a missing share, which Malcolm Chisholm referred to; and the requirement, which Malcolm Chisholm also referred to, for owners to produce a maintenance plan that covers common repairs. They are all reasonable observations and suggestions for further progress and work that is to be done.

The bill has much to commend it, but further steps can be taken to strengthen it. With colleagues across the chamber, I look forward to playing my part at stage 2 to bring about those improvements.

15:42
Jim Hume (South Scotland) (LD): I welcome the opportunity to contribute to this important debate. I broadly welcome many of the aims that are in the Scottish Government’s bill. It is hard to argue that some of them are not long overdue. For example, the scrapping of the right to buy and the long-awaited regulation of letting agents will undoubtedly arrest the decline in social housing stock and provide long-awaited protection for tenants, by driving up professionalism among letting agents.

I welcome the introduction of a tribunal service to better serve tenants and letting agents who are in dispute and take away some of the pressures that our sheriff courts feel. However, I am concerned about the need for a tenant to pay a fee to progress their complaint to a tribunal. Many tenants who find themselves in dispute with letting agents are vulnerable and have little money. I fear that they will be priced out of seeking justice, so I would like the minister to provide assurances in summing up that no one will be priced out of accessing the tribunal system. There must be access for all.

We are in the midst of a housing crisis in this country, with 180,000 people on local authority waiting lists. A third of them have been on those lists for more than three years. Given that, we can understand the minister’s desire to increase flexibility in the management and allocation of social housing. The Government’s news release described that as “allowing landlords to make better use of their stock, tackle anti-social behaviour and provide further protection for tenants.”

That is all good, but the Government was noticeably quieter on the details, which include the provision in section 5 to remove the prohibition on taking age into account in social housing allocations. I know that the Chartered Institute of Housing in Scotland called for that measure, which has the SFHA’s support. I realise that the minister is to look at the provision again, but the measure did not originally feature in the consultation.

The arguments in favour speak of removing barriers and helping social landlords to make sensible allocations to sustain tenancies and communities. To my mind, the reality will wind up
being quite different. I share the concerns of Citizens Advice Scotland, which has stated that the removal of the protection could result in particular age groups—in all likelihood the young—being allocated to undesirable areas. I associate myself with Shelter on the matter and I congratulate it on taking the lead in opposing the removal of the prohibition.

The minister will know that Shelter is not alone. Last month, she received a letter from Graeme Brown and 11 other representatives of organisations such as Children in Scotland, Barnardo’s, Homeless Action Scotland and the Poverty Alliance that detailed their opposition. I agree with their assessment that current legislation and practice already allow for social landlords to respond to particular requirements that relate to, for example, accessibility or the need for an adapted property. The letter also addressed those who say that the proposal will enable social landlords to tackle imbalances in communities by correctly highlighting that they are already able to do so through a local lettings initiative and, of course, sensitive lets.

The allocation of social housing must always be done on the basis of need and nothing else. The proposal has a real danger of leading to age discrimination, primarily against young people, who are so often a section of society in the most pressing need of housing. Regardless of the protections that are afforded in the Equality Act 2010, I hope that the minister will seek to remove the proposal from the bill soon.

I have issues with some things in the bill, but there are a few small missed opportunities. One thing that I would like to be improved—I intend to lodge an amendment to the bill at stage 2 to this effect—is the use of section 5 referrals. When a local authority seeks a registered social landlord’s assistance in housing a homeless person, if that is done through a section 5 referral, the homeless person will enjoy certain safeguards, such as a response from the RSL within a reasonable period, and a request will not be declined without a good reason. However, not all councils currently use section 5 referrals when they engage with social landlords to house a homeless person, which denies such people the safeguards that are afforded through the robust and consistent framework that section 5 of the Housing (Scotland) Act 2001 provides. I would like to see all referrals done through section 5, and I urge the minister to commit today to amend the bill to make that happen. If she does not, as I said, I am prepared to lodge amendments at stage 2.

The bill is important, but it has by no means a perfect set of proposals. Some proposals in particular do not simply need to be amended or refined; they need to be dropped altogether. I support the bill at stage 1 in recognition of the undoubted benefits that it will deliver in certain areas, but, as I said, I will look for significant work on the bill at stage 2.

15:47

Bob Doris (Glasgow) (SNP): I want to look at electrical safety in relation to the private rented sector, which we have heard about from other members. First, however, I pay tribute to our housing minister and the constructive approach that she has taken with the Electrical Safety Council—which I should now call Electrical Safety First, as it has rebranded itself and changed its name—and with me in her willingness to consider legislating in that area in the bill.

In its submission on the bill, the Electrical Safety Council provided strong evidence that

“69% of all accidental fires in Scottish homes (more than 3,400 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.”

Therefore, there is an evidence base on the extent of the problem. That is why I have supported for some time calls for five-yearly checks of both fixed wiring and portable electrical equipment. I am therefore pleased that the minister has indicated that she is supportive of an amendment on that at stage 2. I fully appreciate that the Government must see the detail of the amendment before it confirms that it can accept it, but I confirm that I hope to lodge an amendment at stage 2 that will require a five-yearly cycle for periodic inspection reports on fixed wiring and five-yearly portable appliance testing.

It is not only the Electrical Safety Council that has called for that. It has been excellent in building a coalition of various partners. Among the 12 trade associations that have backed that call are the Scottish Association of Landlords, Shelter Scotland, the Royal Institution of Chartered Surveyors and the Chartered Institute of Housing Scotland. There is a broad coalition and alliance around that, so I hope that we have success at stage 2 in bringing forward a proposal.

I will say a little bit more about the Scottish Association of Landlords, because I do a lot of work with that organisation. Too often, we talk about the cowboy landlords in the private rented sector, whereas the Scottish Association of Landlords represents the top performers—the registered landlords who seek to do all that they can. [ Interruption. ] I suspect that Alex Johnstone may also be a registered landlord—who knows? We can check his declaration of interests.

The Scottish Association of Landlords drew to my attention—or refamiliarised me with—the
repairing standards. The Housing (Scotland) Act 2006 states that

“Regard is to be had”

to any guidance set out by ministers in relation to section 13(1)(f). Members will all know what section 13(1)(f) is, but I remind them of what it says. It states that the repairing standard is met if “the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”

I understand that the guidance in relation to that is in the technical handbook and that the 2013 guidance requires—if members are still following me—that there must be hard-wired smoke detectors in all public rooms. Which tenures does that cover? It covers new-build properties, redeveloped properties and private rented properties but not social rented properties, so the fire safety standards in social rented properties are lower than they are in private rented properties. That is a reasonable thing to put on the record.

It is important that we are cognisant of the various standards that apply to different tenures. We should consider the expression in the 2006 act that private landlords should give “regard” to. There is a vagueness in that. Does it mean that landlords should do it, that they should not do it, or that they should think about it and maybe do it? We must look at and perhaps address that vagueness.

The safety of their tenants is paramount for the private landlords to whom I have spoken, including the Scottish Association of Landlords. However, we must ensure that they are given due time to hard wire smoke alarms and to meet their other commitments in a robust, safe and affordable manner. The landlords whom I work with are up for doing that, but more clarity around the requirements would be welcome.

In the minute and a half that I have left, I will make some general comments on ideas around the flexibility of landlords’ allocation policies. I will talk not about age-related criteria, but about something that is one of my biggest constituency issues. I have constituents who are living in appalling housing conditions. Their housing needs could have been met by social landlords, but when a house was offered they did not take it, because they knew that if they did so they would be stuck in the house for a generation or two. That is because in social housing, a person’s housing aspirations tend to be forgotten once their housing needs have been met.

A Maryhill housing officer said to me years ago that housing officers used to say to social tenants, “I know you don’t really want that property, but do a couple of years up the close and we’ll get you a much better property in a couple of years’ time.” However, for a number of years it has been the case that as long as the person’s housing needs have been met, they will stay up the close for five, 10, 15 or 20 years.

In the context of the need for flexibility in allocation policy, I ask the Parliament and the minister to consider how we can take cognisance of the housing journey and aspirations of tenants in the social rented sector.

In a spirit of flexibility, Presiding Officer, I can give you an extra 10 seconds, because that is me finished.

The Presiding Officer: I am grateful.

15:53

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I welcome the opportunity to speak in the stage 1 debate on this important bill, because housing is probably the single biggest issue about which constituents in my Borders constituency contact me. I am sure that the same is true for many members.

What most concerns my constituents is that local people often cannot secure social housing in their communities, which is frustrating. People are forced to apply for and often take housing in the larger towns across the Borders, which might be several miles from the rest of their family and community and some distance from their place of work. Such an approach does not support local housing associations’ aims to encourage a cohesive community.

A few miles might not sound like a lot, but it is important to recognise that in rural communities such as we have in the Borders the difference between living in Eyemouth and living in Duns, Jedburgh or Earlston can be profound and significant for many people. Members should try asking a family from Hawick to live in Galashiels, or vice versa.

I believe that it is important, therefore, that the bill is amended to give social landlords the ability to include extra priority for applicants with a local connection. I am not saying that that should be an ace card that takes priority over every other factor. Clearly, those applicants who are homeless or who have a particular medical need must still be given the relevant priority. However, where all other things are equal, I believe that a local connection should be taken into account in the allocations process.

It is therefore my intention to lodge amendments at stage 2 to cover the issue. I fully accept that the concept of local will be different in each part of Scotland. What is local in the Borders will be completely different from how local might be defined in Glasgow. I hope that my amendment will ensure that the definition of local is sufficiently
flexible to accommodate the different requirements of Scotland.

In my remaining time, I wish to mention the other concern that constituents have raised with me—the bill’s provisions to reform the site licensing system for mobile home sites with permanent residents. I represent several such sites, including Springwood village, near Kelso. I have been in correspondence with the minister about that issue and she is well aware of the concerns of both the site owner and the residents, so I will not repeat them now. However, the key point is that, although the intention may well be to target unscrupulous site owners who have sought to exploit weaknesses in the current licensing regime, the bill could have the opposite effect.

I can cite a couple of important examples, one of which is the proposal to have a three-year licence term for site licences. I know that the Infrastructure and Capital Investment Committee highlighted concerns that financial lenders may withdraw support for sites on the basis of the introduction of fixed-term licences. Many of my constituents have invested large sums of money in their homes, and that should not be undermined by the imposition of that fixed-term licence period. Like the committee, I would encourage the Scottish Government to work with the lending groups to clarify their views on the introduction of a fixed-term three-year licence. Given the concerns that have been raised with me, I will lodge an amendment at stage 2 to increase the fixed term to at least five years.

There are other aspects of the bill intended for site licensing that raise concerns, not least in relation to the fit-and-proper person test. I would be grateful if the minister could clarify in her closing remarks whether the Government looked at experiences in England in drafting those provisions.

There is much in the bill that we can support. There are areas that need significant improvement but, as my colleague Alex Johnstone explained, the fundamental flaw is the abolition of the right to buy. Many of my constituents will be deeply disappointed by the removal of that right, but I fully recognise that that is a minority view in this chamber.

15:57

Marco Biagi (Edinburgh Central) (SNP): I rise as the elected representative of 31,000 people whose roof over their head is paid for by a monthly bill to a private landlord. At 39 per cent, Edinburgh Central’s rental share has doubled in a decade and is the highest in Scotland.

The private rented sector has long been the choice of students, new migrants and those who work in transient occupations, but today it is also the only option for the families locked out of social housing by the plummeting council house numbers that were the effect of right to buy, and for the younger generations priced out of buying their own home by two decades of soaring house prices during which any concerns were drowned out by back-slapping from mid-market self-congratulations by those who were lucky enough to buy in less turbocharged times.

The new report that was published this month by Shelter confirms that just one in six people in the private rented sector actually wants to be there. How ironic it is that Thatcher’s dream of home ownership was followed by a housing crisis hangover and home ownership falling for the first time in living memory.

With little security of tenure, city centre communities have become more transient, and services long cherished by long-term residents have had to be changed—in the face of understandably deep sentiment—to reflect the replacement of families with children with houses in multiple occupation. I say that not as a criticism but as a recognition. Cities change and living patterns change; they always have and they always will. The question is how we adapt and manage.

We now have landlord registration, independent tenancy deposit protection and tenancy information packs, and the illegal premiums that were formerly charged by 59 out of 60 Edinburgh letting agents surveyed—charges to get on a waiting list or to even be considered for a flat—have been ended.

In a market failure, when supply is quite literally fixed and unmoving and demand is ever increasing, it is not just right but vital that we intervene to deal with the inevitable unfairness that the imbalance creates.

The private rented sector tribunal will speed up adjudication as well as, crucially, providing a specialist space and avoiding the need for tenants and landlords to go to the sheriff court for enforcement.

The landlord-tenant relationship is an intrinsically precarious one, which the landlord can end at any point with little warning. No wonder it is so easy for tenants to feel that they are living in someone else’s asset rather than their own home. No wonder, either, that private rented homes are often of the lowest quality and have the poorest maintenance, which has implications not least for neighbours.

Tenants have told me time and time again of their fears about trying to press their rights and struggling to find a lawyer willing to take on their case and of their apprehension at possibly being
blacklisted as a troublemaker by other letting agents. For new arrivals to Scotland, it is especially hard. Giving local authorities the power to inspect and report on the repairing standard will help to address that. Giving the power to neighbours could help even more. I would be interested to hear the minister’s response to that suggestion from Edinburgh.

Regulation of letting agents means that good practice may become standard practice. If that is implemented well, the new tribunal will be out of a job and we can look forward to empty rooms and bored lawyers because the disputes will not emerge. Maybe that is too much to hope for, but we should all welcome the fact that letting agents, too, support that move because they also realise the importance of the industry being of high repute.

The bill’s provisions will help this country govern a private rented sector that is groaning under the weight of a massive expansion, but I believe that we must also look at the horizon and consider what we want the mix of housing ownership and tenure to look like in another decade’s time.

Yesterday, the Economy, Energy and Tourism Committee heard accounts of inequality in Scotland and the UK and was given a crucial reminder to consider both inequality of income and inequality of wealth. The implication in private renting is fairly straightforward: a private tenant has fewer assets than their landlord and the gap between them grows with every monthly rental payment.

In the short term, we must ensure that rights and responsibilities on both sides are enforced and continue the commendable progress in increasing the supply of social housing. However, let us all take a moment to imagine a society where the proportion of people renting the roof over their head has doubled again. Is that a future where equality is lower or higher and where communities are more cohesive or more atomised? Above all, is that the Scotland that, in another 10 years, we all want to live in?

The Presiding Officer: Thank you, Mr Biagi. We have a few seconds in hand, so if members want to take an intervention, we can give them a wee bit back.

16:03

**Alex Rowley (Cowdenbeath) (Lab):** As a councillor, the biggest case load that I ran always related to housing issues. As an MSP since January, I have found that the biggest case load that I have now, in dealing with constituents’ issues, also relates to housing. The fact is that we have a major housing crisis out there, which needs to be tackled. I will come back to that.

I welcome what is proposed in the bill. I congratulate Maureen Watt and the Infrastructure and Capital Investment Committee on the work that they have done, because the recommendations that they have made look to bring about improvement.

I was pleased to hear Jim Eadie talk about the Shelter Scotland proposals on removing from the bill the possibility of social landlords discriminating against future tenants based on age. In Fife, there are local letting policies and local area committees are able to determine them locally, which seems most appropriate. I would certainly support Jim Eadie in bringing forward that proposal.

On temporary accommodation and strengthening the existing protection for families with children, two Decembers ago, I heard from a family—a young mum and three kids—who were stuck in temporary accommodation above a pub for two months coming up to Christmas, which was totally unacceptable. I am told that that would not happen again in Fife, but we should ensure that it does not happen and that young families have the opportunity to question such things.

Picking up on Bob Doris’s point, we need ambition for housing. Rather than simply telling people that they are adequately housed when they are stuck in a flat, we need some flexibility. I hope that the minister will take on board Bob Doris’s valid points. I was born and brought up in a council house. For years, it was my mum’s ambition that we would move further down the street into a cottage in Kelly, and eventually we did. That was the reality then. There should be choice for council tenants, and not simply a position of last resort.

I welcome the proposals in the bill and the debate that has taken place today. With regard to the private sector, it is not enough for local authorities to have discretionary powers to intervene. I have dealt with many cases over the years involving private landlords. Although I have no doubt that there are good private landlords out there, many landlords leave their houses in an unacceptable state. I meet families who have to live in such conditions. Local authorities need the powers to act, and to recover any moneys from private landlords if they are forced to get the necessary work done on those houses. I appeal to the minister on that point.

Having said all that, the bottom line is that, when people come into my surgeries with housing issues, as they will tomorrow, I know that there is not enough housing to go around. That is why I support Shelter’s campaign for an additional 10,000 social rented houses to be built each year. It is important that we build houses—in Fife, the authority was able to work with tenants and raise the funds, and it now has a plan in place for 2,700 houses to be built in Fife over the next five years.
We need partnership with local authorities to build more houses. At the end of March 2013, there were 151,000 people on the waiting list in Scotland. Almost 32,000 households were accepted by the local authorities as homeless, and there were more than 18,000 children in households accepted as homeless. That is the crisis that we face in Scotland.

I know that the Scottish Government has set a target in its manifesto for 6,000 affordable homes, but it was originally talking about 6,000 social rented homes. That is a fundamental issue. We welcome the bill and some of its provisions, but we should imagine what could happen if we could build party unity and real ambition across Scotland to tackle the housing problems that exist. If we build new houses, it will create a chain and free up housing so that people can have their specific housing needs met.

We need to have an ambitious national housing programme for Scotland, sign up to Shelter’s campaign for 10,000 social rented houses per year and put in the resources to do that. We need to start moving forward and tackle housing needs in Scotland.

16:08 Sandra White (Glasgow Kelvin) (SNP): I thank the Infrastructure and Capital Investment Committee for its scrutiny of the bill. Although I am not a member of that committee, I know that social and private rented housing make up the largest part of my and other MSPs’ constituency work, as members have said.

I will touch on a couple of areas. The debate so far has been very good, and there has not been a great deal of controversy. Unfortunately, however, Mary Fee set off on the wrong foot in her opening remarks, so I hope that I can correct her in my speech.

First, there is the ending of the right to buy. It is vital that we increase the supply of social housing, not only to safeguard the stock for future generations but to allow communities to stay together and flourish, which is what we all want. In my constituency, social housing is at a real premium. When pressured area status was introduced by Parliament, part of my Glasgow Kelvin constituency benefited greatly from that legislation.

I congratulate the Scottish Government on building—I hope that Mary Fee is listening to this—4,432 new council houses in the past six years. That can be compared with the six council houses—yes; six—that were built under the previous Labour-Liberal coalition. We have to be clear about that. In addition, 26,242 housing association houses have been built in the past six years under this Scottish Government. I think that there is a case for giving credit where credit is due, in that regard.

Mary Fee: Does Sandra White acknowledge that the 29 per cent cut in real terms in the housing budget in four years by this Government has had a massive detrimental impact on housing in this country?

Sandra White: I remind Mary Fee that I said that we should be honest and give credit where credit is due. [Interruption.] I think that Mary Fee should be honest about the fact that only six council houses were built in four years under the previous Labour-Liberal coalition.

Mary Fee: What about the 29 per cent cut in the housing budget over four years?

The Deputy Presiding Officer (John Scott): Can we have a little bit of courtesy, ladies?

Sandra White: I echo John Mason’s comments on local connections and housing policy. I assure John Lamont that areas in my Glasgow constituency, although they do not have countryside all around them, are not that different from the area that John Lamont represents. People from Partick and elsewhere in the constituency ask me about local connections because the communities want to stay together. As I have said before, continuity helps communities to flourish.

One of the biggest issues in my area is the private rented sector. Like the constituencies of Gordon MacDonald and Marco Biagi, my constituency, which is Glasgow Kelvin, contains many private sector landlords. I particularly welcome the proposal in the bill to transfer private housing cases from the sheriff court to first-tier tribunals. That proposal is also welcomed by the Scottish Association of Landlords, which has highlighted the problems in using courts for housing disputes.

I welcome the minister’s comments on local authorities being given more powers in respect of poor housing conditions in the private rented sector. There are many tenemental properties in my constituency, some of which are over 100 years old, and many have absentee landlords and are operating as HMOs, so it is really important that poor conditions are tackled. I welcome the minister’s comments about lodging amendments about electrical checks and carbon monoxide detectors.

With regard to areas in my constituency, I would echo what Marco Biagi said about city centre areas and other areas having to change through time. However, a certain amount of private sector housing belongs to people who speculated in property and bought during the property boom, but
now cannot sell. They are operating as private landlords; many are absentee landlords. It is very difficult for people to get hold of them when a repair is needed, or for a meeting. It is good that we are looking at legislating on that, as well.

An area that the committee report did not mention, although I hope that we will look at it as the bill progresses, is the link between planning and HMOs. I know that that is a council issue, but it is brought up daily to me by many of my constituents. Further, an issue that might be thought of as quite small, but which is not regarded as that by people who live in tenements with HMO flats, is how the rooms in such properties are used—for example, a bedroom can become a living room or a kitchen. People whose bedrooms are below what was previously a bedroom in an HMO flat but which is now being used as a living room by four or five people can have horrendous experiences. That is not always the case, but it happens a lot.

I know that the two final issues that I have raised are not mentioned in the report, but I hope that they can be addressed as the bill goes through its stages. As I said, I am not a member of the Infrastructure and Capital Investment Committee, but I will certainly be keeping an eye on the bill and I hope that I can speak in the stage 2 and stage 3 debates.

16:14

Patrick Harvie (Glasgow) (Green): As other members have said, there is not in the bill a great deal to which people object, but there are two broad exceptions to that, the first of which is the criteria around social housing provision, age and other factors. I hope to see those matters debated at stage 2, and to see some willingness from the Government to at least consider with an open mind any proposed amendments.

The second exception is, of course, about the right to buy. Notwithstanding the anguished cry of the thwarted libertarian on the Tory front bench, who seemed at times to be doing a passable parody of Alex Johnstone, I think that most of us are pretty happy to wave bye-bye to the right to buy. We know that its abolition is long overdue. The idea to register landlords was a good one, but it did not deliver everything that was
promised of it. That has been partly because of lack of resourcing and enforcement, but in many cases it has been because tenants did not know what benefits landlord registration could give them—they did not necessarily know their rights. We must not repeat those mistakes with regulation of letting agents, so at stage 2 let us have amendments that provide clarity about what the code of practice can deliver.

I would also like the bill to address the discrimination against benefits recipients that we know is widespread, and I would like it to deal with the on-going problem whereby even reputable professional letting agents find ways of getting around the deposit protection scheme provisions. We know that practices such as pretending that a deposit is not being charged by calling it “increased advance rent” are widespread. The code of practice needs to close the loopholes that many letting agents are exploiting.

Even if we get the best possible code of practice, everything that I have said begs one final question: why on earth should tenants who rent from a landlord instead of a letting agent have to accept lower standards of service? If we are to achieve a high standard of service for tenants of letting agents, why should we not seek to achieve the same high standard of service for tenants of landlords? That way, we would ensure that private sector provision is what it needs to be for all the people in Scotland who depend on it.

16:20

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): As deputy convener of the Infrastructure and Capital Investment Committee, I am pleased to contribute to today’s debate, albeit as a tail-end Charlie whose points have already been covered to a considerable extent by others.

The main headline measure in the bill is the abolition of the right to buy for social housing tenants, which has been warmly welcomed—so much so that we are asking the Government to reduce the lead-in period to abolition—by everyone except the Tories. I am pleased that the minister responded positively on that issue and I hope that we can encourage her to move even faster.

As the Law Society of Scotland points out in its briefing for the debate, over the years since 1980 the exercise of the right to buy has reduced the availability of good-quality affordable housing in the public sector. Some 455,000 properties have been taken out of the sector in that period and 500,000 tenants still have a right to buy. More than 185,000 people are on local authority waiting lists, and continuing depletion of the social housing stock is unsustainable in the face of that level of need.

Of course, abolition of the right to buy is not just about retaining what is left of social housing. It will also remove one of the main constraints on social landlords who seek to expand supply.

Thanks to this Scottish Government, nearly 31,000 social houses have been completed in the six years to 2013, despite the cuts and austerity imposed by Westminster. I appreciate what Alex Rowley said about the need to go even further, but we need to have the resources available for that purpose. I point out to others that the Scottish Government’s performance is significantly better than that of its Labour-led predecessor in the previous six years, when the Scottish budget grew in real terms year on year. The contrast is particularly remarkable when it comes to council house building: 4,400 new council houses were built by the Scottish National Party whereas, as Sandra White mentioned, just six were built under the last four years of the Labour-Lib Dem Administration.

James Kelly: I know that Adam Ingram wants to support his Government’s record, but we can do without such disingenuous claptrap. He ignores the fact that the Labour-Lib Dem Administration built thousands of housing association houses. If he compares the figures over the six-year periods, he will see that 144,000 houses were completed in Scotland between 2001 and 2006, compared with 112,000 in the past six years. Let us get the facts right.

Adam Ingram: As the First Minister is fond of saying, facts are chieals that winna ding. I suggest that Mr Kelly looks at completions of housing association houses. He will find that there have been more under an SNP Government than under Labour Administrations in previous years. Under independence and freedom from UK Treasury rules, we will be able to do much more.

The bill covers other important issues. Given the time that I have, I want to concentrate on just one, which is a change in the factors that may be considered when allocating social housing: specifically, the removal of the prohibition on taking age into account.

The measure was requested by the Chartered Institute of Housing Scotland to allow landlords to deal with specific circumstances by being able to discriminate appropriately. Examples included excluding young people from multistorey tower blocks that have a large proportion of older tenants with associated support groups and social activities specifically suited to older residents, or limiting allocations to younger age groups in particular areas where there is already a preponderance of young or vulnerable people in
order to create a more balanced community. The measure is supported by the Scottish Federation of Housing Associations, which has emphasised that age and lifestyle are critical in developing sustainable communities.

On the other hand, there is significant opposition to such a change.

Jim Hume: Will the member give way?

Adam Ingram: Not at the moment.

Scotland’s Commissioner for Children and Young People believes that a number of vulnerable groups, including young disabled people, care leavers and young single parents, are likely to be disproportionately affected. According to research, housing allocated to young people on leaving care has often been unsuitable and in deprived areas, where the young people have been surrounded by adverse social conditions caused by, among other things, drugs, alcohol and violence. Moreover, although overt discrimination based on age is unlawful under the Equality Act 2010, that more subtle form of discrimination can and does operate against housing allocation that is entirely fair and based purely on need.

The committee has identified this as a key issue and has called on the Scottish Government to monitor the application of this provision in practice. Personally, I want stronger safeguards to be built into the bill and I encourage the minister to work with the commissioner and bodies such as Shelter to achieve that objective through appropriate amendments to the bill at future stages.

16:27

Sarah Boyack (Lothian) (Lab): I very much welcome the debate on this bill and in particular look forward to the raft of amendments that have been suggested by members from across the chamber. I particularly welcome the practical suggestions that committee members who have scrutinised the bill in detail have made. Such amendments will go a long way towards strengthening the bill.

The challenge, however, is that the bill might not be enough. Having reflected on members’ comments about housing allocation policies and sufficient housing for young people, people with disabilities and—crucially—the older people who are going to comprise more and more of our population and who have every right to live in safe, sustainable communities, I think that the key problem is the lack of housing choice, the lack of appropriate and affordable properties and the lack of community access. A lot of the comments that have been made this afternoon about local access, age and antisocial behaviour come down to a lack of decent housing for people.

As a result, I believe that various parts of the bill need to be strengthened. We need not just to build more houses but to ensure that we support the management of the housing sector. At the heart of this issue is the affordability of housing and a lack of choice of housing type, and that is why, as members across the chamber have pointed out, lack of supply and affordability are such crucial issues. The bill has to be seen in the context of the need for more housing.

Although there is a crucial need for affordable housing, we also need private housing that is for sale; indeed, Marco Biagi mentioned the lack of choice in that respect. A lot of people in Edinburgh live in the private rented sector simply because there is no affordable housing to buy or rent, and the city itself needs properly designated social housing provision.

On James Kelly’s intervention on Adam Ingram, which I believe he was quite right to make, I point out that in the first eight years of the Scottish Parliament a huge amount of time was put into improving the quality of social and council housing as well as building social housing; indeed, the best part of £1 billion was invested in bringing Glasgow’s council housing stock up to quality. Such moves were crucial and were deliberate priorities in the Parliament’s first eight years.

I want to focus on a couple of the sections of the bill that contain some helpful suggestions that need to be strengthened.

Like all MSPs from Edinburgh and the Lothians, I want to focus on improving the private rented sector. I have campaigned for that for years, and I am delighted that there are now provisions in the bill to deal with the issue. However, I just want to ensure that they go far enough.

I particularly want to focus on the comments that others have made about flexibility for councils with regard to paybacks in situations in which the council has taken up the missing share when residents have got together and come up with a proper plan for investment in their tenement or communally owned building, using the law of the tenement, but some people have opted out. We need to ensure that we are able to chase absent owners effectively. A little bit more work needs to be done to ensure that that part of the bill is effective.

The flexibility issue is crucial. For people who live in commonly owned property, the point is not to invest every 30 years; people in such properties probably need to invest every five, 10, 15 and 20 years. It is about regular repairs and maintenance. Edinburgh has had huge problems due to a lack of maintenance, and who happens to own a property when repairs are required is a lottery. We need to give all owners the capacity to improve their
properties and we need to make the situation fair. Councils are crucial in that regard. The point that Malcolm Chisholm made about providing local authorities with a pot of money to get things going was good. That would certainly get things moving and would tackle the backlog that exists in key parts of Scotland.

Quality is an issue in the private rented sector, and several members talked about that. Energy efficiency is another real issue. In yesterday’s Labour Party debate on fuel poverty, the private rented sector was identified as a key issue. We passed the Climate Change (Scotland) Act 2009 unanimously five years ago. New housing is of good quality in terms of environmental efficiency. The social rented sector is leading the way in terms of energy efficiency in its new and its existing stock. However, the private sector is missing out, and that is not right. That means that people who are saving up to buy a house or are waiting for social housing to become available are penalised. Given the rises in energy costs, those people are not getting a good deal. We need to focus on that key issue, which needs to be tackled. It is not currently in the bill, and I would be keen to hear from the minister about whether she is prepared to work with us on amendments to improve the situation in that regard.

We need to ensure that we get the right amount of housing stock and we need to get stable, mixed communities.

On the point about council house sales, I note that housing associations are now looking at staircasing and enabling people to take part ownership. Opportunities around co-operative housing are not being fully explored at the moment, and I would be keen to see more of that. However, the delivery of access to ownership of houses was not brought about by giving people the right to buy their council houses. We can see that in those communities where, although the first generation benefited from buying their properties, many houses have been sold off and are now run by private landlords. That gets us back to the point about improving the quality of housing, with a particular focus on the private rented sector. That is something that we could do in this Parliament. If we can work together to get the detail right in that regard at stage 2, that would greatly strengthen the bill and mean that it is the bill that it needs to be, rather than the bill that it currently is.

16:33

**Alex Johnstone:** This has been a constructive debate. It will be remembered for a number of good reasons, not the least of which is the fact that it included a mention of Margaret Thatcher, which is increasingly rare in this chamber. That mention was not even made by me; it is always nice to have a little support.

When I spoke earlier, I, as did the others who opened for their parties, talked largely about the bill itself. However, as the debate has progressed, we have moved slightly to talk about the backdrop against which the bill appears. That is not always the right thing to do in a debate, but I think that the debate has been constructive and has taken us forward in a positive way. I will comment on a number of the speeches that have been made as I develop my ideas against the criteria that have been set out.

Marco Biagi, whose speech was a sound argument for private ownership if ever there was one, talked about the shape of the private rented market. Too often, we have concentrated exclusively on the social rented sector and the contribution of the public and private sectors to that. There is more to the rental sector in Scotland. In cities like Edinburgh and Aberdeen—closer to home, for me—there is a high-end rental market of extremely high-quality properties that are rented at extremely high prices. There is an interesting shape to the rental market that we should take into account when we think about what is going on in some of our cities.

The notion of social rented housing that we take so seriously today was created, in effect, by the Housing (Scotland) Act 2001. Prior to that, we thought about public housing provision slightly differently. The problem that we have in the marketplace is that there is no middle to the rental market; there is the high end and the social rented sector, but virtually nothing in between. There is a significant lack of mid-market rental opportunity in Scotland today.

Alex Rowley spoke at length about how he would like to see 10,000 social rented houses being built every year in Scotland. I would like to see that kind of housing availability in Scotland, but I would not argue that we need to build 10,000 social rented houses every year. I suspect that, if there was a middle to the rental market, many people who currently occupy houses in the social rented sector would choose to move up into that rental opportunity and pay slightly higher rents for a different type of property. In doing so, they would free up capacity in the social rented sector. It is therefore vital that the Government consider, against the background of the bill, how it might stimulate investment and development in that sector. There is private or institutional money ready to be invested, if local authorities have the confidence to make progress on that.

**Patrick Harvie:** If the issue of security of tenure in the private rented sector had been addressed, there might just be something in what Alex Johnstone says. However, at present, what on
earth would possess people to choose to move from the social rented sector, if that is available to them, to a sector in which they could without reason be given a month's notice to quit?

**Alex Johnstone:** The problem, which is deep-seated, is that there is mistrust of the private rented sector. Scotland is full of positive private landlords who are willing to work closely with their tenants to achieve their objectives. I was hypothesising about how we might get private or institutional investment in public housing in the mid-market sector, and the only way in which such investment can ever be secure is by having good houses with good tenants in them. A good house with a good tenant in it is worth more to an investor than one without a tenant. As a consequence, there is a vested interest in supporting long-term tenancies.

I will move on. We had the usual argument about who in the past 10 years built the most houses. I have acted as referee in that argument before and I am going to do so again, because I do not like to see people taking advantage of each other. The truth is that, even if Labour built only six council houses, Labour and its Liberal Democrat allies were in government in Scotland at a time when there was a flourishing of housing associations. A huge number of houses were built, but they were built by housing associations; it is foolish of us to discount the effort that went into that. So, no—there were not only six social houses built in Scotland in that time; there were many, many more built.

The SNP claims consistently that, in government, it has built thousands of council houses. However, it is more correct to say that the councils built the houses and the Government has, if anything, by cutting the housing budget undermined the councils that would want to build.

**Marco Biagi:** How many council houses would those councils have built without the reforms to the right to buy?

**Alex Johnstone:** How long is a piece of string?

I thank Marco Biagi for bringing me back to the right to buy. During the debate, we have heard time and again the accusation that the right to buy is depleting the number of houses that are available for social rent. I argue against that, and I will cite the figures on which I base that.

**The Deputy Presiding Officer:** You have 45 seconds in which to do so.

**Alex Johnstone:** The truth is that, of the 1,500 houses that were sold in the last full year for which information is available, only 347 were sold under the modernised right-to-buy process. However, 1,173 houses were sold under the pre-2001 preserved right-to-buy process. Those were people who had been tenants of their existing properties for more than 12 years—many for significantly longer. I maintain that those who exercised the right to buy were long-term tenants who would, had they not decided to buy, have remained long-term tenants. Therefore, houses will not be freed up by ending the right to buy. As a result of the proposed change, we will see instead a rush to buy from people who see a right being taken away from them and, by this Government's criteria, that would be counterproductive.

16:41

**James Kelly (Rutherglen) (Lab):** I welcome the opportunity to close the debate on behalf of the Labour Party. I thank the committee, the witnesses and the clerks for the work that they put into the production of the stage 1 report that we are debating.

There is no doubt that Alex Rowley and Patrick Harvie are absolutely correct: the biggest housing issue is the lack of supply. A housing crisis exists. Members have cited statistics about the lowest number of completions since 1947 and the rising housing waiting lists, but the issue is not just a question of the statistics. All members must have seen a big increase in cases related to housing and a lack of supply coming through in their surgeries. If members do not acknowledge that, they are not facing up to the truth about housing.

The reality is that the SNP Government has cut housing budgets by 30 per cent and cut the HAG levels. I know that those have been restored slightly, but housing associations say that the HAG funding levels are inadequate, and that undermines their ability to build houses in their areas.

**Bob Doris:** I will not trade figures with the member, but he makes the point that additional resources can achieve additional housing so, rather than espousing rhetoric, will he identify the additional resources that Labour would commit to deliver more housing, so that we have something to consider?

**James Kelly:** The member's point is absolutely valid. I have said before that the SNP, rather than spending millions of pounds on supporting the referendum process, should spend the money on purposeful house building in our communities.

My other point is a serious one. The onus is on us all to look at alternative funding mechanisms for councils and housing associations. The funding will not all come from the Scottish Government budget. For example, pension funds in certain sectors have been looked at as an opportunity to provide house-building programmes. The minister should examine that proposal. However, the minister must acknowledge that supply is an issue.
We have said that we will work with the SNP but we must first address that substantive issue.

There is not a lot in the bill with which necessarily to disagree, although I agree with members that it could be strengthened in areas. However, that will not address the housing crisis. Jim Eadie said that abolishing the right to buy was the centrepiece of the bill, and I do not oppose that provision. However, if that will only stop 1,500 houses a year from leaving the social housing sector, it will have a minimal impact on addressing the social housing waiting list, which has 151,000 people on it. There are big issues to be addressed in that regard.

Marco Biagi charted the rise of the private rented sector. In recent times, because of the difficulty in accessing mortgages and the lack of proper social housing, many people have had to turn to the private rented sector, whose share of the market has increased from 8 per cent to 12 per cent. As Marco Biagi pointed out, many people in the private rented sector do not want to be there; they have been driven to that position and would rather have the opportunity to own their own home.

There are consequential issues. There is a much bigger role for letting agents. As Bob Doris pointed out, there are responsible letting agents, but many of us come across letting agents who are not quite as scrupulous and responsible. In providing for the regulation of letting agents, the bill could be important, but it must be robust and it must have teeth. There must be a process whereby we can see that letting agents are accredited when they go on to the register. Alex Johnstone acknowledged that it is a good scheme, as it has the support of the industry. I think that the test is whether it has the support of tenants in our communities. The scheme will have the proper support of tenants only if they see it as transparent and if it is possible to take action against rogue letting agents and have them removed from the register.

The other issue around the private rented sector is rent levels. Mary Fee mentioned the fact that, in certain areas, rents in the private sector are double what they are in the social sector, and members mentioned the problem around tenure. The issue for people in the private rented sector is that, if they get into accommodation and feel reasonably secure in the area, but the landlord suddenly puts the rent up, they have very little recourse, and they might not have the option to move elsewhere. There is an issue around rent levels, which we should examine at stage 2.

Mark Griffin mentioned antisocial behaviour, which is a big issue in a lot of communities. There are provisions in the bill to address it, but it remains to be seen whether they are strong enough for some and fair enough for others. We will need to monitor the issue as the bill progresses through stage 2.

John Mason made some very reasonable points about the Scottish Housing Regulator. Like John Mason, I detect unease from housing associations about the role of the regulator. Not all aspects of that can be dealt with under the bill, but there is unease about the transparency with which the Housing Regulator is operating and some of the interventions that the regulator is making. If there is any ability under the bill to ensure more transparency and to build more confidence in the role of the regulator, we should pursue that.

The proposals around age have proved to be among the most controversial aspects of the bill. Allocation policies are always difficult in sensitive areas. If there are to be blocks of housing, with pensioners together, for instance, where they feel stronger and more secure in their communities—to refer to Malcolm Chisholm’s example—there is a case for using an allocation policy. However, there is a fear that the way in which the proposal is used could unfairly discriminate against young people. We should be wary of that.

Last Monday, a family came into my surgery who stay in a one-bedroom flat. There are four adults staying there, so it is clearly an overcrowding situation, and they are struggling to find alternative accommodation. That is not an unusual case for me to deal with in my constituency. Many people struggle to access adequate social housing and cannot afford to purchase a private house. That is the substantial issue in housing that we need to address.

We will support the general principles of the bill at stage 1 and try to strengthen it at stage 2, but we need substantive action to address the housing crisis in Scotland if we are to move the issue forward.

16:50

Margaret Burgess: I agree with others that this has been a good debate with many constructive contributions from across the chamber. I listened to all of them and, as I said, I am still looking at how I will take the bill forward at stage 2. It is also encouraging that the lead committee’s endorsement of the bill has been reflected in the debate. I will not be able to respond to all the comments and points that were made, but I hope to address them all in great detail at stage 2.

I want to start by looking at the context. When Mary Fee spoke, she suggested that the Scottish Government has no vision for housing. The bill is part of and fits in with our housing vision, which is that all people in Scotland live in a high-quality home that they can afford and which is suitable to
their needs. That is set out in our “Homes Fit for the 21st Century: The Scottish Government’s Strategy and Action Plan for Housing in the Next Decade: 2011-2020”. It is important that I put the matter in that context.

There has also been criticism that we are not building enough homes and that fewer homes are being built now than previously. I really have to nail that one. Since 2007, the Scottish Government has built more council houses than the previous Administration did. It has also built more housing association housing than the previous Administration did, and we continue to do that.

I take the points that James Kelly and Alex Johnstone made—of course we have to look at ways of getting more money into the housing sector, and we are doing that. We are looking at pension funds, and we have already had a local authority announce that it is using them for housing. That work is going on already, and it is important that I say that.

Sarah Boyack: The point that I made is that it is not just about building houses. In the first eight years of the Parliament, it was about the quality of houses, particularly in Glasgow. That took up the best part of £1 billion, and it was a clear priority on our part.

Margaret Burgess: Yes. Well, I think that standards of housing are higher now.

I will move on to address some points that were made during the debate, but I felt that I had to put that in context, given what was said.

A number of members talked about the mandatory register of letting agents. I have made it clear that my intention is that the system will have teeth and we will enforce it. There is a three-year period for registration, but any problems that arise, even in the first year, can be considered a breach and people can be removed from the list. It is not the case that letting agents will be there for three years and, at the end of that time, a decision will be taken on whether they are acting appropriately or not. I want to be clear on that.

I want to say a bit about mobile home site licensing, as I did not get that into my opening remarks because I was running out of time. John Lamont mentioned the issue and so did Maureen Watt. We will lodge an amendment at stage 2 to change the terms of the licence from three years to five. We have listened to the industry and the arguments that have been made on that and we intend to lodge an amendment at stage 2. We also intend to lodge an amendment to make it clear that permanent residents can stay on a site if the site owner loses or does not renew their licence.

A number of members highlighted the importance of preventing enforcement costs from being passed on to residents, and that was raised by the committee at the meeting that I attended. It is certainly not the Government’s intention for costs to be passed on in that way, so we intend to explore how we can amend the bill at stage 2 to ensure that it cannot happen.

A number of members talked about antisocial behaviour, which we all recognise is a problem. All MSPs have had issues of antisocial behaviour raised at their surgeries. It can be a sensitive issue because we have to get the right balance between allocating houses to tenants who might need support and ensuring that people can live peacefully in their own homes. As I have said, the bill will not resolve antisocial behaviour problems, but it will give landlords a tool for using the tenancy regime to manage effectively or deal better with those problems. That is what we hope to achieve. We are listening to what is being said; our stakeholders tell us that the provision will be useful to them, which we welcome.

John Mason and James Kelly talked about the regulator. I understand the issues that were raised and I know the feeling in some associations about the regulator. However, we decided in 2010 that the regulator should act independently of ministers. People may wish to raise such issues, but I repeat that they must be taken to the regulator first. It would not be appropriate to address those matters in the bill, because that would require wide consultation and an open discussion. I understand the points that have been made, but the bill is not the place to deal with them.

Malcolm Chisholm and Patrick Harvie said that the landlord registration scheme is not as effective as it should be. I believe that the scheme provides sufficient powers for local authorities to undertake enforcement and tackle landlords who are not operating effectively. That is happening in some areas.

Patrick Harvie: Notwithstanding the problems that some local authorities have with the resources that are available to enforce the landlord registration scheme, will the minister give a clear and principled reason why tenants of landlords should accept a lower standard of provision or service than tenants of letting agents get? What is the reason for the disparity?

Margaret Burgess: As I said in my opening speech, I have listened to what has been said across the chamber on all the issues, which will be considered before we talk about matters in detail at stage 2. Today’s debate is about the principles, but I understand the point that Patrick Harvie makes. I expect the private sector regime to be targeted and used more effectively.
Patrick Harvie talked about people saying, “No DSS,” and so on. I make it clear that we expect the code of practice to cover all those ethical issues, financial issues and how a letting agent operates. We hope that it will be publicised, so that people know about it, expect letting agents to operate under it and let us know when they do not. The good agents are keen to let us know of agents that are not operating in the way that we expect.

A number of members who represent Edinburgh—Marco Biagi, Jim Eadie, Sarah Boyack and Malcolm Chisholm—have talked about the City of Edinburgh Council’s requests in relation to the repairing standard. Some of the proposals that are being made have not been consulted on. We believe that there are existing powers to tackle some of the issues that have been raised. I am more than happy to discuss that when we get into the detail of the bill.

Today and yesterday, Mary Fee has talked about energy efficiency. We have energy efficiency measures for the social rented sector and it is right for it to lead the way. We do not need to put in the bill anything specific on energy efficiency measures in the private sector, because we can deal with that under the Climate Change (Scotland) Act 2009. Mary Fee is well aware that we have set up a working group to look at the subject, on which we intend to consult in 2015.

Mary Fee: Will the minister take an intervention?

Margaret Burgess: I will take a brief intervention.

The Presiding Officer (Tricia Marwick): No—you will not; you are in your last 30 seconds.

Margaret Burgess: I am sorry; I will follow up on the issue later.

If I am in my last few seconds, I will finish by saying that I am heartened by the support that we have had across the chamber for the bill. I look forward to further discussions in more detail as parliamentary scrutiny of the bill continues.


Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today’s business. The first question is, that motion S4M-09749, in the name of Margaret Burgess, on the Housing (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adamson, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christain (North East Scotland) (SNP)
Baille, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (Scotland South) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bigi, Marco (Edinburgh South) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Keith (Glasgow and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Dundee and Arbroath) (SNP)
Crawford, Bruce (Stirling) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Cathcart, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dumfriesshire) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
Fedden, Michael (Kirkcaldy and Cowdenbeath) (SNP)
Geddes, Elspeth (Mid Scotland and Fife) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Cathcart, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)

MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosch, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgo) (Lab)
Murray, Elaine (Dumfriesshire) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Surgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (Wester Ross) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Presiding Officer: The result of the division is: For 97, Against 0, Abstentions 13.

Motion agreed to,

That the Parliament agrees to the general principles of the Housing (Scotland) Bill.

The next question is, that motion S4M-09578, in the name of John


Swinney, on the Housing (Scotland) Bill financial resolution, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Housing (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.
May 2014

Dear Maureen,

HOUSING (SCOTLAND) BILL 2013: STAGE 1 REPORT

I am grateful to the Infrastructure and Capital Investment Committee for its thorough Stage 1 Report on the Housing (Scotland) Bill and for its conclusion that the Bill provides a package of measures which will contribute to the improvement of housing in the social, private rented and owner-occupied sectors.

I am pleased to respond to the recommendations and comments in Committee’s report. I have set out the Scottish Government’s position on each of the recommendations in the Annex attached to this letter.

When I gave evidence to the Committee on 12 March I indicated that I was sympathetic to proposals by the Glasgow and West of Scotland Forum of Housing Associations in relation to Registered Social Landlord (RSL) group structures and tenant ballots. I announced a four week consultation on the proposals which ended on 9 April. I was grateful for the 43 responses to that, 27 of which support the Forum’s proposal. This essentially argues that a RSL becoming a subsidiary of a group structure is of equivalent significance as a change of landlord and should require a tenant ballot. I therefore intend to bring forward a stage 2 amendment to the Housing Bill to give effect to this proposal. The consultation analysis, along with the responses of those organisations that have given their agreement, will be published on the Scottish Government website in early May.

I am grateful to you and your Committee, and to the other Committees which took evidence on the Bill, for the very thorough and constructive Stage 1 reports which they have provided. I hope you will agree, in turn, that the Scottish Government’s response is a positive one which addresses the points that you have raised. I believe that the process of dialogue and debate which has taken place during the evidence sessions from January to March and during the Stage 1 debate on 24 April, along with the detailed consideration of our proposals at Stage 2 will result in a better Act. Most importantly it will safeguard the interests of
consumers, support improved quality and deliver better outcomes for communities across all housing tenures in Scotland.

I am copying this letter to the Convenors of the other Committees which considered the Bill.

Kind regards

Margaret Burgess

MARGARET BURGESS
The majority of the Committee 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 therefore welcomes and supports the provisions in the Bill which will end the right to buy in Scotland.

The Scottish Government welcomes the widespread support of those who gave evidence and of the Committee for the provisions which will end the right to buy in Scotland. It shares the view that ending right to buy will be of significant benefit to the social housing sector.

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.

The Scottish Government recognises that the majority of stakeholders who gave evidence to the Committee thought that a three year notice period from the date of Royal Assent was too long and notes the Committee’s recommendation. The Scottish Government has accepted that the notice period should be reduced so that social housing stock can be protected from sale sooner. The Scottish Government will therefore bring forward an amendment at Stage 2 to change the notice period to two years from the date of Royal Assent. It considers that this two year period is fair and reasonable for the purposes of the European Convention on Human Rights and to give tenants time to consider their options and obtain appropriate financial advice if they want to exercise their right to buy. A one year period would limit the opportunity for tenants to consider what is appropriate for their circumstances and to take proper advice on that.
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.

The Scottish Government agrees that it is essential to avoid confusion amongst tenants. Officials have been engaging with tenant groups on the implications of the policy since the proposal to end right to buy was announced in July 2013, and this engagement will continue. The Scottish Government intends to publish guidance material once the Bill has been passed at stage 3. It will ensure that this is made available online, and work with social landlords to determine the best way of distributing this guidance and of notifying tenants of the change in their tenancy conditions.

Part 2 – Social Housing

Reasonable preference

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.

The Scottish Government recognises that some stakeholders have asked for further clarification of unmet housing needs. The Bill defines unmet housing needs as being where the social landlord considers the person to have housing needs which are not capable of being met by housing options which are available. A landlord will consider the alternative housing options that are accessible to the applicant. This could include consideration of, for example, whether the applicant already owns property or whether their needs could be met in their current property with suitable adaptations. The Scottish Government will issue guidance on the priority of allocation of social housing following consultation with stakeholders.

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.

The Scottish Government welcomes the Committee’s response to the changes to reasonable preference. As set out above the Scottish Government will issue guidance on the priority of allocation of social housing following consultation with stakeholders.

**Allocation of Social Housing**

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

The Scottish Government notes the points that have been made by Inclusion Scotland about monitoring the impact of the changes to reasonable preference and consultation on allocation policies.

Under the provisions of the Bill, landlords must have regard to Scottish Government guidance on priority of allocation of social housing in drawing up their own allocation policies. The guidance will include advice on how landlords should consult all groups that will be affected by their allocation policies, including disabled people and their representatives. The Scottish Government will consult stakeholders, including organisations representing disabled people, as part of the process of developing the guidance.

On monitoring, the Scottish Government will deliver the commitments it made as part of its Equality Impact Assessment of the Bill and will:

- gather and review relevant statistical information annually or when new data becomes available;
- review the reports that the Scottish Housing Regulator will publish on how social landlords are performing against the Scottish Social Housing Charter; and
- undertake further engagement with stakeholders including social housing tenants, applicants, landlords and equality groups to gather their views within three years of provisions coming into effect.

**Age as a factor in housing allocation**

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.

The Scottish Government acknowledges the Committee’s concern that this provision should be fully monitored and that there should be no consequential discrimination against any age group. It has considered this request very carefully. The Scottish Government is concerned that such full monitoring could place an undue burden on landlords. In addition the strong protections provided by the Equality Act 2010 would limit the use that landlords could make of the additional flexibility that section 5 aimed to provide.

Having considered these issues, the stage 1 evidence from stakeholders and additional evidence provided to Scottish Ministers, the Scottish Government has decided to bring forward an amendment at stage 2 to remove section 5 of the Bill. The Scottish Government recognises that landlords need to have flexibility in managing their stock. It will work with landlords and other stakeholders to develop guidance on the allocation of social housing with the aim of providing advice on the flexibility that exists in the legal framework for allocations.

Ownership of property as a factor in allocation

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.

This provision allows social landlords to consider current and past property ownership of an applicant or member of their household, subject to some exceptions, when deciding on their priority for social housing. However landlords will have the option not to use this flexibility if they do not wish to take home ownership into account. In the situations described by Homeless Action Scotland and North Ayrshire, landlords would have the ability to consider individual cases and may
decide to allocate social housing in circumstances where the applicant owns property. The Scottish Government intends to issue guidance on the priority of allocations of social housing which is expected to include further advice on taking property ownership into account in the allocation of social housing. Stakeholders will consulted as part of that process.

**Determination of minimum period for application to remain in force**

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.

The Scottish Government notes the Committee’s views that clear guidance is needed to provide more detail on how the provisions in section 7 should be implemented. The Scottish Government intends to issue guidance on suspensions. This will include advice to landlords on ensuring that they provide information to applicants or tenants, who have been suspended from receiving an offer of housing, about the appeal process and where they can access advice and support.

**Short Scottish Secure Tenancy**

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.
The Scottish Government intends to issue guidance for social landlords in order to provide further clarity around the definition of antisocial behaviour as it applies to this part of the Bill. This guidance will include examples of the different types of behaviour which may be considered antisocial and details of the range of other factors which the landlord will need to consider when determining whether a Short Scottish Secure Tenancy for antisocial behaviour is appropriate. These factors are likely to include things like, the level and quality of evidence of antisocial behaviour and the other options available to social landlords to help address the behaviour.

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.

The Scottish Government intends to issue guidance which will describe the law that landlords must follow around assignations, subletting, joint tenancies and successions and how we intend this will work in practice. The Government does not consider that the provision at section 14(b) might potentially disadvantage unpaid carers. Whilst the Bill introduces a 12 month qualifying period before partners (spouses, civil partners and cohabitees), family members and carers could succeed to a property, a landlord has the ability (subject to how it frames its allocation rules) to determine that a person merits the allocation of a tenancy where they do not qualify to succeed to it. However where there is a qualifying person, the landlord cannot take the right to succeed away from them.

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.

The Scottish Government intends to issue guidance for social landlords around the implementation of the measures in the Bill which allow social landlords to consider using the new simplified the eviction process for tenants who have been convicted of serious criminal acts or antisocial behaviour. The planned guidance will emphasise the importance of balancing the rights of both tenants and landlords and is intended to assist landlords in determining the type of cases where it may or may not be reasonable to use the new simplified eviction process.
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.

The Scottish Government intends to provide further clarity around the types of conviction that might lead to an eviction in guidance. The Government will consult landlords, tenant groups and other appropriate organisations in the development of the guidance and will publish this guidance before bringing these provisions into force.

Initial tenancies

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.

The Scottish Government welcomes the Committee's views on its approach to initial tenancies.

Part 3 – Private Rented Housing

Transfer to First-tier Tribunal

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.

The Scottish Government welcomes the widespread support expressed for the transfer of civil private rented sector cases from the sheriff to a tribunal. This will enable greater specialism and access to justice for those cases where we have heard that both landlords and tenants can be reluctant to use the courts. The Scottish Government understands the level of interest shown in the operational detail of the tribunal and will provide the Committee with more information on this issue when it is available.
146. 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.

The Scottish Government welcomes the Committee's support for this approach and will provide further information regarding access to, and representation at, private rented sector tribunals when it is available.

154. 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.

155. 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.

The implementation of Courts Reform will be overseen by a project board as part of the wider 'Making Justice Work' programme. This will include representation from the Scottish Government, Scottish Courts Service, Judicial Office, Scottish Legal Aid Board, Crown Office and Procurator Fiscal Office.

An important part of monitoring of the impact of Courts Reform for social rented sector cases will be through ongoing engagement with stakeholders from that sector. This includes regular Housing Policy Advisory Group meetings which includes representation from social rented sector tenants, the Chartered Institute of Housing, the Association of Local Authority Chief Housing Officers, the Convention of Scottish Local Authorities, the Scottish Federation of Housing Associations and Shelter Scotland.

*Enforcement of repairing standard*

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.
The Scottish Government welcomes the support of the Committee for the provisions which will provide local authorities with additional powers to tackle poor housing condition. The Scottish Government recognises the importance of monitoring the use and impact of the powers. This will be achieved through continuing engagement with tenants, landlords and local authorities who are affected by the policy. The Scottish Government will also monitor the policy through the annual report of the Private Rented Housing Panel that must be laid before the Scottish Parliament.

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.

The Scottish Government consulted with local authorities on the provisions, but it was difficult for them to provide any robust information about the impact of the provisions on resources.

Whilst some authorities anticipated additional costs, others considered that this discretionary power could lead to more effective working between local authority departments and other agencies and bodies who are already engaged in efforts to improve conditions in the private rented sector.

The Scottish Government recognises the pressures that local authorities face when allocating resources. That is why it is important that the power for third party reporting is discretionary; it provides an additional tool that can be used flexibly in the light of local authority priorities and local housing strategies. It is for individual local authorities to determine what those priorities are.

**Electrical safety and the repairing standard**

- mandatory five-yearly checks, carried out by a registered electrician, of electrical installations and any electrical appliances supplied with privately rented homes;

- to make the provision of suitable mains smoke alarms mandatory in private rented properties, as battery operated smoke alarms are unreliable; and

- to make the installation of carbon monoxide alarms mandatory for all private rented accommodation.

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

The Scottish Government welcomes the widespread support from the Committee and stakeholders for changes to improve safety standards in private rented housing.
It intends to consider safety standards across all tenures of housing later this year as part of its Sustainable Housing Strategy. In the meantime, the Government will bring forward an amendment at stage 2 for a regulation making power to make changes to the repairing standard for private landlords.

The Scottish Government notes the Committee’s support for proposals in relation to hard-wired smoke detectors. It agrees that this should be the standard for private rented homes, but it does not consider that the Bill needs to be amended to achieve this. The current requirement, under Section 20 of the Housing (Scotland) Act 2006, is for any alarm installed or replaced since September 2007 to be hard-wired. As alarms need to be replaced by the end of a manufacturer’s recommended lifespan, usually between 5 and 10 years, the desired result will be achieved without further legislation.

If there are concerns about the effectiveness of the existing legislation in achieving the desired outcome, then these can be addressed through the Scottish Government’s proposed work on cross-tenure standards. The new regulation making power would allow those concerns to be addressed.

Part 4 – 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.

The Code of Practice will be a statutory code setting out the standard of service that landlords and tenants can expect of letting agents. Existing Codes in the letting agent industry include issues such as ethical code; professional standards; professional indemnity; client money protection; complaints-handling; educational qualifications. The Scottish Government considers it likely that these issues will feature in the Code of Practice, and will work with stakeholders to build on existing Codes to ensure a high standard across the industry. The consultation with stakeholders will take place once the Bill has received Royal Assent. The Government considers that setting out details of the Code on the face of the Bill ahead of this consultation could have the unintended consequence of limiting its ability to take forward measures identified through that process.

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.
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.

Regulating the letting agent industry is unlikely to have any significant environmental effects. This is because its primary impact will be on standards of service and levels of professionalism. The Scottish Government stated in its Sustainable Housing Strategy that it would consult on draft regulations by 2015 that would set minimum standards for energy efficiency in private sector houses, and that there would be a lead in time to any regulation. The Scottish Government is working with a group of key stakeholders to develop proposals, and plans to consult on these in Spring 2015.

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.

The Scottish Government agrees that there should be effective sanctions against any letting agents who operate without being registered. The Scottish Government is considering how the Bill might be amended to provide for “spot-checks” on letting agents who are registered; and on those that are suspected of not being registered.

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

Letting Agents will be legally required to register. Scottish Ministers will operate the register and will enforce the requirements of the register. The Bill provides that it is an offence not to register, with sanctions of a fine or imprisonment. The Code of Practice will only apply to registered letting agents and therefore is not a means of ensuring compliance with the requirement to register.
Part 5 – Mobile Home Sites with permanent residents

Impact upon site financing

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.

The Scottish Government welcomes the Committee’s support for our on-going engagement with the Welsh Assembly Government, to learn from their experiences in implementing a new site licensing system. It will explore how best to clarify the views of lenders groups on the introduction of fixed term licences in Scotland.

Given the views expressed during stage 1 on the licence term, we will also seek to amend the Bill so that fixed term licences run for 5 years, rather than 3. The Scottish Government considers that will provide greater stability to residents and site owners and that it will reduce the administrative burden for local authorities.

Alternative approaches

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.

The Scottish Government supports this recommendation, and it will consider the best way of making clear and accurate information about the new licensing regime available to residents, local authorities, and site owners.

Local authorities

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.

The Scottish Government welcomes the Committee’s endorsement for our view the system will be cost neutral for local authorities. It will consider the best way to provide advice, information, and guidance to local authorities, including on the timing of inspections.

**Cost of site licensing**

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.

The Scottish Government welcomes the Committee’s agreement that the expected cost of the site licence is a reasonable cost to be passed on to residents, given the benefits they will gain from the new licensing system. As outlined to the Committee by the Minister for Housing and Welfare in her letter of 21 March, the Bill would give Ministers two powers to safeguard residents if, for example, licence fees were found to be excessive. The first of these is a power to set out the matters a local authority can take into account when setting the licence fee. The second is a power to set a maximum licence fee level, which a local authority would not be able to charge more than. The Government will consider when, and how, to best use these safeguards if necessary.

**Impact of perceptions around licensing**

225. The Committee has heard in evidence that there is confusion about the potential impacts which the new licensing 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.

The Scottish Government agrees with the Committee that deliberate or accidental misinformation could create undue stress and difficulties for mobile home residents. Residents who own the mobile home they live in have certain rights, set out in the terms of their agreements under the Mobile Homes Act 1983. This includes the right of a resident to station their mobile home on a site. The Bill already includes a provisions on this but the Scottish Government will seek to amend the Bill at stage 2 so permanent residents are clear that they can stay on a site even if a site owner loses their licence or does not renew it.

The Scottish Government supports the Committee’s recommendation for an awareness campaign and will consider the best way of making clear and accurate information available to residents, local authorities, and site owners, and what organisations would be able to provide further support.

*Fit and proper person test*

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.

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.

The Scottish Government welcomes the Committee’s support for the introduction of a fit and proper person test for site licence holders and those who manage mobile home sites with permanent residents. It notes the Committee’s comments that the test needs to be consistent, fair and robust. To that end, the Government will seek to amend the Bill so that local authorities can explicitly share information relating to the fit and proper person test. The Scottish Government considers that will help to
ensure a robust, fair and consistent approach across the country. It also considers that is a more proportionate and appropriate way forward than establishing a centrally held and run register of site owners in Scotland.

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 resale to mobile home owners.

The Scottish Government notes this recommendation, and will explore further how this might be achieved.

Local authority enforcement powers at relevant permanent sites

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.

The Scottish Government shares the Committee’s concerns. It will consider if it is possible to amend the Bill so that enforcement costs (e.g. for serving an improvement notice) cannot be passed on to residents.

Part 6 – Private Housing Conditions

Tenement management scheme “Missing Share”

257. The Committee welcomes the intention of the amendments to the Tenements (Scotland) Act 2004 to allow local authorities to support owners in tenements to progress repairs and maintenance in cases where the majority of owners support the work, but a minority of shares are ‘missing’.

258. 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.
259. 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.

260. 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.

The Scottish Government notes the Committee’s views on the Tenement Management Scheme, Missing Share provisions in the Bill. Officials engaged widely with stakeholders to develop these proposals. These were consulted on and received strong support (consultation responses on missing share powers were 73% in favour - including 76% of local authority responses).

The Scottish Government is aware that the resources available to local authorities are constrained and considers that these new discretionary powers will help them to carry out their statutory functions without imposing an additional burden on their resources. It would not be appropriate for the Scottish Government to direct local authorities in the use of their discretionary powers.

The use of repayment charges is optional and local authorities can choose to pursue debts through the courts. Repayment charges allow local authorities to secure debt against property without going through the courts and the debt has to be repaid in full before the property can be sold. This is a powerful tool that is not available to other kinds of creditor. In most cases repayment will be made in full before the end of the 30 year period. The Scottish Government considers that it would be difficult in practice for local authorities to determine variable repayment periods.

Work notices, maintenance orders and repayment charges

266. 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.

The Scottish Government welcomes the Committee’s support for these powers which have been developed through extensive consultation with local authorities.
**Sustainability in private housing**

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 the Scottish Government considers the introduction of minimum standards across the private sector earlier than 2018.

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.

The Scottish Government notes the views of the Committee. It has no firm date for introduction of minimum standards. It is working with a group of key stakeholders to develop proposals on the regulation of energy efficiency in private sector homes for public consultation in Spring 2015. The consultation will include proposals on when standards should apply from. The Scottish Government will consider the responses to the consultation before reaching a view on its final approach to the introduction of minimum standards.

**Other issues**

274. 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 people with disabilities. The Committee would welcome more information from the Scottish Government on this point.

These amendments do not directly impact adaptations of housing to meet the needs of disabled people. These issues are being considered separately by the Scottish Government’s Working Group on Adaptations. However, in some cases repair work is needed before work can be carried out to provide adaptations or to improve accessibility, and these amendments should assist here. It is for this reason that the Scottish Government considers that the provisions will support adaptation for people with disabilities.
Part 7 - Miscellaneous

Scottish Housing Regulator – transfer of assets following inquiries

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.

The Scottish Government welcomes the Committee’s endorsement of the reasons for including section 79 in the Bill. For the record, it observes that on 16 October 2013, just over a month before the Bill was introduced, it wrote to stakeholders outlining its plans to include the provision in the Bill and seeking their views on that. Following introduction, it had discussions about the provision with a number of stakeholders at which it sought to explain further the purpose of the provision. It accepts, however, that it would have been better to have consulted stakeholders sooner.

The Scottish Government notes the Committee’s call for it to explain how it will engage with stakeholders, and then issue guidance, on how the SHR will exercise its new powers under section 79. It agrees in principle with the call. It observes, however, that for it to comply directly with it would cut across the provision at section 7 of the Housing (Scotland) Act 2010 under which the Scottish Ministers are prohibited from directing or seeking to control how the SHR performs its functions under that Act. In view of that, it proposes instead to introduce amendments during the Committee’s stage 2 consideration of the Bill that will place on the SHR the duties to consult and issue guidance that the Committee has identified.
Delegated Powers and Law Reform Committee Consideration

Powers to issue guidance

[290. 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.]

291. 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.

The Scottish Government notes the support of the Committee for the recommendations of the DPLR Committee for consultation on and publication of guidance issued under the powers conferred by sections 4(2), 7(2) and 8(1) of the Bill. The Scottish Government is considering how best to address the recommendations made by the DPLR Committee and will bring forward amendments at Stage 2.

Letting Agent Code of Practice

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.

With regard to the Code of Practice for letting agents, the Scottish Government notes the DPLR Committee’s view that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of the power in section 41(1) than the negative procedure. The Scottish Government recognises the significant consequences for letting agents of failure to comply with the Code. Therefore, the Scottish Government now proposes that after consultation, the Code of Practice is to be subject to affirmative resolution. However, any future changes to the Code would be by negative resolution, following consultation. But a completely new Code would proceed by affirmative resolution, following consultation. This approach both reflects the severity of the consequences and ensures a proportionate level of parliamentary scrutiny.
Power to make provision in relation to procedure

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

The Scottish Government has accepted this recommendation from the Delegated Powers and Law Reform Committee, and will seek to amend the Bill to reflect the Committee's concerns.

Power to vary maximum fine

298. The ICI Committee supports the DPLR Committee's request that the Scottish Ministers consider bringing forward a suitable amendment at Stage 2.

The Scottish Government has accepted this recommendation from the Delegated Powers and Law Reform Committee. It has written to the Convenor of the Committee advising that it will bring forward an amendment at Stage 2 to remove the power, at section 63, to vary maximum fine levels.

May 2014
Housing (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 20  Schedule 1
- Sections 21 to 84  Schedule 2
- Sections 85 and 86  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Alex Johnstone

12 Leave out section 1

Section 2

Alex Johnstone

13 Leave out section 2

Section 3

Margaret Burgess

14 In section 3, page 2, line 12, leave out <held by the social landlord which the social landlord> and insert <which—

(i) are held by a social landlord, and
(ii) the social landlord selecting its tenants>

John Lamont

1 In section 3, page 2, line 13, at end insert <and

(d) persons who appear to the social landlord to have a particular connection with a locality or community within its area.

(1ZAA) It is for the social landlord to determine what constitutes a “locality” or “community” for the purposes of subsection (1ZA)(d).

(1ZAB) Reference in subsection (1ZA)(d) to a person having a particular connection with a locality or community is a reference to the person having a connection with that locality or community—

(a) because the person is, or in the past was, normally resident in it of the person’s own choice,
(b) because the person is employed in it,
(c) because of family associations, or
(d) because of any other special circumstances.>
Jackie Baillie

46 In section 3, page 2, line 15, leave out from first <the> to end of line 16 and insert <circumstances prescribed in guidance published by the Scottish Ministers apply.>.

John Lamont

2 In section 3, page 2, line 16, at end insert—

<( ) In section 20 of the 1987 Act, sub-paragraph (i) of subsection (2)(a) and the word “or” immediately following it are repealed.>

Section 4

Margaret Burgess

15 In section 4, page 2, line 40, leave out <issued by the Scottish Ministers> and insert <published by the Scottish Ministers.>

(3AA) Before publishing any guidance mentioned in subsection (3A), the Scottish Ministers must consult such persons as they consider appropriate.

After section 4

Mary Fee

49 After section 4, insert—

<Factors which must be considered in allocation: sustainable communities

In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), after subsection (2B) insert—

“(2C) In the allocation of housing falling within subsection (1), a social landlord may take into consideration the likely effects of that allocation on the sustainability of particular localities or communities.”.

Section 5

Margaret Burgess

16 Leave out section 5

Section 7

Margaret Burgess

17 In section 7, page 4, line 26, leave out from <issued> to end of line 32 and insert <about this section (including the matters mentioned in subsection (4)) published by the Scottish Ministers.>

(3A) Before publishing any guidance mentioned in subsection (3), the Scottish Ministers must consult such persons as they consider appropriate.

Margaret Burgess

18 In section 7, page 6, line 11, at end insert—

<( ) After the social landlord imposes a requirement under subsection (1) (whether or not previously varied under this subsection), it may—

(a) withdraw the requirement, or
(b) vary the requirement in order to shorten the period imposed for the
application to have remained in force.>

After section 7

Jim Hume

3  After section 7, insert—

<Homelessness and allocation of housing

Duty of registered social landlord to provide accommodation

In section 5 of the 2001 Act (duty of registered social landlord to provide
accommodation), after subsection (1) insert—

“(1A) Where a local authority has a duty under section 31(2) of the 1987 Act in
relation to a homeless person—

(a) no request may be made by the authority to a registered social landlord
to provide accommodation to the person otherwise than in accordance
with this section, and

(b) any request made by a local authority to a registered social landlord
which holds houses for housing purposes in its area to provide
accommodation for such a person is deemed to be a request under this
section.”.>

Section 8

Margaret Burgess

19 In section 8, page 6, line 18, leave out from <, after> to end of line 22 and insert <—

(a) in subsection (7), for “or 2” substitute “, 2 or 2A”, and

(b) after subsection (8), insert—

“(9) A landlord must have regard to any guidance published by the Scottish
Ministers—

(a) before creating a tenancy which is a short Scottish secure tenancy by
virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, and

(b) when taking any steps in relation to such a tenancy with a view to—

(i) extending the term of the tenancy under section 35A, or

(ii) raising proceedings for the recovery of possession of the house
under section 36.

(10) Before publishing any guidance mentioned in subsection (9), the Scottish
Ministers must consult such persons as they consider appropriate.”.>

Mary Fee

50 In section 8, page 6, line 41, at end insert—

<( ) after subsection (2) insert—

“(2A) Where subsection (2) applies, the landlord must include in the notice—
(a) details of the actions of the tenant or person that have caused the landlord to issue the notice, and

(b) the support the landlord proposes to provide to the tenant or person in order to assist the tenant to sustain a Scottish secure tenancy.”.

Margaret Burgess

20 In section 8, page 6, line 41, at end insert—

<( ) in subsection (3)(b), after “order” insert “or, as the case may be, has behaved as described in subsection (2)(b)”.

Section 10

Margaret Burgess

21 In section 10, page 8, line 14, after <tenancies) insert <—

( ) after subsection (5), insert—

“(5A) Subsection (5) does not apply to a tenancy mentioned in subsection (6A)”.

Margaret Burgess

22 In section 10, page 8, line 23, at end insert <, and

( ) for subsection (4), substitute—

“(4) Where a tenancy becomes a short Scottish secure tenancy by virtue of this section—

(a) subsection (5) of section 34 does not apply to the tenancy, but

(b) otherwise subsection (6) of that section does apply to the tenancy.”.

Margaret Burgess

23 In section 10, page 8, line 27, leave out <or> and insert <and>

Section 12

Margaret Burgess

24 In section 12, page 10, line 8, at end insert—

<( ) in subsection (5)(a), after “34(5)” insert “or, in a case where subsection (2)(aa) applies, the end of the term applicable to the tenancy in accordance with section 34(6A), 35(3A) or 35A(1)”.

Section 13

Margaret Burgess

25 In section 13, page 10, line 28, leave out from <that> to end of line 29 and insert <, at any time before that period began, the landlord was notified by—

(a) the person, or

(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person’s only or principal home.”.
Margaret Burgess

26 In section 13, page 11, leave out lines 1 to 4 and insert—

“(1A) For the purposes of an assignation mentioned in subsection (1)(b), a period may be considered in relation to a person only if—

(a) the person was the tenant of the house throughout that period, or

(b) at any time before that period began, the landlord was notified by—

(i) the person, or

(ii) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person’s only or principal home.

(1B) For the purposes of a sublet mentioned in subsection (1)(c), a period may be considered in relation to a tenant only if—

(a) the tenant was the tenant of the house throughout that period, or

(b) at any time before that period began, the landlord was notified by—

(a) the tenant, or

(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the tenant’s only or principal home.”,

and>

Section 14

Margaret Burgess

27 In section 14, page 11, line 26, leave out from <that> to end of line 27 and insert <, at any time before that period began, the landlord was notified by—

(a) the person, or

(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person’s only or principal home.”.>

Jackie Baillie

47 Leave out section 14

Section 15

Margaret Burgess

28 In section 15, page 11, line 28, at end insert—

<( ) In section 14 of the 2001 Act (proceedings for possession), after subsection (2A) insert—

“(2B) Where such proceedings are to include a ground for recovery of possession set out in paragraph 2 of schedule 2, the landlord must have regard to any guidance published by the Scottish Ministers before raising such proceedings in relation to recovering possession of the house.
(2C) Before publishing any guidance mentioned in subsection (2B), the Scottish Ministers must consult such persons as they consider appropriate.”.

After section 16

Jim Eadie
Supported by: Alex Rowley

8 After section 16, insert—

< Duties of local authorities with respect to homelessness and threatened homelessness

Unsuitable accommodation orders: applicant with family commitments

In section 29 of the 1987 Act (interim duty to accommodate), after subsection (4), insert—

“(4A) Without prejudice to the generality of subsection (4), an order under subsection (3) must—

(a) include provision that accommodation of a type specified in subsection (4B) is unsuitable accommodation where an applicant is an applicant with family commitments,

(b) define “applicant with family commitments” for the purposes of paragraph (a).

(4B) The type of accommodation is accommodation which is not wind and watertight and in all other respects reasonably fit for human habitation.”.

Alex Johnstone

51 After section 16, insert—

<Scottish starter tenancy

Scottish starter tenancy

(1) The Scottish Ministers must by regulations make provision for a category of tenancy, to be known as a “Scottish starter tenancy”, which may be offered to a prospective tenant by a social landlord where the prospective tenant has not previously held a Scottish secure tenancy or a short Scottish secure tenancy with that landlord.

(2) Regulations under subsection (1) must provide that a Scottish starter tenancy—

(a) will have a term of 12 months,

(b) may be terminated by the landlord at two months’ notice in the circumstances set out in subsection (3),

(c) may, if it has not been terminated before the end of the 12 month period, be converted into a Scottish secure tenancy,

(d) may be extended, for a period to be prescribed by the Scottish Ministers, in the circumstances set out in subsection (4).

(3) The circumstances referred to in subsection (2)(b) are—

(a) that the tenant has been in rent arrears for such period as may be specified by the landlord in the tenancy agreement,
(b) that the landlord considers that the tenant has acted in an antisocial manner in relation to another person residing in the same locality, or to a person visiting or otherwise engaged in lawful activity in the locality of a house occupied by that person,

(c) that the landlord considers that the tenant has failed to take due care of the property, or

(d) such other circumstances as may be prescribed by the Scottish Ministers.

(4) The circumstances referred to in subsection (2)(d) are that the landlord considers that the conduct of the tenant has been unsatisfactory but not to the extent that the landlord has considered it necessary to terminate the tenancy before the end of the 12 month period.

(5) Regulations under subsection (1) must also provide that a landlord offering a Scottish starter tenancy must provide—

(a) such housing support services as the landlord considers appropriate with a view to enabling the conversion of the tenancy to a Scottish secure tenancy, and

(b) an appeals mechanism in relation to decisions—

(i) to terminate or extend a Scottish starter tenancy, or

(ii) not to convert a Scottish starter tenancy to a Scottish secure tenancy.

(6) Regulations under subsection (1) may modify, or disapply any provision of, any enactment (including this Act).

(7) For the purposes of this section, the terms “Scottish secure tenancy” and “short Scottish secure tenancy” have the meanings given in the 2001 Act.

Section 17

Jim Hume

52 In section 17, page 12, line 20, at end insert—

<( ) Tribunal Rules made under the Tribunals (Scotland) Act 2014 (asp 10) must make provision for the legal representation of tenants and occupiers in relation to actions arising from the tenancies and occupancy agreements listed in subsection (1).>

Schedule 1

Margaret Burgess

29 In schedule 1, page 62, leave out line 18, and insert—

<( ) the words “shall be made to the sheriff principal and” are repealed,>

After section 22

Jim Eadie

31 After section 22, insert—

<Repairing standard

Carbon monoxide alarms

In section 13 of the 2006 Act—

(a) the word “and” after paragraph (e) of subsection (1) is repealed,
(b) after paragraph (f) of subsection (1) insert “, and
(g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”,

(c) after subsection (5) insert—
“(6) In determining whether a house meets the standard of repair mentioned in subsection (1)(g), regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”.

Mark Griffin

53 After section 22, insert—

<Repairing standard: smoke alarms

Smoke alarms
In section 13 of the 2006 Act, in paragraph (f) of subsection (1), after “provision” insert “connected to the main electrical supply”.

Bob Doris

54 After section 22, insert—

<Electrical safety inspections

(1) In section 13 of the 2006 Act (the repairing standard), after subsection (4) insert—
“(4A) In determining whether a house meets the standard of repair mentioned in subsection (1)(c) and (d) in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances, regard is to be had to any guidance issued by the Scottish Ministers on electrical safety standards.”.

(2) After section 19 of the 2006 Act insert—

“19A Duty to ensure regular electrical safety inspections

(1) The landlord must ensure that regular inspections are carried out for the purpose of identifying any work which—
(a) relates to installations for the supply of electricity and electrical fixtures, fittings and appliances, and
(b) is necessary to ensure that the house meets the repairing standard.

(2) The duty in subsection (1) is complied with if—
(a) an inspection has been carried out before the tenancy starts (but not earlier than 5 years before the start of the tenancy), and
(b) inspections are carried out during the tenancy at such intervals to ensure that there is a period of no more than 5 years between each inspection.

(3) The landlord must—
(a) before the start of the tenancy, provide the tenant with a copy of the record of the most recent inspection carried out, and
(b) provide the tenant with a copy of the record of any inspection carried out during the tenancy.
(4) For the purposes of sections 16(4), 17, 22 and 24 and schedule 2, references to a duty under section 14(1) include the duties under this section.

(5) In relation to a tenancy which started before the day of commencement of section (Electrical safety inspections)(2) of the Housing (Scotland) Act 2014 (asp 00)—

(a) subsections (2)(a) and (3)(a) do not apply, but

(b) the landlord must ensure that an inspection is carried out no later than the end of the period of 12 months beginning on that day (unless the tenancy ends before the end of that period).

19B Electrical safety inspections

(1) An inspection carried out in pursuance of section 19A must be carried out by a competent person.

(2) The person carrying out the inspection must prepare a record of the inspection including the following information—

(a) the date on which the inspection was carried out,

(b) the address of the house inspected,

(c) the name and address of the landlord or the landlord’s agent,

(d) the name, address and relevant qualifications of the person who carried out the inspection,

(e) a description, and the location, of each installation, fixture, fitting and appliance inspected,

(f) any defect identified,

(g) any action taken to remedy a defect.

(3) A copy of the record must be—

(a) given to the landlord, and

(b) retained by the landlord for a period of 6 years.

(4) The Scottish Ministers must publish guidance on the carrying out of inspections.

(5) In determining who is competent to carry out an inspection, the landlord must have regard to the guidance.”.

Claudia Beamish

48 After section 22, insert—

<Repairing standard: energy efficiency

Duty to make provision on energy efficiency standards

(1) After section 13 of the 2006 Act insert—

“13A Duty to make provision on energy efficiency standards

(1) The Scottish Ministers must by regulations extend or vary the repairing standard to include provision—

(a) setting minimum standards for energy efficiency,
(b) the application of those standards where a house forms part only of any premises,
(c) establishing a system of inspection to determine whether premises comply with those standards, and
(d) for penalties to be imposed on a landlord for failure to comply with those standards.

(2) Regulations under subsection (1) must come into force by 1 January 2015.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as appear to them to be appropriate.

(2) In section 191(5) of the 2006 Act, after “section” insert “13A,”.

Jim Eadie

5* After section 22, insert—

<The repairing standard: common areas

In section 15 of the 2006 Act (application of duty in relation to flats etc.), after subsection (2), insert—

“(3) A landlord is to be treated as having failed to comply with the duty imposed by section 14(1) where the landlord has failed to contribute the landlord’s share of the costs of keeping in a reasonable state of repair and in proper working order any part of the premises which the landlord is responsible for maintaining in common with others.”.

Margaret Burgess

30 After section 22, insert—

<Power to modify repairing standard etc.

(1) After section 20 of the 2006 Act insert—

“20A Power to modify repairing standard etc.

  (1) The Scottish Ministers may by regulations vary or extend the repairing standard and a landlord’s duty to ensure a house meets that standard.

  (2) Regulations under subsection (1) may, in particular, make provision about—

    (a) the tenancies to which this Chapter applies,

    (b) determining whether a house meets the repairing standard,

    (c) carrying out inspections in relation to the repairing standard.

  (3) Regulations under subsection (1) may modify sections 12 to 14 and any other provision of this Chapter.”.

(2) In section 191(5) of the 2006 Act, after “section” insert “20A,”.
Section 23

Jim Eadie
6 In section 23, page 15, line 28, at end insert—

   <( ) an owner of a house adjacent to or adjoining a house owned by a landlord,
   ( ) an organisation providing advice services relating to housing.>

Malcolm Chisholm
10 In section 23, page 15, line 28, at end insert—

   <( ) an owner (“A”) of a house neighbouring a house owned by a landlord, where the landlord has not contributed to the cost of the maintenance and repair of any thing owned in common by A and the landlord.>

Malcolm Chisholm
11 In section 23, page 15, line 28, at end insert—

   <( ) a person responsible for managing a service commissioned by a local authority.>

Margaret Burgess
32 In section 23, page 16, line 18, leave out subsection (6) and insert—

   <( ) In section 181 of the 2006 Act (rights of entry: general)—
   (a) after subsection (1) insert—

      “(1A) Any person authorised by a third party applicant is entitled to enter any house in respect of which an application under section 22 may be made for the purposes of enabling or assisting the third party applicant to decide whether to make an application under section 22(1A).”, and

   (b) in subsection (2), for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”.

   ( ) In section 182 of the 2006 Act (warrants authorising entry)—
   (a) in subsection (1), after “subsection (1)” insert “, (1A)”, and

   (b) after subsection (3) insert—

      “(3A) In relation to an application for a warrant under section 181(1A), the reference to the occupier in subsection (3) is to be read as including the tenant, the landlord and any known agent of the landlord.”.

   ( ) In section 184 of the 2006 Act (rights of entry: supplemental), after subsection (4) insert—

      “(4A) In relation to the exercise of the right conferred by section 181(1A), the reference to occupants in subsection (4) is to be read as including the tenant, the landlord and any known agent of the landlord.”.

   ( ) In section 187 of the 2006 Act (formal communications), in subsection (3)(b), for “the recorded delivery service” substitute “a service which provides for the delivery of the communication to be recorded.”>
After section 25

James Kelly
33 After section 25, insert—

<Rent reviews and rent increases

Rent reviews and rent increases

(1) The Scottish Ministers must by regulations make provision that, in relation to a tenancy of a dwelling-house other than a tenancy granted by a social landlord—

(a) prohibits a landlord from reviewing the rent payable under such a tenancy before the expiry of the period of one year since the previous such review,

(b) specifies the maximum amount by which the total of the rent payable under such a tenancy may be increased at each review, and

(c) makes such further provision in connection with the matters described in paragraphs (a) and (b) as the Scottish Ministers consider necessary or expedient for the purposes of those matters.

(2) Regulations under subsection (1) must come into force by 1 January 2015.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as appear to them to be appropriate.

(4) Regulations under subsection (1) may modify, or disapply any provision of, any enactment (including this Act).>

Patrick Harvie
33A As an amendment to amendment 33, line 13, leave out <come into force> and insert <be laid before the Scottish Parliament>

James Kelly
34 After section 25, insert—

<Security of tenure

Security of tenure

(1) The Scottish Ministers must by regulations make provision that, in relation to a tenancy of a dwelling-house other than a tenancy granted by a social landlord—

(a) establishes that such a tenancy may have an initial term of 6 months,

(b) establishes that, subject to satisfactory completion of the initial term, the period of such a tenancy will be at least 3 years,

(c) after the completion of the initial term, permits the tenant to terminate the tenancy on giving the landlord notice of one month,

(d) after the completion of the initial term, permits the landlord to terminate the tenancy on giving the tenant notice of two months if—

(i) the tenant has such arrears of rent as may be prescribed,

(ii) the tenant has acted in such antisocial manner as may be prescribed,

(iii) the tenant otherwise breaches the terms of the tenancy agreement,
(iv) the landlord wishes to sell the dwelling-house,
(v) the dwelling-house is required as the principal residence of the landlord or
  a member of the landlord’s family, or
(vi) the landlord intends to refurbish or change the use of the dwelling-house, and

(e) makes such further provision in connection with the matters described in
  paragraphs (a) to (d) as the Scottish Ministers consider necessary or expedient for
  the purposes of those matters.

(2) Regulations under subsection (1) must come into force by 1 January 2015.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult
  such persons as appear to them to be appropriate.

(4) Regulations under subsection (1) may modify, or disapply any provision of, any
  enactment (including this Act).

Patrick Harvie
34A As an amendment to amendment 34, leave out line 6

Patrick Harvie
34B As an amendment to amendment 34, line 7, leave out <, subject to satisfactory completion of the
  initial term,>

Patrick Harvie
34C As an amendment to amendment 34, line 9, leave out <after the completion of the initial term,>

Patrick Harvie
34D As an amendment to amendment 34, line 11, leave out <after the completion of the initial term,>

Patrick Harvie
34E As an amendment to amendment 34, line 18, leave out <or> and insert—
  <( ) permits—
      (i) the landlord to terminate the tenancy on giving the tenant notice of six
          months where>

Patrick Harvie
34F As an amendment to amendment 34, line 20, at end insert—
  <(ii) the tenant to reacquire the tenancy at the same rent if the dwelling-house is
       re-let,>

Patrick Harvie
34G As an amendment to amendment 34, line 20, at end insert—
  <( ) where a tenancy has been terminated under paragraph (d)(iv) or (v), the dwelling-
     house may not be re-let for a period of six months from the date of termination,
     and>
Houses let for holiday purposes

(1) The Scottish Ministers may by regulations provide that a local authority may serve a closure notice prohibiting access to premises by any person other than—
   (a) a person who habitually resides in the premises, or
   (b) the owner of the premises
in the circumstances set out in subsection (2).

(2) The circumstances are that the premises—
   (a) is situated in the local authority’s area,
   (b) has been privately let for holiday purposes—
      (i) on at least two occasions during which a person occupying or visiting the
          premises has engaged in antisocial behaviour, and
      (ii) the authority anticipates further use of those premises that will result in
           antisocial behaviour.

(3) Regulations under subsection (1) must include provision for—
   (a) the form of a closure notice and the means by which it is to be served,
   (b) the period for which a closure notice can apply,
   (c) the means by which a closure notice is to be enforced,
   (d) an appeals mechanism, and
   (e) such other matters as the Scottish Ministers consider necessary or expedient.

(4) For the purposes of this section, “antisocial behaviour” has the meaning given by section 81(4) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

Section 72

In section 72, page 50, line 36, after <2004”,> insert—

“(3) The repayable amount is recoverable in—
   (a) 30 equal annual instalments payable on the same date (specified in the charge) in each calendar year, or
   (b) monthly instalments over such shorter period of time as the local authority determines to be reasonable in the circumstances.

(3A) Where a local authority determines a repayment period under subsection (3)(b), it must provide the owner of, or any other person interested in, any living accommodation subject to the repayment charge with assistance under section 71(1).”,
Malcolm Chisholm

35 In section 72, page 50, line 36, after <2004”,> insert—

<(  ) in subsection (4), after the word “register” where it second appears, insert “, and on its being so registered has priority over all existing and future burdens on the same living accommodation”,>.

After section 73

Jim Eadie

9 After section 73, insert—

<Home maintenance framework

(1) Before section 42 of the 2006 Act, insert—

“Home maintenance framework

41A Home maintenance framework

(1) Where any premises consist of two or more houses, the owners of those houses must prepare jointly a framework (a “home maintenance framework”) in relation to any part of the premises which is owned in common by those owners.

(2) A home maintenance framework must set out how the maintenance and repair of such parts of the premises will be managed and must in particular include—

(a) arrangements for an annual inspection of any roof areas owned in common by the owners,

(b) a payment plan or other arrangements to fund maintenance and repairs to any part of the premises which is owned in common, and

(c) arrangements for the appointment of a responsible person or agent to manage the implementation of the framework.”

(2) In section 42 of the 2006 Act, after subsection (2) insert—

“(2A) Where any premises consist of two or more houses, the local authority may consider for the purposes of subsection (2)(b) that those houses are unlikely to be maintained to a reasonable standard if it appears to the authority that a satisfactory home maintenance framework has not been prepared under section 41A in relation to the houses.”.

Section 75

James Kelly

56 In section 75, page 51, line 25, at end insert—

<(  ) In section 44(1) of the 2006 Act (maintenance plans for two or more houses), after “premises,” insert “and any garden area associated with the premises,”.

Section 82

Alex Johnstone

57 In section 82, page 54, line 19, at end insert—
<  
under section \textit{Scottish starter tenancy}(1),> 

James Kelly  
37  In section 82, page 54, line 20, at end insert—  
<  
under section \textit{Rent reviews and rent increases}(1),> 

James Kelly  
38  In section 82, page 54, line 20, at end insert—  
<  
under section \textit{Security of tenure}(1),> 

Drew Smith  
58  In section 82, page 54, line 20, at end insert—  
<  
under section \textit{Houses let for holiday purposes}(1),> 

Schedule 2 

Margaret Burgess  
39  In schedule 2, page 64, line 2, at end insert—  
<  
In section 24(5)(d), for “or 2” substitute “, 2 or 2A”.> 

Margaret Burgess  
40  In schedule 2, page 64, line 31, at end insert—  
<  
In section 5(4)(a), for “or 2” substitute “, 2 or 2A”.> 

Margaret Burgess  
41  In schedule 2, page 65, line 22, at end insert—  
\textit{Housing (Scotland) Act 2006 (asp 1)}  
<  
In section 22 of the 2006 Act—  

Section 85 

Alex Johnstone  
42  In section 85, page 55, line 7, leave out subsection (4) 

Margaret Burgess  
43  In section 85, page 55, line 8, leave out <3> and insert <2> 

Mary Fee  
44  In section 85, page 55, line 8, leave out <3> and insert <1>
Long Title

Alex Johnstone

45  In the long title, page 1, line 1, leave out <the abolition of the right to buy,>
Housing (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Abolition of right to buy**
12, 13, 42, 43, 44, 45

*Notes on amendments in this group*
Amendment 42 pre-empts amendments 43 and 44
Amendments 43 and 44 are direct alternatives

**Reasonable preference in allocation of social housing**
14, 1, 46, 2

**Guidance published by Scottish Ministers on social housing matters**
15, 17, 19, 28

**Factors to be considered in allocation of social housing**
49, 16

**Minimum period for application to remain in force**
18

**Duties with respect to homelessness**
3, 8

**Short Scottish secure tenancy created on antisocial behaviour grounds**
50, 20, 21, 22, 23, 24, 39, 40

**Scottish secure tenancy: assignation, sublet, joint tenancy and succession**
25, 26, 27, 47

**Scottish starter tenancy**
51, 57
Transfer of sheriff’s jurisdiction to First-tier Tribunal
52, 29

Repairing standard
31, 53, 54, 48, 5, 30

Enforcement of repairing standard
6, 10, 11, 32, 41

Rent reviews and rent increases – private rented housing
33, 33A, 37

Security of tenure – private rented housing
34, 34A, 34B, 34C, 34D, 34E, 34F, 34G, 38

Houses let for holiday purposes
55, 58

Tenement management schemes
7, 35

Home maintenance framework duty
9

Maintenance plans: areas
56
INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

EXTRACT FROM THE MINUTES

14th Meeting, 2014 (Session 4)

Wednesday 14 May 2014

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

Also present: Jackie Baillie, Claudia Beamish, Margaret Burgess, Bob Doris, Patrick Harvie, Jim Hume, James Kelly, John Lamont and Drew Smith.

Housing (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to without division: 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 54 and 32.

The following amendments were agreed to (by division)—
16 (For 4, Against 1, Abstentions 2)
17 (For 5, Against 2, Abstentions 0)
30 (For 5, Against 2, Abstentions 0).

The following amendments were disagreed to (by division)—
12 (For 1, Against 6, Abstentions 0)
1 (For 1, Against 6, Abstentions 0)
2 (For 1, Against 6, Abstentions 0)
49 (For 3, Against 4, Abstentions 0)
3 (For 0, Against 7, Abstentions 0)
51 (For 1, Against 6, Abstentions 0)
52 (For 2, Against 5, Abstentions 0)
53 (For 3, Against 4, Abstentions 0)
48 (For 2, Against 5, Abstentions 0)
10 (For 2, Against 5, Abstentions 0)
11 (For 2, Against 5, Abstentions 0)
33A (For 2, Against 5, Abstentions 0)
33 (For 2, Against 5, Abstentions 0)
34A (For 0, Against 7, Abstentions 0)
34E (For 0, Against 7, Abstentions 0)
34F (For 0, Against 7, Abstentions 0)
34G (For 0, Against 7, Abstentions 0)
34 (For 2, Against 5, Abstentions 0)
55 (For 3, Against 4, Abstentions 0).
The following amendments were moved and, no member having objected, withdrawn: 50 and 6.

The following amendments were not moved: 13, 46, 47, 8, 5, 34B, 34C and 34D.

The following provisions were agreed to without amendment: sections 1, 2, 6, 9, 11, 16, 17, 18, 19, 20, 21, 22, 24, 25.

The following provisions were agreed to as amended: sections 3, 4, 7, 8, 10, 12, 13, 14, 15, schedule 1 and section 23.

The Committee ended consideration of the Bill for the day amendment 55 having been disposed of.
Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 14 May 2014

[The Convener opened the meeting at 10:00]

10:02

The Convener: Agenda item 2 is the Housing (Scotland) Bill. Today we are starting stage 2 of the bill and will go no further than the end of part 3. I remind members that the minister’s officials are here in a strictly supportive capacity and cannot speak during proceedings or be questioned by members.

Everyone should have a copy of the bill as introduced, the first marshalled list of amendments and the first groupings of amendments. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move the amendment, and to speak to all other amendments in the group. I will then call the other members who have amendments in the group. Finally, the member who lodged the first amendment in the group will be asked to wind up the debate and to indicate whether they wish to press or withdraw their amendment. Members who have not lodged amendments in the group but who wish to speak should catch my attention in the usual way.

If a member wishes to withdraw their amendment after it has been moved, I must ask whether any member objects to its being withdrawn. If a member objects, the committee immediately moves to a vote on the amendment. If a member does not want to move their amendment when it is called, they should say, “Not moved.” Any other MSP can move it, but I will not specifically invite other members to do so. If no one moves it, I will call the next amendment.

The committee is required to indicate formally that it has considered and agreed each section and schedule of the bill, so I will put a question on each section at the appropriate point.

Section 1—Abolition of the right to buy

The Convener: The first group of amendments is on the abolition of the right to buy. Amendment 12, in the name of Alex Johnstone, is grouped with amendments 13 and 42 to 45. I draw members’ attention to the pre-emption and direct alternatives information on the list of groupings.

Alex Johnstone (North East Scotland) (Con): The right to buy has been one of the most significant drivers for positive social change in Scotland in the past 50 years. Over much of Scotland, it has created mixed-tenure sustainable communities of which we can all be proud.

The policy’s positive aspects are widespread. As I suggested in a recent debate, they include the
opportunity for some of the less well-off people in society to acquire wealth. We should all encourage property ownership, and the right to buy has had a role in that.

The right to buy has had its opponents; many housing organisations continue to this day to oppose it. The presence of section 1 indicates the success of that campaign.

If we look at the right to buy in recent years, it becomes fairly obvious that the policy has been withering on the vine because of neglect by successive Scottish Governments. In the last full year for which we have figures, only just over 1,500 houses were sold to their tenants. The vast majority of them—nearly 1,200—were sold to long-standing tenants who have the residual right to buy and not the modernised right to buy that we have had for the past 10 years or more.

Abolition of the right to buy will simply cause a feeding frenzy in the market; it will give all those who have the right today but are about to lose it an opportunity to decide whether to buy their homes. It suits my political perspective to encourage people to buy their properties, but the decision to include abolition of the right in the bill can only be counterproductive for the Government’s policy intention. For that reason, it would serve my purpose and that of the Government if it did not move to abolish the right to buy at this time.

The main issue that amendments 42 to 44 concern is the suggestion that the three-year time limit in the bill should be shortened. It is important to provide a period for those who have the right to buy to decide whether to exercise that right. In all honesty, I believe that the minister’s proposed reduction from three to two years will have no significant effect. However, it is part of a trend, and that proposal appears alongside an amendment that proposes to reduce the period from three years to one year, which would give me significantly greater cause for concern. Based on that principle, I oppose amendments 43 and 44.

Amendment 42, in my name, would remove the time limit altogether. The amendment stands along with my amendments 12 and 13. If amendments 12 and 13 are not agreed to, I will not move amendment 42.

I move amendment 12.

**The Minister for Housing and Welfare (Margaret Burgess):** The Scottish Government’s policy is to end the right to buy. The majority of the committee supports that policy, and I am grateful for that support.

Ending the right to buy will preserve valuable social housing, increase choice for tenants and people who are on waiting lists, and it will help to make social housing a vital part of vibrant mixed-tenure communities in which people want to live. Again and again, stakeholders have told us that they support our policy and tenants have told us of the damaging impact that the right to buy has had on the social housing sector. Social landlords have told us that ending the right to buy will help them with planning and stock management.

However, in the face of all that evidence, Mr Johnstone continues to call for this outdated and unpopular policy to continue. I understand his party’s historical attachment to the right to buy, but even he must surely accept that there is no longer a place for it in Scotland.

The Scottish Government has a number of other schemes to support and encourage home ownership and low-cost home ownership, and to help those who are on low incomes to get on to the housing ladder, so there is no place for the right to buy. I ask Mr Johnstone to seek to withdraw amendment 12 and not to move amendments 42 and 45.

Amendment 13 seeks to remove a provision that has nothing to do with the right to buy. Section 2 simply tidies up and clarifies two provisions that were amended by the Housing (Scotland) Act 2010 and which might have been open to misrepresentation. The bill seeks to clarify those until the right to buy ends. One of the provisions makes it clear that the right to buy of tenants who are moving to new-supply homes in circumstances that are outwith their control will be protected. That is something with which I would expect Mr Johnstone to agree. The other simply makes it clear that the new tenancy exemption in the 2010 act applies to anyone who might have been living in social housing before the cut-off, but was not a tenant. We want to end the right to buy. However, while it is still in place, it is important that we clarify the legislation in those two areas. Alex Johnstone’s amendment 13 would prevent that, so I invite him not to move it.

On amendment 43, in my name, I share the wish of the committee and stakeholders to end as soon as possible the sale of social rented homes. However, I believe that tenants who have a right to buy that they are allowed to exercise should have a fair and reasonable opportunity to do so. European convention on human rights considerations are important, but I am also thinking about the impact of the notice period on tenants. It is important that tenants have time to read the guidance that the Scottish Government will produce, to consider their options and to obtain reputable financial advice. That is less likely to happen if tenants feel that they are being rushed into buying. Taking those factors into account, I believe that a minimum notice period of two years is fair and reasonable. Accordingly, I ask the committee to support amendment 43.
For reasons that I have already mentioned, I oppose Mary Fee’s amendment 44, which would reduce the notice period to one year. I know that the amendment reflects what was in the committee’s report and the views of many stakeholders who gave evidence to the committee. However, I want to start protecting social rented housing stock as soon as is reasonable. That is why I have lodged amendment 43, which will reduce the notice period from three years to two.

However, there are other things to consider. As I have already said, tenants have to be given a fair and reasonable opportunity to exercise their right to buy before it ends. ECHR considerations are important, but are not the only factor. I simply do not consider that one year is fair to tenants. I do not want tenants to rush into doing something that they cannot afford and which is not right for them. I think that there would be a real risk of that, if the period were reduced to one year. I do not believe that a shorter notice period will necessarily stop more houses being sold; it is more likely that there would be a marked spike in sales in one year than there would be in two.

For the reasons that I have outlined, I cannot support amendment 44.

Mary Fee (West Scotland) (Lab): Amendment 44, in my name, would amend section 85 and would abolish the right to buy in one year. Much of what I was going to say about abolition of the right to buy has been said. The right to buy’s time has come; we need to remove it. By seeking to reduce the timeframe for that removal to a year, my amendment reflects the evidence that we heard in committee, and it reflects the majority recommendation of the committee in its report.

Unfortunately, I do not support Alex Johnstone’s amendments 12, 13, 42 and 45. They would delete part 1 and thereby retain the right to buy.

As the minister has just explained, amendment 43 would reduce the time period for abolition of the right to buy from three years to two. Although I have sympathy with what she said, people who have the right to buy have known for a considerable time that they have it. I do not believe that shortening the period to one year will necessarily mean that people will be under pressure, or will be victimised or taken advantage of in any way. I think that one year is an adequate timeframe for people to read the guidance, get advice and come to a conclusion about whether buying is right for them. I cannot support the minister’s amendment 43. I am disappointed that the minister did not agree with the recommendation of the committee, which—after we had heard a considerable amount of evidence—was for a period of two years. I will be moving amendment 44.

Alex Johnstone: The purpose of my amendments in this group is to remove completely from the bill reference to the right to buy and, in particular, to remove completely part 1 of the bill. Amendment 12 is the key amendment, on which the issue will hinge. As a consequence, I press the amendment.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 12 disagreed to.

Section 1 agreed to.

Section 2—Amendment of right to buy provisions

Amendment 13 not moved.

Section 2 agreed to.

Section 3—Reasonable preference in allocation of social housing

The Convener: The next group is on reasonable preference in the allocation of social housing. Amendment 14, in the name of the minister, is grouped with amendments 1, 46 and 2.

Margaret Burgess: I want social landlords to be able to manage their stock effectively and to house tenants in the most appropriate size of property. I want tenants in social housing to be able to move to properties that suit their needs, and which they can afford. Amendment 14 will extend the existing provision in the bill so that social landlords must, when they are allocating houses, give reasonable preference to the tenants of any social landlord—not just their own—that they consider to be underoccupying, when they are allocating housing. I believe that amendment 14 will improve the provision in section 3 and will give landlords more flexibility to manage their valuable housing resources to meet tenants’ needs better.
Amendment 1 was lodged by John Lamont. I recognise that social housing is a valuable resource and that many communities and social landlords want to take local connection into account in the allocation of social housing. However, social landlords can already take local connection into account, and some landlords are already doing so. Landlords can take account of the fact that a person lives in a particular area and can give priority to local people. Amendment 1 would make it a requirement for social landlords to give reasonable preference to applicants with a local connection. I would prefer that landlords had the flexibility—as is the case at the moment—to take local connection into account if they consider it to be right for their area.

I am concerned that amendment 1 does not take housing need into account, so that landlords could be required to give reasonable preference to applicants who had a local connection but who did not have housing need. That does not fit in with our approach, which is that need should be the key factor in allocating social housing.

Amendment 46, in the name of Jackie Baillie, would remove the definition of “unmet housing needs” that section 3 currently provides, and would instead require that the circumstances for unmet housing needs be prescribed in guidance. The definition makes it clear that a person has unmet need if a social landlord concludes that they cannot meet their housing needs through the options that are available to them—in effect, that the person requires the assistance of the landlord to meet their needs adequately. Having the definition set out in the bill clearly establishes that allocations should focus on addressing cases of unmet need, and that a landlord’s “reasonable preference” categories should give priority to that. Without the definition, we would be relying solely on regulations to achieve the same effect. In my view, that would be a weaker and less robust approach.

I am aware that some stakeholders have asked for further explanation of what is meant by “unmet housing needs”. We will issue guidance on priority for allocations, and interpretation of “unmet housing needs” will be covered in that guidance. The guidance will be developed in consultation with stakeholders.

I do not want to pre-empt the guidance, but I will say that as a general principle I expect landlords, in considering whether there are unmet housing needs, to consider alternative housing options in their areas, and whether such options are accessible to the applicant. That might include consideration of whether the applicant’s needs could be met in their current property if suitable adaptations were made. I therefore think that the definition of “unmet housing needs” should remain in the bill, with further explanation in guidance.

Amendment 2 would allow landlords to take account of the length of time for which an applicant has been resident in an area, when allocating social housing. I have concerns about the approach. It could disadvantage applicants who have not lived in an area for long but who have a housing need. In addition, we have not consulted on such a proposal. I understand the motivation behind the amendment, which is that it should be possible for landlords to consider local connection and the housing needs of local people, but such consideration should be balanced with consideration of the needs of all applicants.

As I said, landlords can take account of local connection and give priority to local people, and they can consider how long an applicant has been on the housing list. Overall, therefore, the current arrangements have sufficient flexibility to enable landlords to take local connection into account, so the approach in amendment 1 is not the right way forward. I invite Mr Lamont and Ms Baillie not to move amendments 1, 2 and 46; if they do so, I invite the committee to reject all three amendments. I ask the committee to support amendment 14.

I move amendment 14.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I will speak to amendments 1 and 2, in my name. One of the biggest issues that concern my constituents is frustration that local people cannot always secure social housing in their own communities. People are often forced to apply for and take housing in some of the larger settlements in the Borders, which might be several miles from the rest of their family and community, as well as being some distance from their place of work. Such an approach is not consistent with local housing associations’ aim to encourage a cohesive community. A few miles might not sound like a lot, but it is important to recognise that it can be a significant distance in a rural community such as the Borders.

The purpose of amendment 1, therefore, is to enable social landlords to give extra priority to applicants who have a local connection. I am not saying that having a local connection should be a trump card that overrules all other considerations. Of course applicants who are homeless or have medical needs should have priority. However, where all else is equal, a local connection should be taken into account.

Amendment 1 might have the greatest impact in rural communities such as those in my constituency, but I can see that it would also have a considerable impact in more urban areas and cities. In many ethnic minority communities
want to live close to family and other members of their community, and amendment 1 would enable social landlords to accommodate such considerations.

I accept that the concept of “local” is different in each part of Scotland. What is local in the Borders will be completely different from what is local in Glasgow and other cities. Amendment 1 would therefore give social landlords discretion about how they define “particular connection”, to meet their needs. In rural areas such as the Borders, the local area might be a particular town or village, whereas in a city it might be a particular street—it might be even more specific.

Amendment 2 would simply clarify and confirm the intentions behind amendment 1.

All political parties have paid lip service to the notion of supporting a local housing allocations policy. Indeed, the Labour Party said in its 2011 manifesto that it wanted to reform the allocations system to ensure that “sufficient weight is given to meeting the needs of local people.”

I hope that the committee will support amendments 1 and 2.

Jackie Baillie (Dumbarton) (Lab): I welcome the opportunity to speak at this meeting. Amendment 46 is supported by Homeless Action Scotland, Shelter Scotland, the Legal Services Agency, Scottish Churches Housing Action and Crisis.

Members know that I am always keen to get principles into the bill itself, but in this context there might be an issue with doing that, which I will explain. Amendment 46 would place a requirement on the Scottish ministers to include a definition of “unmet housing needs” in guidance and would remove the definition from the bill. I accept much of what the minister has said, and I will come on to that, but let me first set out why we lodged amendment 46.

There is a fear that, despite the minister’s best intentions, section 3 will undermine the role of social housing—I know that that is not at all her intention. I recognise and welcome housing options and the approach that is being taken, but we need to reflect, to ensure that we have got it absolutely right.

Proposed new subsection (1ZB) of section 20 of the Housing (Scotland) Act 1987 defines “unmet housing needs” as those

“which are not capable of being met by housing options which are available.”

That almost seems to suggest that social housing should be considered as a last resort once all other options are exhausted and that the role of social housing is somehow residual and as welfare housing. That approach, as the minister will know, is increasingly being taken in England. We would not want that approach in Scotland, which has a strong tradition of considering social housing as having a broad role in meeting housing needs. I am sure that the minister will agree with me on that.

Another concern is that the whole issue of reasonable preference appears to rest with the decision of each social landlord on whether someone’s housing needs could have been met elsewhere. It is slightly vague and it is definitely subjective with regard to how the assessment would be made, at what point it would be made, and how social landlords would be held to account if it was felt that they were not giving appropriate priority to allocating properties to persons in housing need.

There is some genuine concern about that approach, although we recognise that the intentions behind it are probably good. Having unmet housing needs defined in guidance would remove from social landlords the burden of making subjective decisions and would ensure consistency—or a degree of it—across the country, which I am sure the minister agrees would be desirable. Amendment 46 protects the role of social housing as one viable option and goes on to link allocation policies far more to strategic housing priorities.

Having said all that, I very much welcome the minister’s comments. Like her, we are keen to keep a balance and to get it absolutely right. I would be content not to move amendment 46, subject to a commitment to continuing dialogue with the minister before stage 3 to ensure that the guidance truly does reflect those concerns. Failing that, I can, of course, bring back an amendment at stage 3.

Alex Johnstone: I am speaking in favour of amendments 1 and 2. John Lamont has described his experience in the Borders and other areas of Scotland are affected by similar pressures, which sometimes manifest themselves in slightly different forms. My experience in the north-east is that my postbag often contains communications from people who have been allocated housing in a neighbouring town, which may be 10 miles away and may be in the catchment area for a different secondary school. With poor public transport, such a move often threatens the opportunity for individuals to maintain employment, which is a particular difficulty.

Another very specific difficulty, which has been brought to my attention on many occasions, is the housing pressures that exist in villages in the national park area, for example. There have been a number of examples of people from Ballater—
people who have been born and brought up in that community—who find the housing pressure so great that it is impossible for them to be allocated social housing in that area or anywhere near it. As a result, cohesive communities can begin to break down as young people are driven out of an area because of the inability to provide housing locally.

The subject that John Lamont has raised is one that needs to be addressed in greater detail. Amendments 1 and 2 would be a significant step towards allowing us to take that consideration into account.

Margaret Burgess: I am not dismissing amendments 1 and 2, in the name of John Lamont, out of hand—I am sympathetic—but I believe that social landlords can already take local connection into account when allocating housing. We are also concerned that amendment 1 does not require the applicant to have unmet housing needs. That cuts across the clear intention that housing need should be the priority in the allocation of social housing. The existing Scottish Government guidance sets out how a landlord can take into account residency and local connection when making housing allocations and we will revise that guidance to clarify that point further.

On amendment 46, in my view, having the definition of “unmet housing needs” on the face of the bill establishes clearly that landlords should focus on cases of unmet need. I understand what Jackie Baillie said about ensuring that that is not abused and that we do not look on social housing as welfare housing. We are certainly not looking to what is happening with social housing in other parts of the United Kingdom.

10:30

Having the definition in the bill should give landlords some flexibility, which I think they require to have, on who should have priority for housing. They should continue to focus on housing need to target those in the reasonable preference categories and those who are unable to access alternative housing solutions and to enable tenants to downsize. However, I am willing to work with Jackie Baillie before stage 3 to ensure that she is satisfied that what we put in the guidance will cover what amendment 46 seeks.

Amendment 14 agreed to.

Amendment 1 moved—[John Lamont].

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnstone, Alex (North East Scotland) (Con)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 1 disagreed to.

Amendment 46 not moved.

Amendment 2 moved—[John Lamont].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnstone, Alex (North East Scotland) (Con)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 2 disagreed to.

Section 3, as amended, agreed to.

Section 4—Rules on priority of allocation of housing: consultation

The Convener: The next group is on guidance published by the Scottish ministers on social housing matters. Amendment 15, in the name of the minister, is grouped with amendments 17, 19 and 28.

Margaret Burgess: I will begin by speaking to an aspect of all four amendments. I am happy to accept the Delegated Powers and Law Reform Committee’s recommendation, which was endorsed by this committee, that the guidance that is issued under the powers conferred by sections 4, 7 and 8 should be consulted on and published. That recommendation is included in amendments 15, 17 and 19. Amendment 28 also includes a requirement to consult on and publish the guidance that is issued under section 15, to ensure consistency in the way in which guidance is issued.

I have noted the committee’s and stakeholders’ recommendation that clear guidance should be published on section 7 of the bill, which relates to
suspension an applicant from receiving an offer of
housing. I am happy to accept that
recommendation, and amendment 17 extends the
power to issue guidance on suspensions so that a
wider range of issues can be covered.

Along with the requirement to consult on and
publish guidance, amendment 19 does two
additional things. First, it requires that the housing
support services that the landlord considers
appropriate are provided for tenants with the new
short Scottish secure tenancy for antisocial
behaviour. That is consistent with the
requirements at present for other short Scottish
secure tenancies on antisocial behaviour grounds.
The requirement to provide support services is
intended to enable the short tenancy to be
converted to a Scottish secure tenancy at the end
of 12 months.

Secondly, amendment 19 ensures that the
statutory guidance on the new short Scottish
secure tenancy covers all the actions that a
landlord can take around this type of tenancy; for
example, there will be guidance on landlords’
powers to extend the term of this type of tenancy
for a further six months. That will help to ensure
that the necessary checks and balances are in
place and that there is clarity about how the
process should operate.

Amendment 28 introduces a power for the
Scottish ministers to consult on and publish
statutory guidance on recovering possession of a
tenancy under the new simplified eviction process.
The committee recommended in its stage 1 report
that the guidance on the implementation of this
measure include an emphasis on the importance
of balancing the rights of both tenants and
landlords and that it provide clarity on the types of
conviction that might lead to an eviction. Social
landlords should use the new simplified eviction
process only where a tenant or a member of their
household has been convicted of serious
antisocial or criminal behaviour in the locality of a
tenancy. The new simplified eviction process is not
intended to be used where a tenant or a member
of their household has been convicted of a minor
offence that has not caused any harm to the
community. The amendment will allow the
Government to address the committee’s
recommendation on what should be included in
guidance and will help to ensure that tenants have
additional protection against inappropriate evictions.

I move amendment 15 and ask the committee to
support all four amendments in the group.

Amendment 15 agreed to.

Section 4, as amended, agreed to.

After section 4

The Convener: The next group is on factors to
be considered in the allocation of social housing.
Amendment 49, in the name of Mary Fee, is
grouped with amendment 16.

Mary Fee: Amendment 49 seeks to give social
landlords more flexibility in their allocations policy
in order to benefit the sustainability of communities
and localities. As we heard in evidence, social
landlords want that flexibility. For example, Jim
Hayton of the Association of Local Authority Chief
Housing Officers told us:

“Councils ... 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 ... it is
about allowing landlords to make sensible decisions in the
interests of a sustainable community life”—[Official Report,
Infrastructure and Capital Investment Committee, 5 March
2014; c 2714.]

while not ignoring the principle of housing need. I
know of examples of local letting initiatives in my
area, and I believe that it is important to give local
authorities and RSLs a degree of flexibility as it
helps to strengthen, build and maintain
communities. We should not forget that RSLs and
local authorities know best what is good for their
communities. Ultimately, we all want sustainable
communities that have good solid working
relationships, and giving RSLs and councils more
flexibility in their own areas, which, as I have said,
they know better than anyone else, would help to
develop, support and build those kinds of
communities.

I believe that amendment 16, in the name of the
minister, would remove that flexibility. The
proposal in question was included in the bill at the
last minute, was not consulted on and is being
removed with equal haste. I have to say that I am
not sure why the minister is removing it with such
haste. There is merit in allowing flexibility in
allocations policy; I accept that there has to be
some guidance on the matter to ensure that there
is no discrimination, but I believe that amendment
49 in my name would give councils the flexibility
that they told us in evidence they want and would
help to build sustainable communities. For that
reason, I ask the committee to support
amendment 49 and reject amendment 16, in the
name of the minister.

I move amendment 49.

Margaret Burgess: I recognise that landlords
have a difficult job in managing allocations—
indeed, all MSPs will be only too aware of that—
and, as we know, problems between neighbours
can cause distress for the individuals concerned
and give rise to challenges and costs for landlords.
However, I am not convinced that amendment 49,
which Mary Fee has just spoken to, is the way forward to address these issues.

As Mary Fee has suggested, landlords already have flexibility within legislation to make sensitive lets, and I am not clear what amendment 49 would add in that respect. When making allocations, landlords can already take account of the overall circumstances, including an individual’s housing needs and the housing options that are available, and the revised guidance on allocations that will be produced will include advice on making sensitive lettings. In addition, the bill contains additional measures to help landlords tackle antisocial behaviour.

I well understand the importance of making appropriate and sustainable allocations; after all, it is in the interest not only of the tenant who is being housed but of the neighbours and the wider community. However, I think the measures that we already have, along with the bill’s antisocial behaviour provisions, will achieve the same effect. I therefore ask Mary Fee not to press amendment 49 and, if she does, I ask the committee to reject it.

Amendment 16 is a Government amendment that removes section 5 from the bill. Section 5 would have enabled landlords to take age into account in allocating social houses. I point out that the process was not rushed in any way. I know that section 5 was not in the bill initially and was not consulted on and that it has provoked a strong reaction. Landlords are understandably keen to have flexibility to manage their stock effectively; others, such as Scotland’s Commissioner for Children and Young People, are concerned about the potential for discrimination against young people.

In the past few months, I have met stakeholders and have listened closely to all the points that have been made. As I indicated to the committee in my letter of 2 May, I have weighed up all the arguments and have decided to lodge amendment 16 to remove section 5 from the bill.

That was not an easy decision. I recognise that landlords have a challenging task and that there are difficult decisions to be made in allocating social housing. However, I think that the decision is the right one for the following reasons. First, age is not, of itself, an indicator of need and our housing allocations policy is based on making allocations to those in most need. I make it clear that I do not think that landlords would seek to discriminate against young people or any other group, but I am concerned about the potential for certain vulnerable groups to end up being disadvantaged in the allocation of housing.

Secondly, landlords have given me examples of where they would like to take age into account, in many cases to prevent difficulties between neighbours—for example, they would like to restrict allocations to a certain age group where there is a block of predominantly older people.

I am aware of the difficulties, which Mary Fee mentioned, that can exist when neighbours are antisocial or when neighbours with different lifestyles live next door to each other. It does not follow that it is only young people who lead chaotic lives and only older people who do not. The reverse can also be true.

Where there is the potential for clashes of lifestyle, there is already scope in the legal framework to make sensitive lets. Some landlords already make effective use of sensitive lets, and I think that more use could be made of that flexibility. I want to work closely with landlords to develop guidance to provide more advice on how sensitive lets can be used effectively in allocations without discriminating against any age group.

Finally, on the point about tenants behaving in an antisocial way and causing nuisance or distress to neighbours, I am introducing additional measures through the bill to help landlords deal with antisocial behaviour.

For those reasons, I think that it is right that age should not be taken into account in the allocation of social housing. I am grateful to the committee for its recommendations and to landlords and other stakeholders for their input and considered advice on this section. I have listened to all sides of the debate and have thought long and hard about the correct course of action. As a result, I have decided to lodge amendment 16 to remove section 5 from the bill and I ask the committee to support it.

Alex Johnstone: When the bill was published, I liked some bits better than others. I have to say that section 5 was one of the bits that I liked better. My experience from casework in the north-east—particularly in Arbroath, where a number of such cases have arisen—is that it is surprising how often the inappropriate combination of tenants in a block or next door to each other can result in what you and I might consider quite reasonable behaviour being a cause for complaint and, ultimately, the cause of accusations of antisocial behaviour. I therefore think that it is important that such sensitivities can be properly taken into account and I believe that section 5 would have that effect.

The minister has spoken at some length about the powers that currently exist and the concept of sensitive lets. I believe that they go some way towards achieving their objective, but I am extremely disappointed that the minister, having published section 5 in the bill as introduced, feels at this stage that it is necessary to take it out.
10:45  

The Convener: The minister will be aware that there has been heavy lobbying from the likes of the Convention of Scottish Local Authorities in relation to this proposal, and something that has stuck in my memory is a more elderly woman telling us at our evidence-taking session with tenants groups during our away day in Dumbarton that she did not want to be housed next to loads of elderly folk and that she would rather live in a mixed community. The evidence suggests that we cannot please all of the people all of the time, but I wonder whether the minister will assure us that the reissued guidance on this matter will take the issue of sensitive lets into account. I know that in the north-east people are allowed to turn down a house three times; although they must take the next house that they are offered, they still have some choice about where they live.

Margaret Burgess: I have already indicated that I am keen to and will work very closely with stakeholders including local authorities, COSLA and RSLs to ensure that the guidance covers the issue of sensitive lets in a way that is not discriminatory. We absolutely recognise and want to address the difficulties that Alex Johnstone and Mary Fee highlighted and of which we are all aware, but we think that we can use the flexibility that already exists and work with stakeholders to ensure that the guidance addresses sensitive lets in a meaningful way. That is certainly our aim.

Mary Fee: I have listened very carefully to the minister. She has acknowledged that there are issues around the allocation of housing, and I am sure that she wants to build strong and sustainable communities as much as I do. However, I believe that amendment 49 would have given local authorities the flexibility to do that by allowing them to take a number of different issues into account without discriminating against anyone. Such an approach would have given local authorities the ability to build strong communities and, indeed, to work with communities on developing and providing sustainability in the areas they live in. I accept the minister’s comment about guidance and look forward to seeing whatever guidance she produces in the long term. However, I will press amendment 49. Although I have sympathy with what the minister has proposed, I cannot support amendment 16, and I will abstain on it when it comes to the vote.

The Convener: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Fee, Mary (West Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 49 disagreed to.

Section 5—Factors which may be considered in allocation: age

Amendment 16 moved—[Margaret Burgess].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against

Johnstone, Alex (North East Scotland) (Con)

Abstentions

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

The Convener: The result of the division is: For 4, Against 1, Abstentions 2.

Amendment 16 agreed to.

Section 6 agreed to.

Section 7—Determination of minimum period for application to remain in force

Amendment 17 moved—[Margaret Burgess].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 17 agreed to.

The Convener: The next group is on the minimum period for application to remain in force. Amendment 18, in the name of the minister, is the only amendment in the group.

Margaret Burgess: I want landlords to have the flexibility to manage allocations effectively, which may in certain circumstances include suspending an applicant or tenant from receiving an offer of housing for a period. A landlord should also have the flexibility to review its decision and to withdraw or shorten a suspension, if circumstances change. If the reasons for an applicant’s having been suspended change, he or she could apply to the landlord to have the suspension reviewed, and it could be lifted.

Amendment 18 makes it clear that a landlord has the right to shorten or withdraw a suspension if it chooses to. It will not enable a landlord to increase the period of a suspension; it can only shorten or withdraw the suspension.

I move amendment 18.

Amendment 18 agreed to.

Section 7, as amended, agreed to.

After section 7

The Convener: The next group is on duties with respect to homelessness. Amendment 3, in the name of Jim Hume, is grouped with amendment 8.

Jim Hume (South Scotland) (LD): I welcome the opportunity to speak in support of my amendment 3, which aims to ensure that all statutory homelessness referrals from local authorities to registered social landlords are dealt with as referrals under section 5 of the Housing (Scotland) Act 2001.

I am aware that some social landlords are not in favour of my amendment and prefer to use informal nominations for homelessness. However, a section 5 referral not only ensures a consistent and transparent approach to housing homeless households, but affords certain safeguards to the people in those households, who are among our most vulnerable members of society. For example, if a person’s application is the subject of a section 5 referral, they have the right to a response from the registered social landlord within a reasonable period, and their request will not be declined without good reason, which could be lack of stock.

The use of a less formal approach is harder to monitor. Given the importance of the issue, we must ensure that the system is robust. That is possible only through effective monitoring, which would be made easier through mandatory use of section 5 referrals.

I want to move from only 65 per cent of homeless households being referred under section 5 and afforded all the relevant safeguards to 100 per cent of homeless households being in that situation. I refer the committee to the Scottish Housing Regulator’s 2009 report on homelessness, which said that councils should work more effectively with RSLs. The regulator said that there are

“some specific areas where current practices could be improved ... This may mean setting aside their current reluctance to use section 5 powers.”

We have an opportunity to iron out inconsistent practice among local authorities in referring homeless households to registered social landlords. We must ensure that those families enjoy the safeguards that they deserve, and that the system is more transparent and consistent.

It is not just I who would appreciate committee members’ support for my amendment; the many homeless people who are not given the safeguards of a section 5 referral would also appreciate it. The amendment would help them and all of us to go a long way towards fighting homelessness wherever possible.

I move amendment 3.

Jim Eadie (Edinburgh Southern) (SNP): I am pleased to have the opportunity to speak to amendment 8, which is a probing amendment. I am also pleased to have the support of my colleague Alex Rowley, which underlines the cross-party support on the issue.

Amendment 8 would ensure that homeless children and homeless pregnant women are not placed in temporary housing that is of a very poor physical standard or is in serious disrepair. The amendment would give homeless households that include pregnant women and children the right to challenge their placement in temporary accommodation that is of a very poor standard. The majority of temporary accommodation is of a good standard and is an important positive step away from what would otherwise be a crisis of homelessness for the people and families who are affected.

It is worth noting that amendment 8 would affect only a fairly small percentage of vulnerable households and would not have a big impact on local authorities. I record my appreciation for the work of Shelter Scotland, Debbie King and Fiona King in highlighting the issue.

The proposed measure would be a key safeguard for families who are placed in very poor-quality temporary accommodation that it is unhealthy and dangerous for children to live in.
Amendment 8 would not have an impact on the majority of families who are in good-quality temporary accommodation, but for those who find themselves in damp, derelict and substandard housing, it would provide a lifeline.

Families who are in temporary accommodation are already vulnerable, and living in temporary accommodation that is in poor physical repair is an additional burden that has a serious impact on their health, wellbeing and ability to cope.

Shelter Scotland has also asked the Government to commit to amending the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 as soon as the bill receives royal assent, because that would allow households to challenge local authorities about temporary accommodation that is in poor physical repair. Shelter Scotland has argued strongly in favour of my amendment 8, which it believes is necessary because it has acted on behalf of families who have been in temporary accommodation that is in a terrible state of repair. Shelter strongly contends that it has been unable to challenge local authorities using the current legislation. This specific issue is not covered by existing legislation, and although the code of guidance defines good practice around temporary accommodation, that is not legislation, so vulnerable families currently have no recourse to challenge the conditions that they face.

Amendment 8 will protect the most vulnerable households in temporary accommodation—those that include pregnant women and children—and it will affect only a very small, but important, number of households. We have seen how successful the existing legislation has been in preventing families from being put in bed and breakfast accommodation, with a reduction in the use of such accommodation of 92 per cent over the past 10 years. I believe that this small change will prevent families not only from being put in unsuitable types of temporary accommodation, but from being put in accommodation that is in poor physical repair—for example, accommodation that has extreme damp.

For all those reasons, I hope that the Scottish Government will welcome my amendment and support its inclusion in the bill. I strongly urge the Government to instruct its officials to engage with Shelter Scotland in a serious, meaningful and constructive dialogue in order to address the concerns that it has raised, and to explore what further progress may be possible in advance of stage 3. I also request that the minister meet me, Shelter Scotland and Alex Rowley to further discuss and explore the issues.

Margaret Burgess: Amendment 3, in the name of Jim Hume, would place a duty on the local authority to use section 5 of the 2001 act every time it asked a registered social landlord to rehouse a homeless household. I do not believe that that is necessary or appropriate. Local authorities already have the power to use section 5 to request that registered social landlords rehouse a homeless household. They can choose to use the power if they decide that it is necessary.

Local authorities and RSLs have indicated that they see no need to have section 5 referrals made a mandatory route for rehousing homeless households. I am therefore concerned that, if amendment 3 were passed, it could damage the positive working relationships that local authorities and RSLs have developed, which could in turn impact on outcomes for homeless people.

I do not consider that there is evidence to justify the change that is proposed in amendment 3. It is not supported by local authorities or RSLs, so I invite Jim Hume to seek to withdraw amendment 3, and I ask the committee not to support it.

I turn to amendment 8, in the name of Jim Eadie. I do not consider that it is necessary to amend the Housing (Scotland) Act 1987 for unsuitable accommodation orders. Before I talk about the detail of amendment 8, I want to make the committee aware that the Scottish Government is working with the Convention of Scottish Local Authorities and other stakeholders, including Shelter, to develop a standard for temporary accommodation. The work is well under way and the aim is to develop clear standards by this summer.

Amendment 8 seeks to require a definition for “applicant with family commitments”. That is already set out in the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004. It covers applicants who are pregnant, applicants with whom a pregnant woman resides or might reasonably be expected to reside, and applicants with whom dependent children reside or might reasonably be expected to reside. I assume that amendment 8 seeks to cover that group of vulnerable people.

The second part of amendment 8 seeks to introduce the tests of “reasonably fit for human habitation” and “wind and watertight” to the unsuitable accommodation order. Under that order, accommodation must be suitable for children, so it must already be fit for human habitation and be wind and watertight. The unsuitable accommodation order sets out the criteria that accommodation must meet. It must have adequate toilet and personal washing facilities for the exclusive use of the household. It
must be able to be used by the household 24 hours a day and, importantly, it must be suitable for occupation by children.

The “Code of Guidance on Homelessness” provides further statutory guidance to local authorities. In order to comply with the code, local authorities must apply their own houses in multiple occupation standards when considering whether accommodation is appropriate.

The “Code of Guidance on Homelessness” provides further statutory guidance to local authorities. In order to comply with the code, local authorities must apply their own houses in multiple occupation standards when considering whether accommodation is appropriate.

Although the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 allows exceptions to be made, a local authority must always ensure that accommodation meets the safety standard for children. A household that has been placed in accommodation that its members consider to be unsuitable has the right under the homelessness legislation to ask the local authority to review its decision. That covers the temporary accommodation that they have been placed in, so there is an existing legal right to challenge the local authority’s decision to place them there. I believe that the existing legislation provides significant safeguards. In addition, the work that is being taken forward by the temporary accommodation standards group will set agreed minimum standards. I ask members to reject amendment 8.

On Jim Eadie’s point, I have not yet been persuaded by the arguments that have been put forward, but I am more than willing to meet Jim Eadie, Alex Rowley and Shelter Scotland to discuss the issue in more detail before stage 3.

The Convener: I ask Jim Hume to wind up and to say whether he wishes to press or to seek to withdraw amendment 3.

Jim Hume: Thank you, convener. I am obviously disappointed that the minister is not at this stage minded to support amendment 3, and that she talks about local authorities having the choice of whether to use the section 5 referral. However, the facts and figures show that not all local authorities are doing that. Amendment 3 is obviously about the rights of people who are homeless: God forbid that any of us find ourselves in such a situation.

I obviously do not agree that what amendment 3 proposes would create a bad relationship between social landlords and tenants, because all the amendment proposes is that there be a response within a reasonable period, and that a homeless person should not be declined without good reason. I do not see that as being too onerous.

I appreciate that the minister has offered to meet Jim Eadie, Alex Rowley and Shelter Scotland. Of course, Shelter Scotland also supports my amendment 3 and worked hard on it with me. I request that the minister meet me, too, regarding my amendment. I press amendment 3.

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 3 disagreed to.

Section 8—Creation of short Scottish secure tenancy: antisocial behaviour

Amendment 19 moved—[Margaret Burgess]—and agreed to.

The Convener: The next group is on the short Scottish secure tenancy created on antisocial behaviour grounds. Amendment 50, in the name of Mary Fee, is grouped with amendments 20 to 24, 39 and 40. I ask Mary Fee to move amendment 50 and to speak to all the amendments in the group. I hope that you do not have to say “short Scottish secure tenancy”.

Mary Fee: No. I will say “SSST”, which is much easier.

Amendment 50 would amend section 8 by requiring landlords to notify the tenant of the details of the behaviour that had led to the service of a notice that the tenant is being moved to an SSST. More important is that the section would also detail the guidance and support that the landlord would be expected to provide to support the tenant to move back to a more sustained tenancy, thereby benefiting both the tenant and the community.

Our aim is to have tenants living in secure and settled housing; supporting individuals is a crucial part of that. I am grateful to Shelter Scotland for its support. It is important that a person who is being placed on an SSST has a full understanding of the behaviour that has brought them to that circumstance. A number of factors could have led to that, and there could be mitigation because of family circumstances, for example. However, it is very important that the person is in absolutely no doubt as to why they are in the position that they are in.

I ask members to reject amendment 8.
Just as important is that the landlord must work with the person, and must detail what support will be offered and given, as well as how they will work through the situation with the person in order to move them back on to a more secure footing. We all want people to be living in sustained housing, to be happy, to be taking part in their community and to be part of community life. It is incumbent on us to work with individuals to ensure that that is the case.

I support amendment 20, which is in the minister’s name. It will give greater clarity and it will tidy up the wording of section 8.

Amendments 21 and 22, which are also in the minister’s name, are linked. I would be grateful if the minister could explain in a bit more detail the meaning behind amendment 21 in particular. She talks about removing provision for an SSST, but she says that it can continue by express agreement or “tacit relocation”. Perhaps the minister could clarify exactly what she means by “tacit relocation”.

Amendment 23, which is also in the minister’s name, is a tidying-up amendment, which clarifies some wording. I am happy to accept it.

Amendment 24 is linked to amendments 21 and 22. Perhaps the minister could give me a bit more clarity around the thinking behind those three amendments. I would appreciate that.

Amendments 39 and 40, which are also in the minister’s name, will provide additional clarity. They will tighten up the wording of schedule 2. I support both the amendments.

I move amendment 50.

Margaret Burgess: First, I will deal with Mary Fee’s amendment 50, which would require specific information to be included in the notice by the landlord who is, because of antisocial behaviour, converting a tenancy to a short Scottish secure tenancy.

Amendment 50 is in two parts, as Mary Fee explained. First, I will speak to paragraph (a) of new subsection (2A), which the amendment proposes to introduce to section 8. The proposed paragraph (a) seeks to place a requirement on landlords to provide

“details of the actions of the tenant or person that have caused the landlord to issue the notice”.

I agree with Mary Fee that a tenant should be provided with that information, which will allow the tenant to challenge the decision to convert the tenancy—either with their landlord or in court—if they think that it is wrong. However, I instead propose what is in amendment 20, which will place such a requirement on landlords in the notice to the tenant. On paragraph (a) in the provisions proposed in Mary Fee’s amendment 50, I am willing to work to ensure that we are clear on the matter. I am absolutely clear that the tenant should get that information. They should be advised of what the offence is, and of which member of the household committed the offence. I will work with Mary Fee to ensure that amendment 20 covers that.

Paragraph (b) in amendment 50’s proposed new section 8(2A) seeks to place an additional requirement on landlords to include details of

“the support the landlord proposes to provide to the tenant or person in order to assist the tenant to sustain a ... tenancy.”

We all agree that we want tenants to sustain their tenancies.

Landlords have flexibility in legislation to provide, or ensure the provision of,

“such housing support services as they consider appropriate”
to enable the tenancy to convert to a short Scottish secure tenancy. There are good reasons for that flexibility. For example, it is often the case that tenants will not engage with their landlords to allow them to assess what their support needs are. In some cases, it is not the landlords themselves who will be providing or arranging the support. Support that the landlord considers to be appropriate may already be in place, having been provided by another organisation such as an addiction centre or a money advice centre.

A tenant may choose to refuse support, or support may not be what is needed to change the behaviour of someone who, for example, used to have wild parties at the weekend, but who then recognised that that was not appropriate and agreed to take action on that. I do not want to place undue burdens on landlords to provide support when that is not what is needed, or if it is already being provided by another organisation. I absolutely understand the purpose behind Mary Fee’s amendment 50, but I believe that landlords need to continue to have flexibility around providing housing support services in antisocial behaviour cases.

For those reasons, I invite Mary Fee to seek to withdraw amendment 50.

My amendments in the group are technical amendments that will ensure better operation of the bill’s proposals. As I mentioned, amendment 20 deals with the notice that is issued to a tenant to convert a tenancy to a short SST on antisocial behaviour grounds. As I indicated, I want to ensure that we cover some of the areas that Mary Fee mentioned. The change will ensure that the tenant has enough information to challenge the decision, if they wish to do so.
Amendments 21, 22, 23, 24, 39 and 40 are technical amendments that deal with operational matters. The amendments will provide further clarity in the bill on the rules that apply specifically to short SSTs that are created on antisocial behaviour grounds.

Amendments 21, 22 and 23 will ensure that the Housing (Scotland) Act 2001 is clear about the term of the short SST for antisocial behaviour. The intention is that those tenancies will convert back to secure tenancies at the end of the 12-month period, provided that the landlord has not taken action either to extend the SSST for a further six months or to recover possession of the tenancy in court. Mary Fee asked about tacit relocation; that is when a lease continues because neither the landlord nor the tenant has done anything to stop it. Amendments 21 to 23 are purely technical amendments; they bring about no changes.

Amendment 24 clarifies the circumstances under the 2001 act in which a court must make an order for recovery of possession of a tenancy in cases where the new short SST for antisocial behaviour applies. This technical amendment will ensure, as intended, that the court must make an order for recovery of possession at the end of the 12-month term—or, if the tenancy has been extended, the 18-month term—if the landlord has properly followed the process to end the short SST.

Amendments 39 and 40 will add the new short SST for antisocial behaviour to the types of accommodation that are considered to be permanent accommodation for the purposes of discharging a social landlord’s homelessness duty. That will ensure consistency of approach with what happens currently where short SSTs have been granted because of an antisocial behaviour order, or in situations in which there has been an order for recovery of possession of a tenancy for antisocial behaviour in the past three years. The amendments are just about consistency.

In conclusion, I invite Mary Fee to seek to withdraw amendment 50 and I ask the committee to support the technical amendments 21, 22, 23, 24, 39 and 40.

Mary Fee: I am grateful to the minister for her explanation of the issues that I queried. That has helped to clarify the thinking and intention behind the amendments.

On amendment 50, I am grateful to the minister for agreeing to work with me on the issue in the first part of my amendment. I look forward to working with her to ensure that we find a suitable way of working through that.

I am less happy about the fact that the minister does not seem to agree with me that landlords have a duty to explain or detail the support that will be available to people who are on a short SST. That support could range from simple signposting to more detailed intervention. However, given the minister’s assurance that she will work with me on the first part of the amendment, I am content to seek to withdraw amendment 50 at this time. However, I will reintroduce the issue that is in the second part of my amendment at a later stage if I cannot make progress with the minister.

Amendment 50, by agreement, withdrawn.

Amendment 20 moved—[Margaret Burgess]—and agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

Section 10—Short Scottish secure tenancy: term

Amendments 21 to 23 moved—[Margaret Burgess]—and agreed to.

Section 10, as amended, agreed to.

Section 11 agreed to.

Section 12—Short Scottish secure tenancy: recovery of possession

Amendment 24 moved—[Margaret Burgess]—and agreed to.

Section 12, as amended, agreed to.

Section 13—Assignation, sublet and joint tenancy of Scottish secure tenancy

11:15

The Convener: The next group is on the Scottish secure tenancy: assignation, sublet, joint tenancy and succession. Amendment 25, in the name of the minister, is grouped with amendments 26, 27 and 47.

Margaret Burgess: Sections 13 and 14 introduce a 12-month qualifying period for persons other than spouses and civil partners in relation to joint tenancy and assigning, subletting and succeeding to a tenancy. There will be a requirement to notify the landlord of residency.

The purpose of the provisions is to help to ensure the best use of social housing, by limiting the potential for abuse of joint tenancy, assignation, subletting and succession. However, the provisions on notification of residency might be too restrictive. Sections 13 and 14 do not allow for a situation in which the current or previous tenant has notified the landlord that another person is living in their home. In practice, it is often the tenant who notifies the landlord that someone has moved into their home. Indeed, the tenancy
agreement might require such notification to come from the tenant.

Amendments 25, 26 and 27 are minor technical amendments, which will help to ensure that the new 12-month residency requirement for joint tenancy, assignation, subletting and succession operates fairly and effectively in practice, by allowing for a situation in which the current or previous tenant has notified the landlord that someone is living in their home.

Amendment 47, in the name of Jackie Baillie, would remove section 14, which changes the residency rules in relation to succession. Currently, the only residency requirement in law that relates to succession to a tenancy on a tenant’s death is the six-month qualifying period for a cohabitee. That means that there is no residency requirement that a family member or carer must meet before they take over a tenancy on the death of a tenant. Landlords have told us that in some cases people have moved into properties for only a few weeks or days so that they could succeed to the tenancy. That is clearly not the best use of social housing stock, which is an issue that the bill aims to address.

In its evidence to the committee, Carers Scotland expressed concern that section 14 will potentially disadvantage unpaid carers. I do not think that that will happen. In exceptional circumstances, landlords have the flexibility—depending on how they frame their allocations policies—to decide that a person merits the allocation of a tenancy even when they do not qualify to succeed to it. Landlords can consider each case on an individual basis and can decide to use that flexibility, for example if a carer has had to give up their home and move to another part of the country to care for a terminally ill relative, even if the carer has not lived in the house for the 12-month qualifying period before the tenant dies.

Amendment 27 will allow the notification of residency at a property as a person’s only or principal home, for succession purposes, to come from the tenant or the person themselves. The approach will help the provisions on succession to work fairly and effectively in practice.

I ask the committee to reject amendment 47 and thereby retain section 14 and to support amendments 25, 26 and 27.

I move amendment 25.

Jackie Baillie: I thank the convener for giving me the opportunity to speak to amendment 47, which has already excited a bit of comment on Twitter.

I took the time to consider the stage 1 report. The minister is right to say that a number of housing organisations, particularly providers, welcomed the Government’s intentions, but a number of them remain concerned. It is right that we test those concerns, including those of Carers Scotland. Amendment 47 is supported by Homeless Action Scotland, Shelter Scotland, the Legal Services Agency, Scottish Churches Housing Action and Crisis, so it does not come from nowhere.

What I struggled with most was finding the evidence to suggest that we should change the period to 12 months. As I far as I could see, the policy memorandum appeared to be silent on the matter. I know that my colleague Mary Fee asked about the background to the proposed change and that the information was not forthcoming. Despite the explanation that the minister has provided, I still struggle to understand why a period of 12 months is thought to be preferable to one of six months. I can understand the desire to have consistency, but I do not understand why the period has to be 12 months.

The concern centres on carers. If a carer has given up their principal home to care for someone and that person dies after four months or eight months rather than after 12 months, they will face a genuine practical difficulty. Carers are motivated mostly by their desire to care rather than by a timescale, so they will not necessarily remember to notify the landlord in the required way and, if the tenant is ill, the tenant might not remember to notify the landlord of what has taken place. I acknowledge what you say about flexibility. Nevertheless, I am concerned that, unintentionally, we might increase the risk of homelessness.

There are one or two people who will test the system, but I think that the overwhelming majority try to do the right thing by the person who is being cared for and the right thing in terms of housing, and I ask the Government to reflect on the issue further to ensure that we get the provisions right.

What is proposed is also an erosion of the rights of unmarried partners, because the qualifying period is being doubled. Despite the minister’s explanation, I have no appreciation of why that is being done. Some partners might have been in the property for less than 12 months but in a stable relationship for considerably longer than that. At the point at which someone is bereaved, we will just add to their grief in a completely unhelpful way.

I recognise that a balance needs to be struck. I know that, in its report, the committee sought clarification. We want to find out about the policy basis on which the Government made its decision. It is appropriate to make changes—some people have certainly argued that that is the case—but I think that the way in which it has been done opens the way to unintended consequences.
I am prepared not to move amendment 47 if the minister indicates that she will take the opportunity to reflect on the matter further with those who have concerns to ensure that we get the balance absolutely right.

**Margaret Burgess:** I note the points that Jackie Baillie has made. I absolutely agree that carers do not operate on a timescale and that they are there to care. I well understand the concerns that they have highlighted.

I think that landlords have flexibility on the matter and can consider cases on an individual basis, but I am happy to take on board Jackie Baillie’s suggestion and to hold further discussions before stage 3.

Amendment 25 agreed to.

Amendment 26 moved—[Margaret Burgess]—and agreed to.

**Section 13, as amended, agreed to.**

**Section 14—Succession to Scottish secure tenancy**

Amendment 27 moved—[Margaret Burgess]—and agreed to.

**The Convener:** Does Jackie Baillie wish to move amendment 47?

**Jackie Baillie:** I am happy not to move amendment 47 in the light of the minister’s comments.

Amendment 47 not moved.

**Section 14, as amended, agreed to.**

**Section 15—Grounds for eviction: antisocial behaviour**

Amendment 28 moved—[Margaret Burgess]—and agreed to.

**Section 15, as amended, agreed to.**

**Section 16 agreed to.**

**After section 16**

**The Convener:** The next group is on a Scottish starter tenancy. After that, I intend that we will have a short comfort break of five minutes. [Interruption.]

**Sorry—I forgot to call amendment 8, in the name of Jim Eadie. Jim, do you want to move or not move amendment 8?**

**Jim Eadie:** I will not move it, but do I have an opportunity to—

**The Convener:** Do you want to say something?

**Jim Eadie:** Please.

**The Convener:** Okay. On you go.

**Jim Eadie:** I will not move my amendment 8 today in view of the minister’s commitment to meet me, Shelter Scotland and Alex Rowley to explore the issues that I highlighted on behalf of Shelter Scotland this morning.

I note that the minister is not minded to accept amendment 8, but I would like to reiterate and place on record the point that there appears to be an inconsistency that requires further clarification. The Government is clear that the current legislation allows families that are placed in temporary accommodation to challenge that, while Shelter Scotland, based on its experience on the ground, contends strongly that that is not currently possible.

Further clarification on that point is necessary primarily because, although we are talking about a small number of people who are placed in temporary accommodation, we are talking about the most vulnerable people, who are pregnant women and children. If they are not able to mount a legal challenge, that strikes me as something that is not acceptable in a civilised society. I do not believe that the Government wants that to be the case and I feel that further clarification is necessary.

However, I very much welcome the minister’s commitment to meet me, Shelter Scotland and Alex Rowley. I know that the minister is always willing to engage constructively and to listen to reasoned arguments that are put forward throughout the passage of the bill.

**The Convener:** Okay, so Jim Eadie is not moving amendment 8. [Laughter.]

Amendment 8 not moved.

**The Convener:** Just before we have a short break, we will deal with the next group, which is on a Scottish starter tenancy. Amendment 51, in the name of Alex Johnstone, is grouped with amendment 57.

**Alex Johnstone:** Convener, I am delighted that you have offered everybody a short break after this group. I was intending to take hours over my amendment.

I hate it when people bring along amendments that take up whole sheets of paper, but here I am doing it myself. However, I reassure members that much of my amendment is simply a means to an end. The key element that I wish to talk about is subsection (5).

I believe that the Government consulted on the idea of an initial tenancy at an early stage of the bill, but it did not appear in the bill that was eventually introduced.
One of the problems in Scotland today is that a significant minority of people who enter social housing seem to step into a revolving door. They find themselves continually going round the system and in many cases become homeless again and require to be rehoused. Much of that is caused by the fact that we fail to give adequate or appropriate levels of support. My proposal would require the creation of a starter tenancy, which would require appropriate levels of support to be given and an appropriate appeals mechanism and dispute resolution system to be put in place. That would allow new, first-time tenants to go into a system in which support is provided and there is a clear route, through the supported period, to their becoming secure tenants at the end of it.

That objective would, I believe, help to ensure that we create more stable tenancies at the outset and would deliver, at the end of the process, a block of tenants across Scotland who are less likely to fall into the mechanisms that we have discussed a lot today.

11:30

Many housing providers already provide such support, but the problem is that such provision is not universal. By creating a Scottish starter tenancy, I believe that the vast majority of tenants could be supported through to a full tenancy, which will give stability. I am aware that a similar type of tenancy exists in England and that increasing levels of success are being reported in supporting people into stable tenancies. It was an oversight not to include such a provision in the bill initially. If the measure is properly applied, we can achieve good results with this direction of travel.

As we are at stage 2, I am keen for the minister to respond not to the exact wording that I have drafted but to the principles that I am raising.

I move amendment 51.

Mark Griffin (Central Scotland) (Lab): I have a degree of sympathy with Alex Johnstone’s amendment 51. I accept that he wants to have a discussion on the principles, but I feel that I need to go into the wording. If we are to consider starter tenancies and how they assist tenants, we need to consider the reasons why those tenancies should be terminated. Those reasons should be to do with the sustainability of local communities and how behaviour, or antisocial behaviour, affects communities. I do not support section (3)(a) in the amendment, under which rent arrears could be taken into account. Rent arrears can be managed within a tenancy and landlords should not have the power to terminate a tenancy on that ground. The focus should be more on how a tenant’s behaviour affects the wider community than on rent arrears.

On that basis, I cannot support the amendment as drafted, but I welcome the discussion of the general principle of starter or initial tenancies.

Margaret Burgess: As we have heard, amendment 51 would require the Scottish ministers to make regulations to introduce a Scottish starter tenancy. I have explained my views on initial or starter tenancies before. I understand that such tenancies have the support of some tenants groups and landlords, and I have listened carefully to their views. However I remain convinced that this is not the right time to introduce them. I am concerned that the benefits of introducing an initial tenancy would be outweighed by the potential additional insecurity for new tenants at a time of so much uncertainty, which is caused by the United Kingdom Government’s welfare reforms and the changes to housing in other parts of the UK.

As I have said before, I feel strongly that people who might have had to wait a long time to get a house in the social sector, and have been building up to it, should not be put on trial for a year once the house is allocated. That concerns me.

I know that landlords and tenants are concerned about antisocial behaviour, which is part of the reason for suggesting initial or starter tenancies. However, the bill contains other measures to help landlords on that front, including the use of short Scottish secure tenancies, simplified eviction procedures and the ability to suspend tenants from receiving an offer of housing in certain circumstances, including antisocial behaviour. Those measures will give landlords extra tools to address antisocial behaviour without the need for initial tenancies.

In the committee’s stage 1 report, it gave its view that there is no clear indication that it would be appropriate to introduce initial tenancies at this time. I am of the same opinion, and I invite the committee to reject amendments 51 and 57.

Alex Johnstone: I will press amendment 51, because it is my nature to push these things through to the end of the process. I was interested to hear what the minister said. I am aware that, during the bill process, the minister has considered the inclusion of measures to support tenancies. I wonder whether, during the process, we might have the opportunity to strengthen the measures that are already in the bill. Nevertheless, the bill is an important opportunity to create a class of tenancy that has already demonstrated its success in other areas, and it will be a missed opportunity not to introduce it in Scotland. I therefore press amendment 51.

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.
The Convener: There will be a division.

For
Johnstone, Alex (North East Scotland) (Con)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 51 disagreed to.

The Convener: We will now have a five-minute comfort break.

11:35
Meeting suspended.

11:42
On resuming—

Section 17—Regulated and assured tenancies etc

The Convener: The next group of amendments is on the transfer of the sheriff’s jurisdiction to the first-tier tribunal. Amendment 52, in the name of Jim Hume, is grouped with amendment 29.

Jim Hume: Thank you, convener, for giving me the opportunity to speak to this amendment.

I was compelled to lodge amendment 52 because I did not believe that the bill was clear about what access there would be to legal representation at tribunals. With the transfer of jurisdiction for civil private rented sector cases to the tribunal system, the new first-tier tribunal will have to deal with sensitive and important issues. Indeed, one of the most serious issues over which it will now preside is the loss of a person’s home through eviction.

I welcome the introduction of the tribunal system, and the tribunal will undoubtedly provide a more relaxed environment that might be more conducive to a satisfactory resolution being reached between a landlord and a tenant. However, I believe that the issue of eviction is so serious that there must be a guarantee that the tenant can obtain legal representation in order to make the best possible case.

In the absence of such a guarantee in the bill, I felt it necessary to lodge amendment 52 to enshrine in law the ability for tenants or occupants to access legal representation, should they find themselves involved in such serious cases. I believe that it would be a mistake, and indeed a failing on our part, if we introduced such an important new system without there being a clear understanding of how tenants can access justice under the new framework. It would therefore be helpful, and I would be grateful, if the minister could confirm clearly that those at risk of losing their homes would be entitled to legal representation, and that those affected would be able to afford such representation either through legal aid or some equivalent—assuming, of course, that the necessary eligibility criteria were met and that the legal aid available for solicitors’ fees was no less for representing someone in an eviction case at the tribunal than for appearing at the sheriff court.

11:45

I would be grateful for clarity from the minister on some of those points and I believe that the points that I have made would be best addressed by members supporting my amendment. The amendment is supported by Homeless Action Scotland, Shelter Scotland, the Legal Services Agency, Scottish Churches Housing Action and Crisis.

I move amendment 52.

Margaret Burgess: Amendment 52 would require that provision is made for legal representation. That could undermine the system that we are aiming for, in which legal representation is not the norm and in which most people can engage directly with the tribunal.

Having said that, we recognise that there are still likely to be people who will need—or wish for—assistance to present their case. We will consider the most appropriate method of support as part of the detail of the operation of the private rented sector tribunal. That support could be provided through some form of lay representation such as advocacy, or through funding for legal representation. I am grateful for the committee’s support for that approach in its stage 1 report. I have undertaken to keep Parliament informed regarding operational detail, including policy regarding access and representation.

I hope that that explanation is sufficient to allow Jim Hume to withdraw amendment 52.

Amendment 29, in my name, is a technical amendment that ensures that appeals for private rented sector cases from the first-tier tribunal to the upper tribunal are handled consistently. The
amendment removes wording from the Antisocial Behaviour etc (Scotland) Act 2004 that sets out the current route of appeal for cases about landlord registration decisions by local authorities.

Appeals to the upper tribunal will still be allowed for those cases but, as with other appeals relating to private rented sector cases, such appeals will be under provisions in the Tribunals (Scotland) Act 2014. That is relevant as the Courts Reform (Scotland) Bill contains provisions that set conditions that must be met for a decision of the upper tribunal to be judicially reviewed. If appeals are provided for other than by the Tribunals (Scotland) Act 2014, those conditions will not apply.

I ask for support for amendment 29 and for amendment 52 to be rejected.

Jim Hume: The committee report asked the Scottish Government to provide further information regarding access to and representation at private rented sector tribunals. I appreciate that tribunals should be a more relaxed environment but when the case concerns eviction, that is very serious—someone is facing homelessness.

Until we have further clarity, I am minded to press amendment 52. I appreciate that the amendment may not be agreed to today, but I would be inclined to bring it back at stage 3 if it is not supported at this stage or if we do not get further clarity from the minister in the meantime.

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)  
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 52 disagreed to.

Sections 17 agreed to.

Schedule 1, as amended, agreed to.

Sections 21 and 22 agreed to.

After section 22

The Convener: The next group is on the repairing standard. Amendment 31, in the name of Jim Eadie, is grouped with amendments 53, 54, 48, 5 and 30.

Jim Eadie: I am pleased to speak to amendments 31 and 5.

The purpose of amendment 31 is to ensure that all private rented sector properties will have carbon monoxide alarms. Carbon monoxide, or CO gas, is known as the silent killer because it is invisible and has no smell. CO can be emitted by any faulty appliance that burns a carbon-based fuel such as gas, petrol, oil, coal or wood, and a level of just 2 per cent in the air can kill within one to three minutes. Children, older people, pregnant women and people with respiratory problems are particularly at risk from carbon monoxide poisoning.

A YouGov survey from March this year highlighted that one in 20 tenants in the private rented sector in Scotland have experienced some problems with carbon monoxide—typically drowsiness, nausea and headaches—in the past five years. Furthermore, according to Department of Health figures for England and Wales, 50 people a year die from CO poisoning and around 4,000 people are taken to accident and emergency.

The Scottish Government recently reported at least one death a year in Scotland from CO poisoning—that is one death too many. A recent survey of tenants in the private rented sector in Scotland found that 3 per cent said that they had experienced carbon monoxide poisoning in the past year. Amendment 31 seeks to reverse those figures by introducing an inexpensive and effective way to safeguard tenants’ safety.

At present, all private landlords in Scotland must provide a valid gas safety record and annual checks for the appliances in the property that they rent out, but there is no legal requirement for them to provide a carbon monoxide detector and alarm. I am keen for CO alarms to become part of an evolution in private renting in which stability and security become the norm and, as a result, tenants feel comfortable in asking for the services and improvements that turn a private let into a home.

I place on record my thanks to Shelter Scotland for its work in highlighting the issue and in supporting me in lodging the amendment.

I welcome the opportunity to speak to amendment 5, which is intended as a probing amendment. Its purpose is to prevent landlords
from failing to contribute to the cost of common repairs that are required to be carried out in order for their property to meet the repairing standard.

The issue has been highlighted by the City of Edinburgh Council. Around 67 per cent of all homes in Edinburgh are flats, and more than 45,000 households rent their home from a private landlord. It is essential that those buildings are maintained, but issues with mixed ownership often complicate the process.

Although common parts of a building are already covered by the repairing standard, it may be difficult for owners to recover the cost of common repairs if a landlord does not contribute. The amendment will help to avoid situations in which responsible home owners pay to maintain common areas, which contributes to enabling a privately rented property to meet the repairing standard, while the landlord fails to contribute to the costs.

For example, a secure door entry system in a block of flats may need to be repaired, and the majority of owners may agree to carry out the work. A private landlord may not have engaged with the owners regarding the work, but the owners may decide to go ahead with the repair anyway, as the building’s security is compromised. The landlord would therefore not have paid for their share of the work that ensures that their flat now complies with the repairing standard.

Under the current provisions in the Tenements (Scotland) Act 2004, the onus is on the other owners to recover costs from the landlord. That can be complex and time-consuming, and it can act as a disincentive to responsible owners who want to actively maintain their property.

Amendment 5 would mean that the landlord could be referred to the private rented housing panel. If it is proven that the landlord has not been contributing to common repairs, they could be found guilty of an offence and face removal from the landlord register or a fine.

I strongly urge the Scottish Government to engage in constructive dialogue through its officials with the City of Edinburgh Council to address what is a serious and widespread issue throughout the city, and to explore what further progress may be possible in advance of stage 3.

I move amendment 31.

Mark Griffin: Amendment 53 is a simple amendment that would ensure that all smoke alarms in houses are connected to the mains electrical supply. We know about the issues with the safety and reliability of battery-operated smoke alarms, and I know that the Government supports the move to hard-wired detectors.

The Government’s position is that, since 2007, smoke alarms that have needed to be replaced have been replaced by hard-wired alarms. However, we should simplify the position, so that rather than make tenants wait five to 10 years for their alarms to be upgraded to the safer, hard-wired alarm, and rather than have tenants worry about when a warranty will expire and when they should ask their landlord to replace an alarm, we make the position clear and increase the safety of all houses in the private rented sector by ensuring that all smoke alarms are connected to the mains supply.

Bob Doris (Glasgow) (SNP): I welcome the constructive dialogue that I have had with the Government and with Electrical Safety First—the campaigning name of the Electrical Safety Council—which proposed the approach in amendment 54.

Amendment 54 would introduce a requirement for five-yearly checks by a registered electrician of fixed electrical installations and any electrical appliances that are supplied with a let, in all properties in the private rented sector.

Such checks are supported by 12 trade associations, businesses and charities, including key housing stakeholder organisations such as the Scottish Association of Landlords, Shelter Scotland, the Royal Institution of Chartered Surveyors Scotland and the Chartered Institute of Housing Scotland. The approach therefore has broad support.

The approach would be achieved by amending the repairing standard in the Housing (Scotland) Act 2006. Amendment 54 would require private landlords to arrange for a suitably competent person to carry out an electrical safety check every five years; landlords would also be required to provide a copy of the inspection record to the tenant or subsequent tenants in the five-year period. A power to issue guidance on electrical standards would be introduced, and the approach would be enforced through a complaint to the private rented housing panel.

The majority of accidental domestic fires in Scotland—indeed, 69 per cent of such fires—are caused by electricity. Research indicates that private tenants are at much greater risk of electrical fires and electric shocks. Amendment 54 is therefore needed. The private rented sector itself supports such regulation, which is key.

Claudia Beamish (South Scotland) (Lab): Amendment 48 would confer on the Scottish ministers a duty to make provision on energy efficiency standards in the private rented sector. Ministers would set regulations that required landlords to adhere to a minimum energy efficiency standard, which would come into force
by 1 January 2015, following a consultation. There would also need to be regulation for a system of inspection.

Amendment 48 would also give the Scottish ministers the power to set penalties for landlords who failed to ensure that their properties met the minimum standard, including when a house formed only part of the premises. I appreciate that that is a difficult aspect of the proposed approach, but it requires serious consideration, because people are often left isolated in poor conditions.

I was surprised that the bill as introduced does not include provisions on such an important issue. My Labour colleagues and I thought that it was necessary to lodge an amendment on energy efficiency. Increased energy efficiency would bring many benefits, in the context of not just tenants' general comfort but reduced fuel poverty and carbon emissions.

The Parliament passed the Climate Change (Scotland) Act 2009, which requires us to achieve annual carbon emissions reduction targets. We have missed the first two targets, for complicated reasons. Legal standards on energy efficiency in the private rented sector could go some way towards addressing greenhouse gas emissions in Scotland.

We also have a target on fuel poverty, which must be addressed. That is as important in rural areas as it is in urban areas. The Scottish Government set an ambitious target of eradicating fuel poverty by November 2016. The target is achievable, but only if we address the issue, in part through the bill.

If the target is to be realised, it is essential that we improve energy efficiency standards. The existing homes alliance certainly supports that way forward. I am not a member of this committee, but I understand that the Royal Institution of Chartered Surveyors, the City of Edinburgh Council and Friends of the Earth Scotland are also supportive of moves being made in the bill.

I am aware that the Scottish Government has put together a ministerial working group to look at energy efficiency standards in the whole of the private sector. As I understand it—and if I am wrong, I apologise—the minister will no doubt confirm as much—the group is likely to report in the autumn. Although I welcome that news, I have lodged amendment 48 to help focus minds now on how in this section of the bill we might have the best means of addressing this issue with regard to the private rented sector.

I would argue that, as the bill contains a number of other repairing standards provisions, my proposal would be a sensible way of addressing energy efficiency and ensure that the standards are in place, at least in the rented sector, by 2015, instead of the later date that would be required if we had to wait for separate measures.

12:00

Margaret Burgess: I will take the amendments in the order in which they were spoken to.

On amendment 31, I thank Jim Eadie for raising the issue of carbon monoxide poisoning in private rented homes. The installation of carbon monoxide detectors provides additional protection to tenants in the private rented sector; indeed, Mr Eadie has already indicated how many deaths occur in the UK as a result of carbon monoxide poisoning. His amendment seeks to add the requirement for the installation of carbon monoxide detectors to the repairing standard for private rented homes. As such a proposal would strengthen housing standards and improve the safety of tenants in the private rented sector, I welcome it and urge the committee to support amendment 31.

Amendment 53 in the name of Mark Griffin seeks to require the installation of hard-wired smoke alarms in properties in the private rented sector. As I said at stage 1, private landlords have since September 2007 been required to install such alarms to achieve the repairing standard if they have not already put in place provision for smoke detection. Moreover, any battery-operated alarms that landlords installed prior to September 2007 must be replaced with hard-wired detectors at the end of their five to 10-year lifespan. That means that all battery-operated detectors should be replaced with hard-wired systems by 2017. I believe that such a phased approach is sensible and proportionate and will achieve the amendment's desired purpose in an incremental way and ensure the steady improvement of fire safety standards. Accordingly, I ask that Mr Griffin not move amendment 53 and, if he should, that the committee reject it.

I am grateful to Bob Doris for lodging amendment 54 and raising the important issue of electrical safety in private rented homes. Regular electrical safety testing will give additional protection to tenants in the private rented sector and reduce the risk of exposure to unsafe electrical installations. As Mr Doris has pointed out, his proposal has been strongly supported by the Electrical Safety Council—or Electrical Safety First, as I believe it is now called—whose research suggests that 70 per cent of accidental fires in Scotland are caused by electricity. Amendment 54 will require landlords to ensure that such a test is completed at least once every five years, and tenants will also be provided with a copy of the most recent record of an inspection. As I believe that the proposal will strengthen housing standards and improve the safety of tenants in the
private rented sector, I welcome it and urge the committee to support amendment 54.

I have some concerns with Claudia Beamish’s amendment 48, which seeks to introduce a provision on energy efficiency standards in private rented sector properties. Under the Climate Change (Scotland) Act 2009 and the Energy Act 2011, the Scottish ministers already have powers to introduce minimum standards for energy efficiency in private sector housing, and we are committed to improving energy efficiency to address fuel poverty and reduce carbon emissions from housing. We are already working with stakeholders, including environmental, fuel poverty, local authority, private rented sector and consumer interests, to identify proposals for minimum energy efficiency standards for consultation in spring 2015. As well as being unnecessary, amendment 48 would not give us sufficient time to understand the issues that the working group has identified; after all, we need to take proper account of the evidence that we have commissioned on the level of regulation that is technically feasible and appropriate.

Consultation on the Scottish Government’s sustainable housing strategy also indicated strong support for sufficient lead-in time for the sector to prepare for minimum standards. It is unsatisfactory that amendment 48 seeks to undermine that process: it would severely limit the opportunities to develop proposals that will be appropriate to the sector as a whole, and it could constrain its ability to deliver on it.

I have proposed amendment 30 to enable the repairing standard to be amended by regulations, so, if the steering group on minimum energy efficiency standards in the private sector identifies that it would be appropriate to use the repairing standard to support improvement in energy efficiency work, that could be looked at in future, after appropriate consultation.

For those reasons I do not consider that amendment 48 is necessary or that it would achieve the desired purpose, and I invite Ms Beamish to not to move amendment 48 and members not to support it.

I have concerns about Jim Eadie’s amendment 5, which seeks to force private sector landlords to comply with majority decisions to complete repairs to common parts of a property. Owners already have a right under the tenement management scheme to pursue any non-complying owner for work agreed under a majority decision. In addition, owners already have a common duty to maintain any part of the building that provides support or shelter to any other part, and an owner can recover costs from any other owner.

This bill takes important steps forward, as section 72 contains an amendment to the Tenements (Scotland) Act 2004, which will allow a local authority discretionary power to pay a missing share on behalf of a non-co-operating owner and to recover the debt.

For those reasons, amendment 5 is unnecessary to achieve the desired purpose and I ask members not to support it. I add that officials and I are continually in discussion and are happy discuss amendment 5 with Jim Eadie, but I do not think that we need to support it.

Amendment 30, in my name, will create a new regulation-making power for the Scottish ministers to vary the detail of the repairing standard for private rented property without the need for further primary legislation. Any such variation to the standard will remain subject to parliamentary scrutiny. The amendment will make it easier to introduce improvements to accommodation standards in the private rented sector, including any further improvements to safety in the home for private tenants, should they be required.

The Scottish Government’s proposed work on cross-tenure housing quality standards later this year will provide stakeholders with the opportunity to raise further issues regarding housing quality. The outcome of the consultation will be important in determining any further changes to housing standards. Amendment 30 will provide assurance that further changes to the repairing standard can be made following the outcome of the consultation. I therefore ask members to support amendment 30.

Jim Eadie: I am grateful to the minister for her positive response to amendment 31 and the constructive engagement that there has been between me, the minister and the Scottish Government on this issue. I am delighted that the amendment will strengthen the rights of people who live in the private rented sector.

In relation to amendment 5, I note the minister’s clarification that the existing proposal in section 72 would allow a local authority to recover a contribution from a private landlord for a common repair. I welcome the minister’s commitment to an on-going dialogue with the City of Edinburgh Council on the issues that amendment 5 highlighted.

Amendment 31 agreed to.

Amendment 53 moved—[Mark Griffin].

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Section 23—Third party application in respect of the repairing standard

The Convener: The next group is on enforcement of the repairing standard. Amendment 6, in the name of Jim Eadie, is grouped with amendments 10, 11, 32 and 41.

Jim Eadie: I am pleased to introduce amendment 6, the purpose of which is to enable neighbouring owners who are adversely affected by a property that does not meet the repairing standard to refer the owner of the said property to the Private Rented Housing Panel. The amendment would also allow advice services to make referrals to the Private Rented Housing Panel, where those services are providing support to tenants whose property does not meet the repairing standard.

It is worth noting that common repairs can be complex, especially in a city such as Edinburgh, where 67 per cent of all homes are flats, 49 per cent of homes were built before 1945 and more than 45,000 households rent privately. Data from the Scottish house condition survey shows that 76 per cent of private sector homes are in some form of disrepair. Although the majority of landlords who operate in Edinburgh take responsibility for their obligations on common repairs, more can be done to ensure that tenants and neighbouring home owners have the power to hold bad landlords to account.

Allowing neighbouring owners to make a referral to the Private Rented Housing Panel would help to reinforce the message that people need to take responsibility for the maintenance of their home as well as the common areas of the building. Neighbouring owners might be more likely to take a proactive approach to reporting the need for a repair than tenants, who might fear the reaction of the landlord. Landlords might be less likely to take an interest in the upkeep of the building and common areas if they do not actually live in the building, or they might be less aware of the general state of repair of the building, especially if they do not visit the property regularly.

Some tenants might prefer to access support through an advice agency rather than their local authority. It might be more convenient for a tenant to use an advice agency if it is located in the community or if they have a relationship with an agency or have had positive experiences of support from one in the past. Taking all that into account, I hope that the Scottish Government will consider amendment 6 and the potential views of neighbouring owners, landlords and tenants.

I move amendment 6.

The Convener: The next amendment in the group is amendment 10, which is in the name of Malcolm Chisholm, but I think that Mary Fee is
going to speak to it and to the other amendments in the group.

Mary Fee: Yes, convener. I am going to move amendments 10 and 11, which are in Malcolm Chisholm’s name. They are fairly straightforward and simple amendments. Amendment 10 would enable the owner of a house neighbouring a house that is owned by a landlord, where the landlord has not contributed to the cost of maintenance and repair, to recoup the cost and enforce the standard. As elected representatives, all members will have had people come to see them about an adjoining or neighbouring property that is not maintained to a particular standard and the difficulties that that subsequently brings for them. Amendment 10 would cover that by allowing neighbours to enforce the repairing standard.

Similarly, amendment 11 would extend the ability to enforce the repairing standard to contractors. Quite often, when contractors come out to do work, they could highlight that the repairing standard has not been met. The amendment would enable them to ensure that the standard is met.

I support amendments 32 and 41, in the name of the minister.

12:15

Margaret Burgess: As we heard, amendment 6, in the name of Jim Eadie, seeks to specify two additional types of person who may apply to the private rented housing panel for a determination in respect of the repairing standard.

The bill, as it stands, will enable local authorities to make such applications. I would expect neighbours and advice bodies to provide evidence of poor property condition to the relevant local authority for it to consider whether the application is needed. The bill provides ministers with the power to extend the range of bodies that can make applications in the future if that is considered useful. In addition, new powers for inspection that I am proposing as part of the provisions for third-party reporting support the strategic role that local authorities play in ensuring that properties right across Scotland meet minimum standards.

The power of entry for local authorities to inspect a property in relation to the repairing standard will be an important new tool. Taken together with existing powers of inspection, it will enable local authorities to enter private rented sector properties for a variety of housing-related issues.

I believe that the bill strikes the right balance in allowing local authorities to make the applications but granting a power to ministers to broaden access to the Private Rented Housing Panel through secondary legislation if that is considered necessary and appropriate in the future. In the meantime, it is important to let local authorities exercise the new powers that are in the bill to tackle poor standards in the private rented sector.

I therefore invite Mr Eadie to withdraw amendment 6.

What I have just said is also relevant to amendments 10 and 11, in the name of Malcolm Chisholm. As I have said, third parties such as service managers can report evidence of poor property condition to the local authority. There is a power to allow service managers to make direct applications if experience shows that that would be advantageous. I think that it is preferable to let local authorities operate the provisions for applications to the panel and consider how effective that proves to be before extending the range of bodies that can do so. I ask members not to support amendments 10 and 11.

Amendment 41 is a technical amendment that removes redundant references to Scottish Homes from section 22 of the Housing (Scotland) Act 2006. I ask members to support amendment 41.

Amendment 32 is a more significant change. I want local authorities to be able to take effective action when there is evidence that property condition falls below the legal minimum standards. The provisions for third-party reporting provide an additional and important tool that will enable local authorities to take action and enforce the repairing standard.

In some cases, it may be difficult for a local authority to gather evidence on property condition without a power of entry to inspect a property that is suspected of failing to meet the repairing standard. The new power of entry that is introduced by amendment 32 is significant and can be used much more easily than the powers that were previously considered in the policy memorandum for designating a specific geographic area as an enhanced enforcement area.

After further consideration, I believe that allowing all local authorities to inspect properties that give them concern, regardless of their geographical location, provides a more appropriate and effective solution. Amendment 32 will enhance the provisions for third-party reporting and will significantly strengthen the hand of local authorities in tackling substandard housing. I therefore urge members to support amendment 32.

Jim Eadie: I am grateful to the minister for her explanation and clarification, particularly in relation to the broadening of access to the Private Rented Housing Panel through secondary legislation. I also note her comments on the need to allow the
new proposals in the bill to bed down before taking any further powers. However, I encourage the Scottish Government to engage in a continuing dialogue with the City of Edinburgh Council on the issues that are highlighted in amendment 6.

I seek agreement to withdraw amendment 6.

Amendment 6, by agreement, withdrawn.

### Amendment 10 moved

**The Convener:** The question is, that amendment 10 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 10 disagreed to.

### Amendment 11 moved

**The Convener:** The question is, that amendment 11 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

**Against**

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 11 disagreed to.

### Amendment 32 moved

**Margaret Burgess**—and agreed to.

**Section 23, as amended, agreed to.**

**Sections 24 and 25 agreed to.**

### After section 25

**The Convener:** The next group is on rent reviews and rent increases—private rented housing. Amendment 33, in the name of James Kelly, is grouped with amendments 33A and 37.

**James Kelly (Rutherglen) (Lab):** I welcome the opportunity to move the amendments in my name. Aside from the crisis in housing supply, the biggest issues that face housing in Scotland today are the growth of the private rented sector and the issues that derive from that. The private rented sector has almost doubled in size to more than 300,000 and, as a result, there have been substantial rent rises, particularly in certain parts of Scotland. For example, in Aberdeen, the average rent rise is 8.6 per cent.

The growth in the private rented sector has put some tenants in a position where they are vulnerable in having to deal with landlords. There are many responsible landlords in the country, but there are some who are not so responsible, and they take advantage of the position that tenants find themselves in of not being able to find alternative accommodation and put rents up. We see many examples of that in our constituency casework. Added to that, 120,000 households in the private rented sector are below the poverty line, and we know that that results in 40 per cent of those households cutting back on heating and a third cutting back on food.

It is therefore incumbent on us as a Parliament to try to address some of the issues around rising rent levels, which lead to poverty issues for some households. Amendment 33 seeks to address that by ensuring that rent reviews take place no more than once a year and that rents are capped at a particular level to prevent a situation where there are irregular rent reviews and unreasonable rent rises are imposed on tenants.

Amendment 33A, in the name of Patrick Harvie, seeks to ensure that the regulations for such a scheme must

“be laid before the Scottish Parliament”—as opposed to “come into force”—by 1 January 2015. On reflection, I think that that is sensible. In amendment 33, I do not propose a particular scheme. I think that it makes sense for ministers to bring forward a scheme and lay it before the Parliament by 1 January 2015, and I therefore accept the amendment to amendment 33.

In summary, I note that the effect of amendment 33 is clearly to introduce rent caps in the private rented sector in order to alleviate the issues that many tenants face with unreasonable rent rises. We have real problems in the private rented sector, as we know from the issues that we face in our constituencies, and the bill gives us an opportunity here and now to act to make a difference to the lives of many tenants throughout the country.
I move amendment 33.

Patrick Harvie (Glasgow) (Green): I was pleased that James Kelly lodged amendment 33. In the stage 1 debate and in housing debates before the bill was introduced, I consistently argued that we should address rent levels in the private rented sector, particularly in this extended period of low interest rates, which have been a benefit to owner-occupiers as well as owners of property that is rented in the private rented sector who have a mortgage on such property. Owners have gained that benefit in the period of low interest rates, but it has not been passed on to those who live in the private rented sector in their housing costs.

I am not sure whether I would have taken precisely the same approach as James Kelly has taken. The Labour Party at UK level has decided on its policy, which there is a good case for. My approach would have been to look at the variations in the private rented sector in different parts of the country.

Scotland is not the same as south-east England. Prices in Aberdeen are not the same as those in rural parts of Scotland. Even different parts of Glasgow or Edinburgh are not the same as each other. My instinct would have been to provide a power to introduce controls on rent levels in areas where the evidence demonstrates a particular problem. That approach would be less likely to have a wider disruptive effect on the private rented sector.

However, as the committee is to debate and decide on amendment 33 as it is framed, I think that it should refer to an achievable date. The proposed timescale of the beginning of 2015 seems to provide enough time for ministers to consider their options, consult on the issue, draft regulations and introduce them in Parliament. Given the requirement for Parliament to take evidence on, scrutinise and make a decision on the regulations, for the regulations to come into force and for any systems to implement them to be in effect, the beginning of 2015 is a wee bit ambitious as a timescale.

As the committee is to decide on amendment 33, I think that it would be reasonable to move the timescale back a wee bit. I am grateful to James Kelly for acknowledging that. If the committee decides that the proposed approach is not the right one, I hope that there will be willingness to look at variations on the theme of rent levels when we reach stage 3.

The Convener: Will you move amendment 33A?

Patrick Harvie: Not yet.

The Convener: You have to move it now.

Patrick Harvie: Oh—it is an amendment to an amendment. I beg your pardon.

I move amendment 33A.

Margaret Burgess: I have reservations about amendment 33, because it would require the Scottish ministers to introduce rent controls by 1 January 2015, as Patrick Harvie highlighted. Amendment 33A would provide a slightly longer timescale; it would allow regulations to be laid by that date and it takes into account the possibility that Parliament might not support the regulations.

I cannot support James Kelly’s proposal or the amendment to it from Patrick Harvie. Amendment 33A would improve the drafting, but it does not address the reasons why amendment 33 is flawed.

The amendment proposes a significant new duty in respect of matters that formed no part of the bill on introduction. If I had lodged such an amendment at this late stage, I would rightly have been criticised for failing to consult stakeholders, for not producing any assessment of the impact that the duty would have on landlords or tenants and for denying the committee the opportunity to consider and take evidence on the provision at stage 1.

A measure of such significance would require full public consultation on the basis of clear proposals, followed by close parliamentary scrutiny of detailed provisions that appeared in the bill on introduction. As none of those conditions has been met, I urge members to reject the amendments in the group.

12:30

James Kelly: I take on board Patrick Harvie’s comments on the scheme that is set out in the amendment and on variations throughout the country. I have deliberately not been specific about a particular scheme. If the amendment is unsuccessful, I will not look to bring it back at stage 3. If the idea is considered at stage 3 or beyond, I am certainly sympathetic to a proposal that would involve variations across the country. I recognise that a blanket Scottish approach would not be the best approach in these circumstances so I take on board those comments.

I think that the minister’s response is inadequate. Tenants face big issues in all our constituencies and in communities throughout Scotland. Patrick Harvie is right to highlight the fact that there has been a shift in power in favour of landlords—not in favour of tenants—because of the growth of the sector and low interest rates.

The minister does not seem to acknowledge that the growth in rent levels in the private rented sector is an issue. I think that it is an issue and
that it should have been addressed in the bill. If she had listened to stakeholders, the minister would have heard a number of stakeholders saying loud and clear that it is an issue. It almost seems as though she is turning a blind eye to a big issue in housing.

You are the housing minister and you are therefore responsible for making a positive impact on housing policy. The bill gives you the opportunity to do that and if the proposal that is before us is not one that you like, you could try to make an alternative proposal at stage 3. However, you seem set on taking no action on this issue. That approach will be greeted with disappointment by many tenants and by people on the ground throughout Scotland.

Patrick Harvie: Given that James Kelly has indicated that he does not object to my amendment to his amendment, I have nothing further to add. I press amendment 33A.

The Convener: The question is, that amendment 33A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 33A disagreed to.

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 33 disagreed to.

The Convener: The next group is on security of tenure—private rented housing. Amendment 34, in the name of James Kelly, is grouped with amendments 34A to 34G and amendment 38.

James Kelly: Amendment 34 seeks to address the fact that there has been real growth in the size of the private rented sector and a major issue facing many people in that sector is short tenancies. A number of years ago, the Scottish Parliament information centre provided the information that 74 per cent of tenancies were short tenancies. That is a somewhat outdated figure, but I am sure that it is not totally out of the ball park.

Short tenancies mean lack of stability for tenants, who do not know whether they will be able to stay in the accommodation for any length of time; the landlord can come along and say that their tenancy is ended and move them on. That causes a lot of consequential problems and, as I said in the previous debate, it places too much power in the hands of landlords, as opposed to tenants, which can be illustrated by a lack of repairs being done to properties. A property might not be in a fit state, but if a tenant has only a short tenancy, they can do very little about it.

Amendment 34 seeks to introduce more secure tenancies and proposes a three-year standard tenancy. After the first six months, the tenant would have the ability to terminate the contract on one month’s notice, and the landlord would have the ability to terminate it on two months’ notice, if the tenant was acting in an antisocial manner or had rent arrears, or if the landlord planned to refurbish or change the use of the property.

Although Patrick Harvie’s amendments bring a number of reasonable points into consideration, I do not support them at this stage. If amendment 34 is agreed to, I will consider lodging such amendments at stage 3. If amendment 34 is not agreed to, I will lodge similar amendments at stage 3 and will consider some of the points that Patrick Harvie has made in his amendments.

In summary, the purpose of amendment 34 is to address the insecurity that many tenants face, and their lack of power in dealing with landlords. I believe that longer and more stable and secure tenancies are required in order to give more power to tenants so that we can address some of the problems that exist in the private rented sector.

I move amendment 34.

Patrick Harvie: I am pleased that an amendment on security of tenure is being considered because, as members will recall, I have emphasised the issue in previous discussions. Security of tenure underpins many of the other improvements that I think all members would like to be made in the private rented sector.
Without it, very many of the other rights that both we and the Government want to give tenants in that sector to improve their situation will be difficult to exercise in practice.

We should recognise that the Government has previously indicated that it does not intend to address security of tenure in the bill, but has begun work to examine the issue, although I think that this is a useful forum for rehearsing the arguments. I hope that the discussion that takes place on the amendments in the group will help to inform the Government’s consideration of security of tenure, even if the committee does not agree to them.

I have sought to make a few changes to the scheme that James Kelly has proposed so that we can discuss particular aspects of that scheme. Amendments 34A, 34B, 34C and 34D would remove the idea of a six-month initial term. If the reasons that are set out in subsections (1)(d)(i) to (1)(d)(vi) of the new section that amendment 34 seeks to insert in the bill are the reasonable grounds on which a landlord could terminate a tenancy, get rid of the tenant and tell them that they had lost their home—which is a very serious step—I do not think that there is a case for having additional grounds on which a landlord could do so during the first six months. If the tenant does not breach the terms of the tenancy, act in an antisocial way or get into rent arrears—the reasons that are set out in subsections (1)(d)(i) to (1)(d)(iii)—no additional conditions should apply in the first six months. I am not clear about the reason for that interim term.

Amendment 34E suggests that, when refurbishment or change of use is the reason for ending a tenancy, six months’ notice might be given. If a landlord intends to change the use of a property or refurbish it, it seems reasonable to expect them to plan ahead for such action and to give sufficient notice to ensure that the tenant does not have their life unduly disrupted and has time to make alternative arrangements.

Amendment 34F suggests that, when a property is to be refurbished, a tenant should at least have the option to move back in when that has been done. The intention behind amendments 34F and 34G is to close down the possibility that the reasons in subsections (1)(d)(iv), (1)(d)(v) and (1)(d)(vi) might be misused.

We have probably all heard of constituents who are told that a property is going to be sold, which is why they have to move out, but then find that within weeks the property is back on the market for a higher rent. That is a very common practice. If refurbishment was a ground for removing a tenant from their home, it is entirely conceivable that only minor refurbishments could be done, which would not be extensive enough to genuinely require someone to be removed from their home, and the property could then go back on the market.

Amendment 34G is similar in intent as it tries to cut down the possibility that one of the reasons that are given in amendment 34 could be used as an excuse, rather than a genuine ground. It suggests that if a property is going to be sold, or if the landlord is going to move back into it, that would have to happen in practice—as opposed to the property just being put back on to the market. I have suggested that in such cases, the property could not be put back on the market for private rent for six months.

I recognise that the Government is probably unlikely to budge on this, but some discussion of these questions in relation to the scheme of secure tenure that we might move to in time will, I hope, help inform the Government’s consideration in further work that it does on the issue.

I move amendment 34A.

Margaret Burgess: Amendment 34 would place a duty on ministers to introduce regulations to establish a new type of tenancy in the private rented sector. Amendment 38 would require that Parliament’s affirmative procedure be adopted for the proposed new regulations that are detailed in amendment 34. As amendment 33 in James Kelly’s name would have done, amendment 34 would introduce a significant new duty on ministers in respect of matters that formed no part of the bill on its introduction.

As I said earlier, it is not about ignoring things or not taking things into account; I am always willing to consider the views of stakeholders and have done so throughout the development of the bill. However, before embarking on major legislative changes, we need to establish the nature and scale of any problem, understand clearly how we would go about addressing it and be sure that we would help those who need help.

Patrick Harvie has previously raised the issues of rent control and security of tenure in the private sector, but that is the only mention of that that has come to me from anyone in Parliament. We have discussed security of tenure with stakeholders. I object to the amendments in the group on the ground that there has not been appropriate consultation on the issue.

However, we recognise that the tenancy regime is central to efficient functioning of the private rented sector. That is why in our private rented sector strategy we undertook to carry out a review of the tenancy regime. To drive that work forward, I asked Professor Douglas Robertson to chair a stakeholder-led review group to examine the suitability and effectiveness of the current private sector tenancy regime, and to consider legislative
changes, where such might be required. The review group was established in September 2013 and it presented its final report to me last Friday. I want to consider that report and to decide, in the light of it, whether we should introduce a bill to give effect to any of its recommendations.

Patrick Harvie: It would be helpful for the discussion if the minister could say when that report is going to be published.

Margaret Burgess: I saw the report for the first time on Friday.

Patrick Harvie: That is understood.

Margaret Burgess: We will publish it as soon as possible; I have said clearly that if we need to introduce regulation on the tenancy regime, we will do so in separate legislation. It was made very clear—the review group was aware that it was not part of the Housing (Scotland) Bill. The work has been going on for some time within the Government. I will certainly make sure that the research is published as soon as possible.

Patrick Harvie: Thank you.

Margaret Burgess: I want to consider the report. That way, any legislation to change the private rented sector regime would reflect the findings of the group and—importantly—it would be the subject of full consultation and parliamentary scrutiny.

I ask Mr Kelly to seek to withdraw amendment 34 and not to move amendment 38.

Amendments 34A to 34G would amend Mr Kelly’s amendment 34. As I have said about amendment 34, we need to take time to consider the findings from the private rented sector tenancy review group before we make any changes to the tenancy regime. We must also ensure that any changes are fully discussed and explored with stakeholders. The amendments represent major changes; they are not just tinkering around at the edges of the bill. Stakeholders require to be consulted and any changes need to have undergone a full and robust public consultation and parliamentary scrutiny.

I ask Mr Harvie not to press amendments 34A to 34G and I urge the committee to reject all the amendments in the group.

12:45

James Kelly: There were two central themes to Patrick Harvie’s comments. The first was the initial tenancy and the second was on provisions relating to a landlord’s ability to terminate a tenancy, for example in the case of refurbishments.

Essentially, my amendment 34 would move us where from where we are now with short tenancies to a three-year tenancy, and proposes an initial period of tenancy before a longer three-year secure tenancy. My mind is not closed to Patrick Harvie’s points; I will consider them if I bring back an amendment at stage 3, as I expect I will have to do.

Similarly, on refurbishment, we do not want anything in legislation to be misused in any way by landlords. Proposed changes to legislation must be tight enough to ensure that that does not happen.

I am disappointed that the minister is not prepared to attempt to address, in the bill, the significant issues in the private rented sector. I do not accept the minister’s assertion that the issues have not been raised before; they have been raised in the sector and in Parliament. For example, when Patrick Harvie spoke in the Labour housing debate in November, he raised the issue of rent control, and when I summed up, I specifically said that Labour is considering raising rent control and would use the Housing (Scotland) Bill to test that out. They are significant issues and work is being done on them at the moment. It might help if the minister were to be clearer about the timescale and whether legislation will be introduced in the future.

In the meantime, however, although we remain unclear about that, we cannot ignore the issues in the sector that are brought to our surgeries and constituency offices. Therefore, when a bill such as this is going through Parliament, we must take the opportunity to amend it in order to make a difference to the lives of our constituents. That is what I am seeking to do, which is why I will press amendment 34.

The Convener: I would like to point out to Mr Kelly that the issues were not raised in evidence at stage 1 and that Labour members on the committee did not raise them with any of the stakeholders who came to the committee to give evidence.

Patrick Harvie: I do not have a great deal to add. I would simply echo James Kelly’s comments about timescale. I am slightly sorry that some members do not seem to welcome the idea of having even a discussion about these important issues, either in committee or in the chamber. It would be most useful to Parliament as a whole if the minister were at some point able to give a clear indication of the timescale for consideration of these issues in the expert group, and a commitment to legislate during this parliamentary session.

The Convener: The question is, that amendment 34A be agreed to. Are we agreed?

Members: No.
The Convener: There will be a division.

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 34A disagreed to.
Amendments 34B to 34D not moved.
Amendment 34E moved—[Patrick Harvie].

The Convener: The question is, that amendment 34E be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 34E disagreed to.
Amendment 34F moved—[Patrick Harvie].

The Convener: The question is, that amendment 34F be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 0, Against 7, Abstentions 0.

Amendment 34E disagreed to.
Amendment 34G moved—[James Kelly].

The Convener: The question is, that amendment 34G be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 34G disagreed to.

The Convener: The final group today is on houses let for holiday purposes. Amendment 55, in the name of Drew Smith, is grouped with amendment 58.

Drew Smith (Glasgow) (Lab): Patience is my virtue this afternoon, convener. I am grateful to the committee for giving me the opportunity to move amendment 55, which seeks to strengthen the regulation of housing let for holiday purposes.

My concern about the issue has been prompted primarily by complaints made to me by my constituents. The issue of very short-term lets for holiday purposes—such properties are often known as party flats—is not a new one, but it is one for which I believe that a comprehensive solution does not yet exist. The private letting of property to provide an income for the owner and housing for a tenant is clearly an important part of the housing mix. However, I am sure that no one would disagree that party flats do not fill a housing need. They are commercial enterprises that impact on people in neighbouring properties that are used for housing and, in my view, they require to be better regulated.

The intention of amendment 55 is not to ban party flats or even, necessarily, to reduce their...
number, as I recognise that in the tourism sector, as in the housing sector, a mix of accommodation options can be a good thing.

The effect of amendment 55 would be to build on the minimal regulation that currently exists by extending closure powers over party flats in circumstances in which no other resolution has been arrived at and it is recognised that noise nuisance, antisocial behaviour or other inappropriate activity is taking place regularly and is, quite simply, making the lives of the neighbours around the property a living hell.

The power of closure currently resides with the police. I propose not to remove the power from the police but to extend it to local authorities—my experience in Glasgow is that the local authority is aware of the problems—and to adopt a multi-agency approach to seeking to provide respite and a correction to inappropriate use that gives those who live around party flats their lives back and returns to them the basic right to live in and enjoy their home.

I believe that the current arrangements put too much of the burden on the police. The practical reality is that the police are less likely to be willing to intervene, except in cases of serious criminality. The police, by nature, tend to deal with situations as they occur and are less focused on the longer-term impact of problems than they are on ensuring that particular instances of antisocial behaviour are resolved. When they attend an incident at a party flat, it is likely that they will seek to quieten down the disturbance and, in the absence of more serious criminality, advise neighbours that the nuisance will, in all likelihood, resolve itself in a couple of days’ time. However, neighbours know that the flat is likely to be let again and that the same issues will possibly arise the following weekend.

Amendment 55 makes it clear that it is for ministers to consider whether to grant the power to local authorities through regulations. The amendment also provides for proper scrutiny of such regulations by the Parliament. I reiterate that amendment 55 is about extending a power that already exists to a more appropriate enforcement body rather than creating a new power.

If instances of regular nuisance such as my constituents have experienced were taking place as a result of any other housing use, action would rightly be demanded and, indeed, mechanisms would exist for them to be dealt with. However, when it comes to party flats, those problems are being allowed to persist and get worse.

The problem exists across Scotland, but it is particularly acute in city centres. My constituents who choose to make their home in Sauchiehall Street or the Merchant City are well aware that compromises have to be made as a result of that choice, but it is not reasonable that enjoyment of their own home is violated by the letting of a neighbouring flat—or, as in one case, several flats in the same building—for a party, based on a notice displayed in a pub inviting revellers to head upstairs into a residential building to carry on drinking and, for want of a better word, partying.

I hope that members will consider those issues when they decide whether to support amendment 55. If the minister is not willing to support it, I hope that she will lay out a suggested way forward that represents a suitably strong and speedy alternative to amending the bill. I know that the constituents who have contacted me would certainly very much welcome the opportunity to make parliamentarians further aware of the issues that they face.

I move amendment 55.

Margaret Burgess: I certainly understand the problems that can be caused by antisocial behaviour in properties that are let on a short-term basis, but I do not believe that the provisions proposed by amendment 55 are necessary.

Legislation is already in place to enable local authorities to tackle the issue of antisocial behaviour in properties let for holiday purposes. For example, under part 7 of the Antisocial Behaviour etc (Scotland) Act 2004, local authorities have powers to serve antisocial behaviour notices on a private landlord when an occupant or visitor engages in antisocial behaviour at or in the locality of the house. In addition, in March 2011, the Scottish Government introduced an order that deals specifically with the problem of antisocial behaviour in properties let for holiday use or so-called party flats.

In a landmark case last year, the City of Edinburgh Council successfully used the existing legislation to apply for a management control order for two party flats in Grove Street. Since then, the council has assumed all landlord responsibilities, thereby helping to improve the quality of life for residents who were previously affected by antisocial behaviour.

I do not believe that amendment 55 would provide any additional benefits in tackling antisocial behaviour in holiday lets. I invite Mr Smith to withdraw amendment 55 and not to move his consequential amendment 58.

Drew Smith: I will not take up more of the committee’s time, other than to say that I am disappointed that the minister did not take the opportunity that I offered to consider the issues further. I am sure that my constituents will be disappointed, too, because the fact is that the current provisions are not providing the resolution that she talked about. Although resolution has
been possible in cases in which the landlord is willing to engage with the system of regulation as it exists, when the landlord is not willing to engage in that process, resolution has not been possible, certainly for a number of people in my city. I would have hoped that the minister could at the very least have offered to consider an alternative route for resolving the issue.

I intend to press amendment 55.

**The Convener:** The question is, that amendment 55 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 55 disagreed to.

**The Convener:** That concludes day 1 of the committee’s consideration of the bill at stage 2. I thank everyone for their co-operation and patience.

The committee’s consideration will continue next week. I propose that we go no further than the end of part 5 on day 2. The deadline for lodging any amendments to the bill from where we have ended up today to the end of part 5 is 12 noon on Friday 16 May.
Housing (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 20
- Sections 21 to 84
- Sections 85 and 86
- Schedule 1
- Schedule 2
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 26

Alex Johnstone

59 In section 26, page 18, line 27, after <available> insert <free of charge>

After section 26

Mary Fee

134 After section 26, insert—

<Solicitor letting agents: exemption>

(1) The provisions of this Part do not apply to a solicitor letting agent.

(2) For the purposes of this section, “solicitor letting agent” means a solicitor who holds a valid practising certificate who, or an incorporated practice which—

(a) intends to carry out letting agency work, and

(b) has notified the Council of the Law Society of Scotland (“the Council”) of that fact.

(3) A solicitor letting agent must comply with any guidance issued by the Council setting out how solicitor letting agents are to conduct letting agency work in accordance with the standards of practice set out in any code of practice issued under section 41.

(4) A solicitor letting agent who fails to comply with such guidance will be deemed to be guilty of professional misconduct.>

Section 29

Margaret Burgess

60 In section 29, page 19, line 30 at end insert <, and

(c) the applicant meets such training requirements as the Scottish Ministers may by regulations prescribe.

( ) Regulations under subsection (2)(c) may, in particular, prescribe—

(a) the matters on which training must have been undertaken,

(b) the persons who must have undertaken training,
(c) qualifications which must be held by the applicant or other persons,
(d) the period within which training must have taken place.

Alex Johnstone

61 In section 29, page 20, line 10, after <entry,> insert <their reasons for the refusal and>

After section 29

Margaret Burgess

62 After section 29, insert—

<Time limit for determining application>

(1) This section applies where a person (referred to in this section as the “applicant”) makes an application in accordance with section 27.

(2) The Scottish Ministers must determine the application under section 29 within 12 months of receiving the application.

(3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the Scottish Ministers, by such period as the Tribunal thinks fit.

(4) The Tribunal may not extend a period unless the Scottish Ministers apply for the extension before the period expires.

(5) The applicant is entitled to be a party to any proceedings on an application under subsection (3).

(6) The decision of the Tribunal on such an application is final.

(7) If the Scottish Ministers do not determine the application within the period required by this section—

(a) on the day by which they were required to determine the application, they are to be treated as having entered the applicant in the register or, as the case may be, having renewed the applicant’s existing entry in the register, and

(b) the applicant is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day unless—

(i) before the expiry of the period, the applicant made a subsequent application in accordance with section 27 to renew the applicant’s entry in the register, or

(ii) the applicant is otherwise removed from the register in accordance with this Part.

(8) Where subsection (7) applies the Scottish Ministers must—

(a) notify the applicant—

(i) that subsection (7) applies, and

(ii) of the day on which, in accordance with subsection (7)(a), they are treated as having entered the applicant in the register or, as the case may be, having renewed the applicant’s existing entry in the register, and

(b) enter the name of the applicant in the register or, as the case may be, renew the applicant’s existing entry in the register.
Subject to the modifications in subsection (10), the applicant is for all purposes to be treated as a registered letting agent entered in the register or, as the case may be, whose entry has been renewed by virtue of section 29(2).

The modifications are—
(a) section 34 does not apply,
(b) paragraphs (a) and (b) of section 35(1) are to be read as if for the words “no longer” there were substituted “not”, and
(c) subsections (1)(b) and (4)(b) of section 38 are to be read as if after the word “under” there were inserted “section (Time limit for determining application)(7)(b) or”.

Section 30

Margaret Burgess

63 In section 30, page 21, line 4, at end insert—

< ( ) failed to provide information in accordance with section (Power to obtain information) or (Power to carry out inspections)(2)(d)(i),
( ) obstructed a person acting in the proper exercise of the persons’ functions under sections (Power to carry out inspections) to (Inspections: supplemental),
( ) failed to comply with a requirement made by a person who is so acting.>

Section 31

Alex Johnstone

64 In section 31, page 21, line 8, leave out <may> and insert <must>

Alex Johnstone

65 In section 31, page 21, line 12, leave out subsection (2)

Margaret Burgess

66 Leave out section 31 and insert—

<Fit and proper person: criminal record information

(1) This section applies where the Scottish Ministers have reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 30(2) is, or has become, inaccurate.

(2) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers may have regard to—

(a) the information referred to in section 113A(3)(a) of the Police Act 1997 (c.50) (prescribed details of every relevant matter relating to the person which is recorded in central records), and

(b) whether the person is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c.42).>
Alex Johnstone

66A As an amendment to amendment 66, line 7, leave out <may> and insert <must>

Section 32

Alex Johnstone

67 In section 32, page 21, line 24, leave out <take all reasonable steps to>

Section 34

Mary Fee

135 In section 34, page 22, line 16, leave out <3 years> and insert <1 year>

Mary Fee

136 In section 34, page 22, line 17, leave out <3 years> and insert <1 year>

Section 35

Margaret Burgess

68 In section 35, page 22, line 22, leave out first <person> and insert <agent>

Margaret Burgess

69 In section 35, page 22, line 24, at end insert <or,>

( ) the agent does not meet the training requirements prescribed under section 29(2)(c).>

Margaret Burgess

70 In section 35, page 22, line 29, leave out <applicant> and insert <agent>

Alex Johnstone

71 In section 35, page 22, line 36, after <decision> insert <and their reasons for that decision>

After section 35

Alex Johnstone

72 After section 35, insert—

<Cancellation of registration on request>

(1) Where subsection (2) applies, the Scottish Ministers must, on receipt of an application by a registered letting agent, remove the registered letting agent from the register.

(2) This subsection applies where the Scottish Ministers are satisfied that—

(a) the registered letting agent has made adequate arrangements with respect to the agent’s letting agency work, and

(b) it is otherwise appropriate to remove the registered letting agent from the register.>
Section 38

Alex Johnstone

73 In section 38, page 24, line 2, at end insert—
   
   \(<(\ ))\text{ all contracts for letting agency work concluded between the person and a landlord after the relevant date are void.}\>

Margaret Burgess

74 In section 38, page 24, line 2, at end insert—

   \(<(\ ))\text{ Subsection (2)(a) does not apply in relation to costs incurred before the relevant date in a case where the person is removed from the register under section 34.}\>

Section 39

Margaret Burgess

75 In section 39, page 24, line 30, leave out <level 5 on the standard scale> and insert <£50,000>

Section 41

Alex Johnstone

76 In section 41, page 25, line 7, leave out <may> and insert <must>

Margaret Burgess

77 In section 41, page 25, line 8, at end insert—

   \(<(\ ))\text{ the handling of tenants’ and landlords’ money by those persons, and}\>

   \<(\ ))\text{ the professional indemnity arrangements to be kept in place by those persons.}\>

Patrick Harvie

137 In section 41, page 25, line 9, at end insert—

   \<(\ )\text{ Regulations under subsection (1) must, in particular, include provision about the level of advance rent that a letting agent may charge a tenant.}\>

Patrick Harvie

138 In section 41, page 25, line 9, at end insert—

   \<(\ )\text{ Regulations under subsection (1) must, in particular, include provision about the level of deposit that a letting agent may charge a tenant.}\>

Patrick Harvie

139 In section 41, page 25, line 9, at end insert—

   \<(\ )\text{ Regulations under subsection (1) must, in particular, include provision requiring a letting agent to provide a tenant with standard tenancy documents as defined by section 30B of the Housing (Scotland) Act 1988 (c.43).}\>
Patrick Harvie

140 In section 41, page 25, line 9, at end insert—

<( ) Regulations under subsection (1) must, in particular, include provision prohibiting a letting agent from discriminating against a prospective tenant on socio-economic grounds.>

Patrick Harvie

141 In section 41, page 25, line 9, at end insert—

<( ) Regulations under subsection (1) must, in particular, include provision prohibiting a letting agent from discriminating against a prospective tenant on the grounds that the prospective tenant (or an individual whom the prospective tenant intends will reside or lodge with the prospective tenant) is in receipt of payments under the Social Security Contributions and Benefits Act 1992 (c.4), the Jobseekers Act 1995 (c.18) or the Welfare Reform Act 2012 (c.5).>

Patrick Harvie

142 In section 41, page 25, line 9, at end insert—

<( ) Regulations under subsection (1) must, in particular, include provision prohibiting a letting agent from discriminating against a prospective tenant on the grounds of the immigration status of the prospective tenant (or an individual whom the prospective tenant intends will reside or lodge with the prospective tenant).>

Patrick Harvie

143 In section 41, page 25, line 9, at end insert—

<( ) Regulations under subsection (1) must, in particular, include provision setting time limits for repairs to a house required to meet the repairing standard set out in Chapter 4 of the 2006 Act.>

Mary Fee

144 In section 41, page 25, line 9, at end insert—

<( ) A person who carries out letting agency work must comply with the Letting Agent Code of Practice.

( ) Regulations under subsection (1) must, in particular, include provision—

(a) requiring that all deposits received by a letting agent must be paid to a tenancy deposit scheme approved under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (SSI 2011/176),

(b) prohibiting a letting agent from charging a prospective tenant, tenant or former tenant any fee, charge or premium before, during or after the end of a tenancy, apart from rent and a tenancy deposit within the meaning of section 120 of the 2006 Act,

(c) setting out any measures that the Scottish Minister consider necessary to ensure that letting agents comply with duties under the Equality Act 2010 (c.15),

(d) prohibiting a letting agent from discriminating against a prospective tenant on the basis that the prospective tenant (or a person whom the prospective tenant intends will reside or lodge with the prospective tenant) —
(i) is in receipt of a payment under the Social Security Contributions and Benefits Act 1992 (c.4), the Jobseekers Act 1995 (c.18) or the Welfare Reform Act 2012 (c.5), or

(ii) is responsible for the care of a child.

Patrick Harvie

130 In section 41, page 25, line 11, at end insert—

<( ) Regulations for the first code of practice under subsection (1) must be laid before the Parliament no later than the end of the period of one year beginning with the day of Royal Assent.>

Section 43

Patrick Harvie

131 In section 43, page 25, line 25, after <tenant> insert <, third party authorised by a tenant>

Margaret Burgess

78 In section 43, page 25, line 25, leave out <or landlord> and insert <, a landlord or the Scottish Ministers>

Patrick Harvie

132 In section 43, page 25, line 28, after <tenant> insert <or third party authorised by a tenant>

Margaret Burgess

79 In section 43, page 25, line 32, at end insert—

<( ) in relation to an application by the Scottish Ministers, any letting agent.>

Patrick Harvie

133 In section 43, page 26, line 7, at end insert—

<( ) must provide that rent may not be charged to or recovered from a tenant from a date specified in the enforcement order until such time as the order has been complied with.>

Section 46

Mary Fee

145 In section 46, page 26, line 39, at end insert—

<(4) The Scottish Ministers must remove from the register a letting agent who commits an offence under subsection (1).>

(5) Where the Scottish Ministers remove a person from the register under subsection (4) they must note that fact in the register.

(6) The Scottish Ministers may by regulations make such further provision as they consider appropriate in connection with the consequences of the removal of a letting agent under subsection (4) for tenants of properties managed by that agent.>
After section 46

Margaret Burgess

80  After section 46, insert—

<Monitoring of compliance

Power to obtain information

(1) The Scottish Ministers may, for the purpose of monitoring compliance with the provisions of this Part, serve a notice on a person who appears to be a letting agent requiring the person to provide them with information specified in the notice.

(2) The Scottish Ministers may by regulations make further provision about the requiring of information under subsection (1) and, in particular, may make provision about—

(a) the form of the notice and manner of service,

(b) the time within which information must be provided.

(3) Nothing in this section authorises the Scottish Ministers to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.>

Margaret Burgess

81  After section 46, insert—

Power to carry out inspections

(1) For the purpose of monitoring compliance with the provisions of this Part, an authorised person may carry out an inspection of premises which appear to be being used for the purpose of carrying out letting agency work.

(2) For the purposes of carrying out the inspection, the authorised person may—

(a) enter and inspect the premises,

(b) require the production of any book, document, data or record (in whatever form it is held) and inspect it, and take copies of or extracts from it,

(c) take possession of any book, document, data or record (in whatever form it is held) which is on the premises and retain it for as long as the authorised person considers necessary,

(d) require any person to—

(i) give the authorised person such information as the authorised person considers necessary,

(ii) afford the authorised person such facilities and assistance as the authorised person considers necessary.

(3) Nothing in this section authorises the authorised person to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.

(4) In this section—

“authorised person” means a person authorised by the Scottish Ministers,

“premises” includes any place and any vehicle, vessel, or moveable structure.>
Margaret Burgess

82 After section 46, insert—

<Warrants for entry

(1) A sheriff, justice of the peace or stipendiary magistrate may by warrant authorise a person to enter premises (if necessary using reasonable force) for the purpose of carrying out an inspection under section (Power to carry out inspections).

(2) A warrant may be granted under subsection (1) only if the sheriff, justice or magistrate is satisfied by evidence on oath—

(a) that there are reasonable grounds for entering the premises in question, and

(b) that—

(i) entry to the premises has been or is likely to be refused and that notice of the intention to apply for a warrant under this section has been given to the occupier,

(ii) a request for entry, or the giving of such notice, would defeat the object of the proposed entry,

(iii) the premises are unoccupied, or

(iv) the occupier is temporarily absent and it might defeat the object of the entry to await the occupier’s return.>

Margaret Burgess

83 After section 46, insert—

<Inspections: supplemental

(1) A person entering any premises under section (Power to carry out inspections)(2)(a) or in accordance with a warrant granted under section (Warrants for entry) may take on to the premises such other persons and such equipment as the person considers necessary.

(2) A right to enter any premises conferred by section (Power to carry out inspections)(2)(a) may be exercised only at a reasonable time.

(3) The occupier of the premises concerned must be given at least 24 hours’ notice before a person carries out an inspection under section (Power to carry out inspections) unless the person carrying out the inspection considers that giving such notice would defeat the object of the proposed inspection.

(4) A person carrying out an inspection under section (Power to carry out inspections) must, if required to do so, produce written evidence of the person’s authorisation to carry out the inspection.

(5) On leaving any premises which a person is authorised to enter by a warrant granted under section (Warrants for entry), the person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the person found them.

(6) A person who takes possession of any item under section (Power to carry out inspections)(2)(c) must leave a statement on the premises from which the item was removed—

(a) giving particulars of what has been taken, and

(b) stating that the person has taken possession of it.>
Margaret Burgess

84 After section 46, insert—

<Information and inspection: offence

(1) It is an offence for a person who has been required to provide information in accordance with section (Power to obtain information) or section (Power to carry out inspections)(2)(d)(i)—

(a) without reasonable excuse, to fail or refuse to provide the information,
(b) to knowingly or recklessly make any statement in respect of that information which is false or misleading in a material particular.

(2) It is an offence for a person—

(a) to intentionally obstruct a person acting in the proper exercise of the persons’ functions under sections (Power to carry out inspections) to (Inspections: supplemental),
(b) without reasonable excuse, to fail to comply with any requirement made under section (Power to carry out inspections)(2)(b) or (d)(ii) by a person who is so acting.

(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.>

Section 51

Alex Johnstone

85 In section 51, page 29, line 10, leave out from <or> to end of line 13

Margaret Burgess

86 In section 51, page 29, line 18, leave out <“house”, “landlord”>,

Margaret Burgess

87 In section 51, page 29, line 21, leave out <modify> to end of line 22 and insert <-

(a) provide that “letting agency work” does not include things done—

(i) on behalf of a specified body, or
(ii) for the purpose of a scheme of a specified description, or
(b) otherwise modify the meaning of “letting agency work” for the time being in this section.

(4) A scheme falling within a description specified by the Scottish Ministers under subsection (3)(a)(ii) must be—

(a) operated by a body which does not carry on the scheme for profit, and
(b) for the purpose of assisting persons to enter into leases or occupancy agreements.>
In section 52, page 29, line 24, at end insert—

“house” is to be construed in accordance with section 101 of the 2004 Act,
“landlord” is to be construed in accordance with section 101 of the 2004 Act.

In section 52, page 29, line 29, at end insert—

“tenant”, in relation to an occupancy arrangement, means the person who under the arrangement is permitted to occupy the house.

In section 55, page 32, line 16, at end insert—

(3A) Where subsection (3B) applies, the local authority must visit the site before determining whether to issue or renew a Part 1A site licence.

(3B) This subsection applies where a person has made a relevant permanent site application for a site in respect of which the local authority has, at any time in the period of 3 years ending with the date of the application, received from a tenant or an authorised representative of a tenant a complaint about the management of that site.

In section 55, page 33, line 4, at end insert—

(4) Before refusing to consent to the transfer under subsection (2), the authority must give to the applicant a notice stating that—

(a) it is considering refusing the application and its reasons for doing so, and

(b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(5) In making its decision under this section the local authority must consider the application and any representations made in accordance with subsection (4)(b).

In section 55, page 33, line 12, leave out <within 12 months of receiving the application.> and insert <before the time limit specified under subsection (2A).>

(2A) The Scottish Ministers must, by regulations subject to the negative procedure, specify a time limit for the purposes of each application to which this section applies (and in doing so may specify different limits for different applications or types of application).
Margaret Burgess

92 In section 55, page 35, line 3, at end insert—

<(4) A local authority must give to the persons mentioned in subsection (3) its reasons for making a decision mentioned in subsection (2).”>.

Section 56

Margaret Burgess

93 In section 56, page 35, line 15, leave out <3> and insert <5>

Section 57

Margaret Burgess

94 In section 57, page 35, line 32, leave out <as soon as practicable after> and insert <before the end of the period of 28 days beginning with the day on which>

Margaret Burgess

95 In section 57, page 35, line 35, at end insert—

<(4) Where a local authority requests information under subsection (3), the licence holder must provide the information before the end of the period of 28 days beginning with the day on which the request is made.”>.

Section 58

Margaret Burgess

96 In section 58, page 36, line 26, leave out <and its reasons for doing so>

Margaret Burgess

97 In section 58, page 36, line 28, at end insert—

<(5) Where a local authority revokes a licence under this section, the authority must give to the person who held the licence its reasons for doing so.”>.

Section 60

Margaret Burgess

98 In section 60, page 37, leave out lines 18 to 23 and insert—

<( ) the procedure to be followed in relation to—

(i) the issue, renewal, transfer, transmission and revocation of a Part 1A site licence,

(ii) appeals under section 32M,

( ) the determination and consequences of an appeal under section 32M.>

Margaret Burgess

99 In section 60, page 37, line 34, after <section> insert <32G or>
Margaret Burgess

100 In section 60, page 37, line 36, after <section> insert <32G or>

Margaret Burgess

101 In section 60, page 37, line 38, after <section> insert <32G or>

Margaret Burgess

102* In section 60, page 37, line 39, leave out from <and> to end of line 2 on page 38, and insert—

<( ) the time limits for the giving of reasons under section 32I(4) and 32L(5),>

Margaret Burgess

103 In section 60, page 38, leave out lines 4 to 6

Margaret Burgess

104 In section 60, page 38, leave out line 9

Section 61

Margaret Burgess

105 In section 61, page 38, line 31, at end insert—

<( ) committed a breach of an agreement to which the Mobile Homes Act 1983 applies,>

Mary Fee

147 In section 61, page 38, line 31, at end insert—

<( ) contravened any guidance issued by the Gas and Electricity Markets Authority established under section 1(1) of the Utilities Act 2000 (c.27) on the resale of gas and electricity,>

Mary Fee

148 In section 61, page 38, line 31, at end insert—

<( ) contravened any guidance issued by Scottish Water on the resale of water,>

After section 62

Margaret Burgess

106 After section 62, insert—

<Fit and proper person: information sharing>

After section 32P of the 1960 Act (inserted by section 62), insert—

“32PA Fit and proper person: information sharing

(1) A local authority may, for the purpose of another local authority deciding under this Part if a person is a fit and proper person, provide to that other authority information which falls within subsection (2).
(2) Information falls within this subsection if the local authority holding the information considers that—

(a) it is likely to be relevant to the other authority’s decision under this Part as to whether a person is a fit and proper person, and

(b) it ought to be provided for that purpose.

(3) Subsections (1) and (2) apply despite any duty of confidentiality owed to any person in respect of the information by the authority disclosing the information.”

Section 63

Margaret Burgess

107 In section 63, page 39, line 34, at end insert—

<(1A) It is an offence for a person, without reasonable excuse—

(a) to fail to notify a local authority in accordance with 32K(1) and (2), or

(b) to fail to provide information in accordance with section 32K(3) and (4).>
Margaret Burgess
113 In section 65, page 43, line 22, at end insert—

<(  ) The period specified in a penalty notice under subsection (2)(c) must begin on the later of—

(a) the day on which the period during which the person may make an appeal under subsection (6) expires, or
(b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.>

Section 70

Margaret Burgess
114 In section 70, page 49, line 6, at end insert—

<32Z5A Guidance

(1) The Scottish Ministers may, after consulting such persons as they consider appropriate, publish guidance about the operation of this Part.

(2) A local authority must have regard to any guidance published when carrying out its functions under this Part.>

Margaret Burgess
115 In section 70, page 49, leave out lines 7 to 12

After section 71

Margaret Burgess
116 After section 71, insert—

<Agreements to which the Mobile Homes Act 1983 applies

In Schedule 1 to the Mobile Homes Act 1983 (c.34)—

(a) after paragraph 1, insert—

“1A (1) The right to station the mobile home under in paragraph 1 is not affected by—

(a) the expiry of a Part 1A site licence in accordance with section 32J(1)(b)(ii) of the 1960 Act,
(b) the refusal to issue or renew a Part 1A site licence under section 32D of the 1960 Act,
(c) the revocation of a Part 1A site licence under section 32L of the 1960 Act, or
(d) the expiry of a site licence in accordance with section 71(2) of the Housing (Scotland) Act 2014 (asp 00).

(2) Sub-paragraph (1) applies in relation to agreements that were made at any time before the day on which that sub-paragraph comes into force (as well as in relation to agreements made on or after that day).

(3) In this paragraph—>
“the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62), and
“Part 1A site licence” has the same meaning as in section 32Z5 of the 1960 Act.”, and

(b) in paragraph 23, after sub-paragraph (1)(a) insert—

“(aa) no regard may be had to any costs paid, or to be paid, by the owner in connection with expenses recovered by a local authority under—

(i) section 32Z2(2) of the Caravan Sites and Control of Development Act 1960,
(ii) subsection (1)(a) or (c) of section 32Z3 of that Act, or
(iii) section 32Z4 of that Act,

(ab) no regard may be had to any costs paid, or to be paid, by the owner in connection with the owner being convicted of an offence under Part 1A of the Caravan Sites and Control of Development Act 1960.”.

Section 72

Jim Eadie

7 In section 72, page 50, line 36, after <2004”,> insert—

<( ) for subsection (3), substitute—

“(3) The repayable amount is recoverable in—

(a) 30 equal annual instalments payable on the same date (specified in the charge) in each calendar year, or

(b) monthly instalments over such shorter period of time as the local authority determines to be reasonable in the circumstances.

(3A) Where a local authority determines a repayment period under subsection (3)(b), it must provide the owner of, or any other person interested in, any living accommodation subject to the repayment charge with assistance under section 71(1).”.

Malcolm Chisholm

35 In section 72, page 50, line 36, after <2004”,> insert—

<( ) in subsection (4), after the word “register” where it second appears, insert “, and on its being so registered has priority over all existing and future burdens on the same living accommodation”.

After section 72

Margaret Burgess

117 After section 72, insert—

<Notice of potential liability for costs: notice of discharge

(1) In section 10A of the Title Conditions (Scotland) Act 2003 (asp 9) (notice of potential liability for costs: further provision), after subsection (3) insert—
“(3A) The owner of a burdened property may apply to register a notice (a “notice of discharge”) if—
(a) a notice of potential liability for costs in relation to the property has not expired,
(b) the liability for costs under section 10(2) to which the notice of potential liability relates has, in relation to the property which is the subject of the application, been fully discharged, and
(c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—
(a) must be in the form prescribed by order made by the Scottish Ministers, and
(b) on being registered, discharges the notice of potential liability for costs as it applies to the property which is the subject of the application.”.

(2) In the Tenements (Scotland) Act 2004—
(a) in section 13 (notice of potential liability for costs: further provision), after subsection (3) insert—
“(3A) The owner of a flat may apply to register a notice (a “notice of discharge”) if—
(a) a notice of potential liability for costs in relation to the flat has not expired,
(b) the liability for costs under section 12(2) to which the notice of potential liability relates has, in relation to the flat which is the subject of the application, been fully discharged, and
(c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—
(a) must be in the form prescribed by order made by the Scottish Ministers, and
(b) on being registered, discharges the notice of potential liability for costs as it applies to the property which is the subject of the application.”, and

(b) in section 29(1) (interpretation), in the definition of “register” after “costs” insert “, a notice of discharge”.

After section 73

Jim Eadie

9 After section 73, insert—

<Home maintenance framework

(1) Before section 42 of the 2006 Act, insert—
“Home maintenance framework

41A Home maintenance framework

(1) Where any premises consist of two or more houses, the owners of those houses must prepare jointly a framework (a “home maintenance framework”) in relation to any part of the premises which is owned in common by those owners.

(2) A home maintenance framework must set out how the maintenance and repair of such parts of the premises will be managed and must in particular include—

(a) arrangements for an annual inspection of any roof areas owned in common by the owners,

(b) a payment plan or other arrangements to fund maintenance and repairs to any part of the premises which is owned in common, and

(c) arrangements for the appointment of a responsible person or agent to manage the implementation of the framework.”

(2) In section 42 of the 2006 Act, after subsection (2) insert—

“(2A) Where any premises consist of two or more houses, the local authority may consider for the purposes of subsection (2)(b) that those houses are unlikely to be maintained to a reasonable standard if it appears to the authority that a satisfactory home maintenance framework has not been prepared under section 41A in relation to the houses.”

Section 75

James Kelly

56 In section 75, page 51, line 25, at end insert—

<( ) In section 44(1) of the 2006 Act (maintenance plans for two or more houses), after “premises,” insert “and any garden area associated with the premises,”>

After section 76

Margaret Burgess

118 After section 76, insert—

<Charging orders

(1) In Schedule 9 to the 1987 Act (recovery of expenses by charging order)—

(a) in paragraph 4, sub-paragraph (b)(i) is repealed, and

(b) for paragraph 6, substitute—

“6 Every annuity charged by a charging order may be recoverable as a debt due to the person for the time being entitled to it.”.

(2) In section 108(2) of the Civic Government (Scotland) Act 1982 (c.45) (recovery of expenses by charging order), for the words from “modifications” to “paragraph” in the last place where it appears substitute “modification, that is to say, in sub-paragraph (b)(ii) of paragraph 4 of that Schedule”.

(3) In section 19(3) of the Crofters (Scotland) Act 1993 (c.44) (priority of sums due), the words “heads (i), (ii) and (iii) of” are repealed.>
After section 77

Margaret Burgess

119 After section 77, insert—

<First-tier Tribunal: disqualification of members from exercise of certain functions

(1) This section applies to the following functions and jurisdictions of the First-tier Tribunal—

(a) a function or jurisdiction of the sheriff transferred to the Tribunal under section 17 or by virtue of Part 1 of schedule 1,

(b) a function conferred on the Tribunal, by virtue of Part 3 and Parts 2 to 4 of schedule 1, by—

(i) the 2004 Act,

(ii) the 2006 Act,

(c) a function conferred on the Tribunal by or under Part 4.

(2) A member of the First-tier Tribunal is disqualified from exercising a function or jurisdiction to which this section applies if the member is—

(a) a member of the House of Commons,

(b) a member of the Scottish Parliament,

(c) a member of the European Parliament,

(d) a Minister of the Crown,

(e) a member of the Scottish Government.

(3) The Scottish Ministers may by order modify subsection (2) by—

(a) adding a disqualification to,

(b) varying the description of a disqualification for the time being mentioned in,

(c) removing a disqualification from,

that subsection.>

Margaret Burgess

120 After section 77, insert—

<Private rented housing panel: disqualification from membership

In Schedule 4 to the Rent (Scotland) Act 1984, after paragraph 1 insert—

“1A (1) A person is disqualified from appointment to, and from remaining a member of, the private rented housing panel if the person is or becomes—

(a) a member of the House of Commons,

(b) a member of the Scottish Parliament,

(c) a member of the European Parliament,

(d) a Minister of the Crown,

(e) a member of the Scottish Government.

(2) The Scottish Ministers may by order modify sub-paragraph (1) by—
(a) adding a disqualification to,
(b) varying the description of a disqualification for the time being mentioned in,
(c) removing a disqualification from,
that sub-paragraph.
(3) An order under sub-paragraph (2) is subject to the negative procedure.”.

Section 79

Margaret Burgess

121 In section 79, page 53, line 20, leave out <Subsection (4)> and insert <A duty on the Regulator to consult in accordance with paragraph (i) or (ii) of subsection (4)(a)>

Margaret Burgess

122 In section 79, page 53, line 27, leave out <the duties under subsection (4)> and insert <that duty>

Margaret Burgess

123 In section 79, page 53, line 28, at end insert—

<(4B) The Regulator must—
(a) issue guidance on subsection (4A), such guidance to include—
   (i) the circumstances in which it considers that subsection (4A) is likely to apply,
   (ii) the actions it expects to take in those circumstances, and
   (iii) how, in those circumstances, it intends to communicate with any of the persons mentioned in paragraph (b) who are affected by its actions, and
(b) before issuing or revising any guidance, consult—
   (i) tenants of registered social landlords or their representatives,
   (ii) registered social landlords or their representatives, and
   (iii) secured creditors of registered social landlords or their representatives.>

Margaret Burgess

124 In section 79, page 53, line 28, at end insert—

<(4C) Where the Regulator proposes to direct a transfer of some (but not all) of a registered social landlord's assets, the Regulator must—
(a) before making a direction, obtain an independent valuation of those assets, and
(b) when making a direction, have regard to that valuation.”.>
After section 79

Margaret Burgess

125 After section 79, insert—

<Registered social landlord becoming a subsidiary of another body

(1) After section 104 of the 2010 Act insert—

“Registered social landlord becoming a subsidiary of another body

104A Registered social landlord becoming a subsidiary of another body

(1) This section applies to a registered social landlord which is—

(a) a registered society, or

(b) a registered company.

(2) An arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary has effect only if the Regulator consents to that arrangement before it is completed.

(3) Chapter 3 of Part 10 makes provision for Regulator consent for the purpose of this section.”.

(2) After section 124 of the 2010 Act insert—

“For Chapter 3

REGISTERED SOCIAL LANDLORD BECOMING A SUBSIDIARY OF ANOTHER BODY

124A Regulator’s consent

(1) The special procedure set out in sections 114 to 121 of Chapter 1 applies in relation to an arrangement to which the Regulator’s consent is required under section 104A as it applies in relation to a disposal to which Chapter 1 applies.

(2) The Regulator may determine that the special procedure is not to apply where the Regulator considers that proposed arrangement will result in there being no reduction in the amount of control that the registered social landlord has over its own affairs.

(3) The Regulator must determine that the special procedure is not to apply or is to cease to apply where the Regulator considers that—

(a) the registered social landlord’s viability is in jeopardy for financial reasons,

(b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73, and

(c) the determination under this subsection would substantially reduce the likelihood of a person taking such a step.

(4) Where the Regulator makes a determination under subsection (2) or (3), the Regulator may give or refuse consent to the arrangement.
124B Purchaser protection

Failure by the Regulator or by a registered social landlord to comply with any provision of sections 114 to 121 of Chapter 1 in relation to an arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary does not invalidate the Regulator’s consent to the arrangement.”.

(3) In section 164 of the 2010 Act (connected bodies), the definition of “subsidiary” is repealed.

(4) In section 165 of the 2010 Act (interpretation), after the definition of “social landlord” insert—

“subsidiary” has the same meaning as in the Companies Act 2006 (c.46) or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968 (c.55),”.

Section 82

Alex Johnstone

57 In section 82, page 54, line 19, at end insert—

<( ) under section (Scottish starter tenancy)(1),>

James Kelly

37 In section 82, page 54, line 20, at end insert—

<( ) under section (Rent reviews and rent increases)(1),>

James Kelly

38 In section 82, page 54, line 20, at end insert—

<( ) under section (Security of tenure)(1),>

Drew Smith

58 In section 82, page 54, line 20, at end insert—

<( ) under section (Houses let for holiday purposes)(1),>

Margaret Burgess

126 In section 82, page 54, line 21, at end insert—

<( ) under section 41(1) which set out the first code of practice or replace the code of practice,>

Patrick Harvie

127 In section 82, page 54, line 21, at end insert—

<( ) under section 41(1),>

Margaret Burgess

128 In section 82, page 54, line 22, leave out <51(3)> and insert <51(3)(b)>
Schedule 2

Margaret Burgess

39 In schedule 2, page 64, line 2, at end insert—

<(  ) In section 24(5)(d), for “or 2” substitute “, 2 or 2A”.
(  ) In section 31(5)(c), for “or 2” substitute “, 2 or 2A”.
>

Margaret Burgess

40 In schedule 2, page 64, line 31, at end insert—

<(  ) In section 5(4)(a), for “or 2” substitute “, 2 or 2A”.
>

Margaret Burgess

41 In schedule 2, page 65, line 22, at end insert—

<Housing (Scotland) Act 2006 (asp 1)

In section 22 of the 2006 Act—

(a) subsection (4)(c) is repealed, and
(b) subsection (6) is repealed.
>

Margaret Burgess

129 In schedule 2, page 65, line 29, at end insert—

<(  ) In section 124, for “122” substitute “121”.
>

Section 85

Alex Johnstone

42 In section 85, page 55, line 7, leave out subsection (4)

Margaret Burgess

43 In section 85, page 55, line 8, leave out <3> and insert <2>

Mary Fee

44 In section 85, page 55, line 8, leave out <3> and insert <1>

Long Title

Alex Johnstone

45 In the long title, page 1, line 1, leave out <the abolition of the right to buy,>
2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

**Access to register of letting agents**
59

**Exemption for solicitor letting agents**
134

**Registered letting agents: training requirements**
60, 69

**Register of letting agents: giving of reasons for decisions**
61, 71

**Register of letting agents: time limit for determining application**
62

**Register of letting agents: monitoring compliance**
63, 80, 81, 82, 83, 84

**Fit and proper person: criminal record information**
64, 65, 66, 66A

**Letting agent registration number**
67

**Duration of letting agent registration**
135, 136

**Register of letting agents: minor and technical amendments**
68, 70, 86, 88, 89
Register of letting agents: cancellation of registration on request
72

Letting agency work without registration
73, 74, 75

Letting Agent Code of Practice
76, 77, 137, 138, 139, 140, 141, 142, 143, 144, 130, 126, 127

Enforcement of Code of Practice
131, 78, 132, 79, 133, 145

Meaning of letting agency work
85, 87, 128

Part 1A site licence: site inspection before issue or renewal
146

Part 1A site licences: giving of reasons for local authority decision
90, 92, 96, 97

Part 1A site licence: time limit for determining application
91

Duration of Part 1A site licence
93

Duty to inform where change: period and offence
94, 95, 107, 108

Power to make provision in relation to decisions and appeals
98, 99, 100, 101, 102, 103, 104

Part 1A site licence: fit and proper person test
105, 147, 148, 106

Power to vary maximum fine
109

Improvement notices and penalty notices
110, 111, 112, 113

Guidance on operation of Part 5
114

Agreements to which the Mobile Homes Act 1983 relates
115, 116

Tenement management schemes
7, 35
Discharge of costs notices applying to owners of property
117

Home maintenance framework duty
9

Maintenance plans: areas
56

Charging orders
118

First-tier Tribunal and private rented housing panel: disqualification from membership
119, 120

Scottish Housing Regulator: transfer of assets following inquiries
121, 122, 123, 124

Registered social landlord disposals and restructuring
125, 129

Amendments already debated

Abolition of right to buy
With 12 – 42, 43, 44, 45

Notes on amendments in this group
Amendment 42 pre-empts amendments 43 and 44
Amendments 43 and 44 are direct alternatives

Short Scottish secure tenancy created on antisocial behaviour grounds
With 50 – 39, 40

Scottish starter tenancy
With 51 – 57

Enforcement of repairing standard
With 6 – 41

Rent reviews and rent increases – private rented housing
With 33 – 37

Security of tenure – private rented housing
With 34 – 38

Houses let for holiday purposes
With 55 – 58
INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

EXTRACT FROM THE MINUTES

15th Meeting, 2014 (Session 4)

Wednesday 21 May 2014

Present:
Jim Eadie
Mary Fee
Adam Ingram (Deputy Convener)
Alex Johnstone
James Kelly (Committee Substitute)
Gordon MacDonald
Maureen Watt (Convener)

Also present: Margaret Burgess and Patrick Harvie

Apologies were received from Mark Griffin.

Housing (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to without division: 60, 61, 63, 68, 69, 70, 71, 74, 75, 77, 78, 79, 80, 81, 82, 83, 84, 86, 88, 89, 90, 92, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115 and 116.

The following amendments were agreed to (by division)—
62 (For 5, Against 2, Abstentions 0)
66 (For 4, Against 3, Abstentions 0)
87 (For 5, Against 0, Abstentions 2)
91 (For 5, Against 2, Abstentions 0)
93 (For 5, Against 2, Abstentions 0)
94 (For 5, Against 2, Abstentions 0)
95 (For 5, Against 2, Abstentions 0).

The following amendments were disagreed to (by division)—
134 (For 3, Against 4, Abstentions 0)
64 (For 3, Against 4, Abstentions 0)
66A (For 3, Against 4, Abstentions 0)
135 (For 3, Against 4, Abstentions 0)
136 (For 3, Against 4, Abstentions 0)
73 (For 1, Against 6, Abstentions 0)
137 (For 2, Against 5, Abstentions 0)
138 (For 2, Against 5, Abstentions 0)
139 (For 2, Against 5, Abstentions 0)
140 (For 2, Against 5, Abstentions 0)
141 (For 2, Against 5, Abstentions 0)
142 (For 2, Against 5, Abstentions 0)
143 (For 2, Against 5, Abstentions 0)
144 (For 2, Against 5, Abstentions 0).
131 (For 2, Against 5, Abstentions 0)  
145 (For 2, Against 5, Abstentions 0)  
85 (For 3, Against 4, Abstentions 0).

The following amendments were moved and, no member having objected, withdrawn: 59, 67, 72, 76 and 146.

The following amendments were not moved: 65, 130, 132, 133, 147 and 148.

The following provisions were agreed to without amendment: sections 26, 27, 28, 32, 33, 34, 36, 37, 40, 42, 44, 45, 46, 47, 48, 49, 50, 53, 54, 59, 62, 66, 67, 68, 69 and 71.

The following provisions were agreed to as amended: sections 29, 30, 31, 35, 38, 39, 41, 43, 51, 52, 55, 56, 57, 58, 60, 61, 63, 64, 65 and 70.

The Committee ended consideration of the Bill for the day, amendment 116 having been disposed of.
The committee is required to indicate formally that it has considered and agreed each section and schedule in the bill, and I will put a question on each section at the appropriate point.

Section 26—Register of letting agents

The Convener: The first group is on access to register of letting agents. Amendment 59, in the name of Alex Johnstone, is the only amendment in the group.

Alex Johnstone (North East Scotland) (Con): The reason for my amendment is simply to ensure that those who wish to consult the register can do so without a charge being levied. Members will be aware that I am the sort of person who often likes to see charges put in place to ensure that measures are self-financing. However, if the register of letting agents—and much of the bill—is to function effectively, it will rely on access to the register being given to people who may be of limited means or who may be experiencing hard times. For that reason, it is important that the bill contains a clear statement that access to the register will be without a fee.

I move amendment 59.

The Minister for Housing and Welfare (Margaret Burgess): Amendment 59, as we have heard, is aimed at preventing ministers from imposing a charge for making publicly available the information that the register contains. There is no provision in the bill that allows Scottish ministers to charge a fee. The register will be an online register that can be accessed by all, and there will be no charge for that access. The amendment is therefore not required, and I invite Alex Johnstone to withdraw it.

Alex Johnstone: I thank the minister for stating clearly that access to the register will be free. That is on the public record, and I therefore seek to withdraw my amendment.

Amendment 59, by agreement, withdrawn.

Section 26 agreed to.

After section 26

The Convener: The next group is on exemption for solicitor letting agents. Amendment 134, in the name of Mary Fee, is the only amendment in the group.

Mary Fee (West Scotland) (Lab): Amendment 134 concerns solicitor letting agents. Many solicitors are letting agents and have been providing services as such for many years. Solicitor letting agents operate after notifying the council of the Law Society of Scotland and work in accordance with standards of practice that the Law Society issues. Any breach of those...
standards would mean that a solicitor would be guilty of professional misconduct and dealt with appropriately.

Solicitor letting agents are already registered with the council of the Law Society and are subject to its sanctions. My amendment would prevent dual regulation of solicitor letting agents. The Law Society takes the view that it is the body that should regulate and sanction its letting agents. I note the concerns that have been brought to my attention by Shelter and the Scottish Association of Landlords, and I would be happy to meet the minister to discuss how that sector could be recognised in registration.

I move amendment 134.

Alex Johnstone: I have looked at the situation that is likely to exist under the bill's current provisions, and there appears to be duplication in the case of solicitor letting agents. I am concerned that may generate additional cost in the industry, in addition to the confusion associated with dual registration for solicitor letting agents.

I am aware that a single system of registration has its advantages, and I would be keen to hear whether the minister has any ideas about how the system might be simplified and aligned so that it may be easier to impose without duplicating costs in some cases.

Margaret Burgess: The Scottish Government is committed to improving standards across the letting agent industry. The bill's provisions are intended to give tenants and landlords confidence in a consistent standard of service. The bill will also improve the framework for dealing with disputes through a single authority, the first-tier tribunal, underpinned by a code of practice. I am clear that there will be a register for all letting agents, including solicitors. I am also clear that all letting agents must comply with the code of practice. That will ensure consistency of standards across the industry.

I appreciate that solicitors have their own redress arrangements, but I am not convinced that they should be exempted from the regulations that are set out in the bill. I recognise that solicitors must be registered with the Law Society of Scotland. I have already informed the Law Society that I will consider what may be done for solicitors in the registration process to avoid unnecessary duplication in the fit-and-proper-person test. However, I am clear that all those in the industry must be on the register. That includes solicitors who operate as letting agents.

The Scottish Government will work with stakeholders to develop the draft code of practice before it goes out to full public consultation. The Law Society and other professional bodies will therefore have an opportunity to help shape it, taking account of their current requirements. If solicitors wish to operate as letting agents, they must be subject to the same rules as all other letting agents. That includes having the same code of practice and the same means of redress for consumers.

I am clear that there must be a consistent approach to regulating all letting agents. Amendment 134 would undermine that consistent approach, and it could result in confusion for landlords and tenants. Any complaint relating to a breach of the code of practice for letting agents should be taken to the first-tier tribunal.

The Scottish Government will continue to work with stakeholders to ensure that the regulation of letting agents works in a joined-up way with other regulatory regimes, minimising any potential overlap between the Scottish Legal Complaints Commission and the tribunal, for example.

The approach that will be taken will be comprehensive and as simple as possible for letting agents and clients.

I therefore ask Mary Fee to withdraw amendment 134.

Mary Fee: I listened carefully to the minister. Although I accept what she said about the consultation that is to be carried out, I do not feel that I have received the commitment that I was hoping to get regarding recognition of solicitor letting agents within the bill. I accept that there must be one code of practice, and that there must be one set of rules that everyone abides by. The Law Society of Scotland is simply looking for some form of recognition within the bill that it is a body that governs and rules its members and that it will comply with a code.

For those reasons, I press my amendment.

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Caryck, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 134 disagreed to.

Sections 27 and 28 agreed to.
Section 29—Decision on application

The Convener: The next group is on registered letting agents: training requirements. Amendment 60, in the name of the minister, is grouped with amendment 69.

Margaret Burgess: At present, letting agents are not required to have any training before they can operate a lettings business. During stage 1, representatives of the sector argued strongly that all letting agents should have a level of training before they can be registered. I have listened to the points that were made, and I agree that training is an important element of raising standards across the sector as a whole.

For that reason, amendment 60 provides that training is required as a condition of registration for letting agents. Amendment 60 confers a power on the Scottish ministers to specify, in regulations, the content and timing of the training and those persons who must undertake it. That will be done in consultation with key stakeholders.

That will provide ministers with flexibility to take account of the views of the sector, to ensure that the training is fit for purpose and to change the training requirements to suit future circumstances within the sector. The power will also allow ministers to require other persons who are carrying out letting agent work, such as front-line staff, to undertake training, should that be considered necessary.

10:15

Amendment 69 will enable a letting agent to be removed from the register if the agent no longer meets the training requirements. Amendments 60 and 69 will ensure that a letting agent must demonstrate knowledge of letting agency work in order to be registered, thereby providing an important additional assurance to consumers, in addition to the fit-and-proper-person test.

I move amendment 60.

Amendment 60 agreed to.

The Convener: The next group is on register of letting agents: giving of reasons for decisions. Amendment 61, in the name of Alex Johnstone, is grouped with amendment 71.

Alex Johnstone: We are getting on at tremendous speed, convener.

The purpose of amendments 61 and 71 is to ensure that anyone who is refused access to the register is made aware of the reasons for the refusal. It is reasonable to expect that such a person might want to consider their position and perhaps appeal against the decision, so it is important that the reasons for the refusal are made available at the earliest opportunity.

Amendments 61 and 71 would achieve that objective.

I move amendment 61.

Margaret Burgess: I thank Alex Johnstone for lodging amendments 61 and 71. Amendment 61 would require the Scottish ministers to provide a reason for their decision to refuse an application to the letting agent register or a renewal of application. Ministers would give reasons as a matter of good practice, but I accept that amendment 61 would ensure that that happened.

Amendment 71 seeks the same provision for ministers to provide reasons for their decision, but in the context of removing someone from the register.

The amendments ensure a consistent approach to the notification provisions, and I therefore support amendments 61 and 71.

I move amendment 61.

Margaret Burgess: Amendment 61 requires the Scottish ministers to provide a reason for their decision to refuse an application to the letting agent register or a renewal of application. Ministers would give reasons as a matter of good practice, but I accept that amendment 61 would ensure that that happened.

The amendments ensure a consistent approach to the notification provisions, and I therefore support amendments 61 and 71.

Section 29, as amended, agreed to.

After section 29

The Convener: The next group is on register of letting agents: time limit for determining application. Amendment 62, in the name of the minister, is the only amendment in the group.

Margaret Burgess: Amendment 62 requires Scottish ministers to make a decision on an application for registration or renewal to the register of letting agents within 12 months of receiving the application. Scottish ministers will have the power to apply to the first-tier tribunal to extend the deadline. However, in practice, a decision would be made within a much shorter timescale. If Scottish ministers do not make a decision within 12 months, that will be taken as tacit approval of the application.

A person whose application has been tacitly approved will stay on the register for only one year before being required to reapply. The Scottish ministers will still have the power to remove such a person from the register under section 35 if they are not a fit and proper person to carry out letting agency work.

I move amendment 62.

Mary Fee: You say that the decision should be made within 12 months but that the reality is that it will be made within a much shorter timescale. What timescale are you referring to?

Margaret Burgess: Every application has to be considered on its merits, and a renewal will very
often be much quicker than a new application. The provision ties in with other forms of registration—it is exactly the same procedure that we have for landlord registration and so on. The application should not just lie there without a decision being taken. The idea is that, if there is a lot of work to be done and information to be gathered in order for a decision to be made because the applicant did not provide sufficient information, there is still an onus on ministers to make that decision within a 12-month period. However, as is the case with the other forms of registration, only in unusual circumstances would it take anything close to 12 months.

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 62 agreed to.

Section 30—Fit and proper person considerations

The Convener: The next group is on register of letting agents: monitoring compliance. Amendment 63, in the name of the minister, is grouped with amendments 80 to 84.

Margaret Burgess: The committee’s stage 1 report identified some concerns about how the regulatory regime will tackle unregistered letting agents. During an evidence session at stage 1, letting agent representatives put forward a strong argument for further powers to be added to the enforcement measures that are contained in the bill. I have listened to the committee and to stakeholders, and I considered their views carefully before deciding to lodge the amendments in the group.

Amendment 80 enables the Scottish ministers to serve a notice requiring a letting agent to provide information. Scottish ministers will use the power to get evidence of whether a letting agent is complying with the code of practice or the registration requirements. That may include information relating to how a letting agent manages its client accounts or the types of fees that it may charge to tenants. However, it does not include information that it would be unlawful to disclose, for example where to do so would be a breach of confidentiality.

Amendment 81 allows Scottish ministers to authorise an inspection of a letting agent’s business premises in order to check compliance with the regulatory requirements. The power could be used in situations in which ministers suspect that an unregistered letting agent is operating illegally or when it would be more appropriate to inspect for compliance with the code of practice on site.

Amendment 82 provides that a court can grant a warrant for entry in certain circumstances, including when access has been refused. A court may grant a warrant where it considers that there are reasonable grounds to do so.

Amendment 83 sets out further detail about the carrying out of inspections, including—in particular—provision about giving notice and providing evidence of authorisation.

Amendment 84 sets out offences, with fines at level 3 on the standard scale, for non-compliance with certain aspects of the new powers to obtain information and inspection.

Finally, amendment 63 ensures that if a letting agent fails to comply with an inspection or a request to provide information, that failure can be taken into account in determining whether the agent is a fit and proper person.

There is overwhelming support for letting agent regulation. I am clear that the regulatory framework should be robust, that regulation should have teeth and that it will be enforced. I want to see a regulatory system that boosts the confidence of landlords and tenants and raises the professional standards of the industry. I believe that the amendments will help to achieve that.

I move amendment 63.

Amendment 63 agreed to.

Section 30, as amended, agreed to.

Section 31—Fit and proper person: criminal record certificate

The Convener: The next group is on fit and proper person: criminal record information. Amendment 64, in the name of Alex Johnstone, is grouped with amendments 65, 66 and 66A.

Alex Johnstone: The purpose of amendment 64 is to change “may” to “must”, which is a typical amendment that we see often enough. The function in this case is to ensure that the applicants for registration are required to provide a
Amendment 65 would have the effect of removing section 31(2).

However, the group also includes amendment 66, in the name of the minister, which will remove the section to which the previous two amendments would apply. As I expect amendment 66 to be agreed to, I have lodged amendment 66A, which is designed simply to make the change to the new provision that I proposed to make to the old, which is to remove “may” and replace it with “must” to ensure that the bill has the effect of requiring applicants to the register to provide a criminal record certificate.

I move amendment 64.

Margaret Burgess: I will speak to amendment 66, in my name, and respond to the amendments in Alex Johnstone’s name. Amendment 66 is a technical amendment to modify section 31, so that it better reflects operational practice. It will not change the intended effect of section 31, which aims to provide the Scottish ministers with access to information on criminal records where they have reasonable grounds to suspect that the information already provided to them under section 30(2) is false or has become inaccurate.

Amendments 64, 65 and 66A are intended to have the same effect, but the latter amendment would change my proposed replacement of section 31 rather than the existing section 31. The amendments would mean that the Scottish ministers “must” have regard to information that would normally be contained in a criminal record certificate where they have reasonable grounds to suspect that the information provided under section 30(2) is false or has become inaccurate.

Amendments 64, 65 and 66A are intended to have the same effect, but the latter amendment would change my proposed replacement of section 31 rather than the existing section 31. The amendments would mean that the Scottish ministers “must” have regard to information that would normally be contained in a criminal record certificate where they have reasonable grounds to suspect that the information provided under section 30(2) is false or has become inaccurate. I do not think that that change would create a proportionate process, as it would mean that ministers would have to look at criminal record information in every case, even in cases where the information provided under section 30(2) did not relate to a criminal offence.

Amendment 66, as currently worded, proposes that the Scottish ministers “may” have regard to that information. It is important to retain that discretion to enable the Scottish ministers to determine whether it is proportionate in the circumstances to have regard to what is highly sensitive information. Applicants will be required to provide information on any criminal offences when they make their application, and it is only in cases where it is thought later that that information was inaccurate or has changed that we would look to the provision that gives ministers discretion to look at an applicant’s full criminal record.

I ask the committee to support amendment 66 but not to support amendments 64, 65 or 66A, as they would create a disproportionate process.

Mary Fee: I ask the minister to clarify something relating to amendment 66, which would leave out section 31. Section 31(3) requires that, if a criminal record check has to be done, ministers have to wait until that check is back before proceeding, but amendment 66 will remove that provision, and I am a bit concerned about that. Why has the minister done that?

Margaret Burgess: Amendment 66 is a technical amendment about operational practices. Ministers are responsible for the system for disclosing criminal records, so ministers can get that information, if necessary, straight from Disclosure Scotland, rather than going by some circuitous route to get it. That is what we are saying. When someone applies, they have to disclose criminal information. If we think that it is not accurate, we can obtain criminal information direct from Disclosure Scotland. The amendment strengthens the provision and makes it more operationally effective than previously.

Alex Johnstone: Although it seems a bit strange, there is a strong likelihood that I will support amendment 66, in the name of the minister. However, for chronological consistency, I will press amendment 64.

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 64 disagreed to.

Amendment 65 not moved.

Amendment 66 moved—[Margaret Burgess].

Amendment 66A moved—[Alex Johnstone].

The Convener: The question is, that amendment 66A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 66A disagreed to.

10:30

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against
Fee, Mary (West Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 66 agreed to.

Section 31, as amended, agreed to.

Section 32—Letting agent registration number

The Convener: The next group is on letting agent registration number. Amendment 67, in the name of Alex Johnstone, is the only amendment in the group.

Alex Johnstone: Amendment 67 would make it obligatory to include the letting agent’s registration number in all documentation. There is no practical reason why the registration number cannot appear in all the agent’s documentation, and the requirement should be obligatory.

I move amendment 67.

Margaret Burgess: The bill requires letting agents to “take all reasonable steps” to include their registration number in communications with landlords and tenants and in adverts and other publications. That represents a stringent test for letting agents to adhere to. Failure to use the registration number contravenes the fit-and-proper-person requirements and could lead to the person’s registration being revoked. Amendment 67 seeks to remove the qualification. It would mean that any failure not to include the registration number in a document, advert or publication would become part of the fit-and-proper-person consideration. That would include situations in which, for example, the number had not been included because of an information technology failure or human error. I want a robust and effective regime in place, but the amendment seems a bit draconian. I consider that the qualification provides for a more equitable approach and should be left in place. I invite Alex Johnstone to withdraw his amendment.

Alex Johnstone: The brief discussion that we have had leaves a considerable gap between my position and that of the minister, and that still needs to be addressed. I am content to seek leave to withdraw amendment 67, but I reserve the right to bring back an amendment at stage 3 that seeks to fit into the gap that our discussion has quite obviously left open.

Amendment 67, by agreement, withdrawn.

Section 32 agreed to.

Section 33 agreed to.

Section 34—Duration of registration

The Convener: The next group is on duration of letting agent registration. Amendment 135, in the name of Mary Fee, is grouped with amendment 136.

Mary Fee: Amendments 135 and 136 would change the duration of registration from three years to one, the result of which would be to tighten up the sector. The proposed change also sits well with the minister’s comments earlier this morning on the length of registration.

We need a well-regulated private rented sector if those in the sector are to have confidence in it. Annual registration would ensure that we have a well-run, well-managed and well-regulated sector. Any breaches would be caught quickly and the potential for poor practice would be minimal, which would strengthen the sector and demonstrate good governance.

I move amendment 135.

Margaret Burgess: The bill provides that the duration of a letting agent’s period of registration should be three years. Amendments 135 and 136 seek to reduce the registration period to one year. As it stands, the Scottish ministers are able to consider a breach of the fit-and-proper-person test or of the code of practice at any time during the three-year period of registration. Section 35 provides the Scottish ministers with the power to revoke a registration if the agent is no longer a fit and proper person. I consider the three-year registration cycle to be a proportionate approach that safeguards clients without placing an onerous burden on the industry. I therefore invite Mary Fee
to withdraw amendment 135 and not to move amendment 136.

Mary Fee: I note the minister’s comments, but I reiterate that we need a well-run, well-maintained and well-governed private rented sector if the people within it are to have confidence in the sector. Amendment 135 would ensure that that would happen, so I will press it.

The Convener: The question is, that amendment 135 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 135 disagreed to.

Amendment 136 moved—[Mary Fee].

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 136 disagreed to.

Section 35, as amended, agreed to.

After section 35

The Convener: The next group is on register of letting agents: cancellation of registration on request. Amendment 72, in the name of Alex Johnstone, is the only amendment in the group.

Alex Johnstone: The bill lacks provision for voluntary removal from the register of letting agents. A person might wish to be removed from the register for a number of reasons, including change of career, retirement and sale of the business. Amendment 72 would provide that the Scottish ministers could remove a person from the register at their request if they were satisfied that the letting agent had made adequate arrangements with respect to the business in hand and it was otherwise appropriate to do so.

I move amendment 72.

Margaret Burgess: Amendment 72 would provide a mechanism for a letting agent to apply to the Scottish ministers to terminate a registration; otherwise, an agent’s registration will lapse after three years if no application to renew is made. Amendment 72 would require the Scottish ministers to grant termination if they were satisfied that the agent had made adequate arrangements for their letting agency work. I am sympathetic to the aim of amendment 72. However, it is important to get it right, in light of the significant consequences of not being registered, and to ensure the robustness of the register.

I would like to take time to consider the technical points and to return at stage 3 with an amendment addressing the issue that I am confident will work. I hope that Alex Johnstone will take that as a sufficient undertaking for him to withdraw amendment 72.

Alex Johnstone: I hear what the minister has said, and I am confident that, if I seek leave to withdraw the amendment, the minister will produce an alternative, or equivalent, proposal at stage 3.

Amendment 72, by agreement, withdrawn.

Sections 36 and 37 agreed to.
Section 38—No payment for letting agency work where refusal or removal

The Convener: The next group is on letting agency work without registration. Amendment 73, in the name of Alex Johnstone, is grouped with amendments 74 and 75.

Alex Johnstone: Amendment 73 would void all contracts for letting agency work that are concluded between a landlord and a letting agent where the letting agent is refused access to, or is removed from, the register. The bill will prevent a proposed or former letting agent from recovering costs or charges that are incurred in respect of letting agency work that is carried out after a person has been refused registration or has been removed from the register. Those penalties do not affect the existence of a contract or letting agency work.

Amendment 73 would impose a real sanction on the proposed or former letting agent by reducing the contract by making it void. No contractual claims could then be made.

I move amendment 73.

Margaret Burgess: I understand the wish to deter unregistered letting agents from continuing to operate after the date of their deregistration. However, I have some concerns about amendment 73. First, although it might seem to be appropriate to make contracts void on the basis that the person should not be carrying out letting agency work, that could have unintended adverse consequences for third parties—for example, where a letting agent has entered into a contract with a landlord, after the relevant date, to provide letting agency services. If a letting agent then contracts a third party to undertake maintenance or cleaning of the property, that could have adverse consequences for the third party’s contract, and it may affect the recouping of legitimate costs for that work.

I reassure the committee that there are already provisions for dealing with unregistered letting agents who continue to operate; section 39 makes it a criminal offence to do so. Amendment 75, in my name, seeks to increase the level of the fine from level 5 on the standard scale to a maximum of £50,000.

I turn to my amendments in the group. Amendment 74 will amend section 38, which provides that letting agents are not able to recover costs where they have been refused entry to or removed from the register. The amendment makes it clear that costs that are incurred by a letting agent before they are removed from the register are still recoverable. That will allow letting agents, including those who allow their registration to lapse for a legitimate reason, such as their retiring from the industry, to recover costs that are still owed to them.

Amendment 75 seeks to increase to a maximum of £50,000 the level of fine for the offence of operating as a letting agent without registration. The amendment will provide a significant deterrent to that.

Alex Johnstone: I will press my amendment 73, but I look forward to hearing what the minister says on the subject at stage 3.

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnstone, Alex (North East Scotland) (Con)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kelly, James (Rutherglen) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 73 disagreed to.

10:45
Amendment 74 moved—[Margaret Burgess]—and agreed to.

Section 38, as amended, agreed to.

Section 39—Offence of operating as a letting agent without registration

Amendment 75 moved—[Margaret Burgess]—and agreed to.

Section 39, as amended, agreed to.

Section 40 agreed to.

Section 41—Letting Agent Code of Practice

The Convener: The next group is on letting agent code of practice. Amendment 76, in the
name of Alex Johnstone, is grouped with amendments 77, 137 to 144, 130, 126 and 127.

Alex Johnstone: Amendment 76 would replace a “may” with a “must”. Section 41 will give Scottish ministers discretion on whether they issue a code of practice for letting agents. The code is key to the scheme of regulation under the bill, and ministers should therefore not have the option not to issue such a code. Amendment 76 seeks to amend section 41 by removing that discretion.

I move amendment 76.

Margaret Burgess: The bill currently provides that “The Scottish ministers may, by regulations, set out a code of practice” for letting agents. Amendment 76 would place a duty on Scottish ministers to do so.

Amendment 126, in my name, will require the first code of practice, and replacement codes, to be subject to affirmative procedure. If the amendment is accepted, Parliament will be required to approve regulations that set out the first and any future replacement code, before the regulations can be made. The Scottish ministers will not be able to make those regulations without parliamentary approval, so to put on ministers the duty that amendment 76 proposes would pre-empt Parliament’s ability to agree, or not to agree, the code. Therefore, it would not be appropriate to make the change. On that basis, I invite Alex Johnstone to seek to withdraw amendment 76.

The bill provides for ministers to develop a code of practice on professional standards, in consultation with stakeholders. At stage 1, Parliament called for further detail of what is to be included in the code of practice to be put in the text of the bill. Amendment 77 responds to that request and ensures that the important matters of client money protection and professional indemnity arrangements will be included in the code.

The bill provides that the code of practice will be subject to negative procedure. The Delegated Powers and Law Reform Committee expressed concerns about that; it considers that affirmative procedure would be a more suitable level of parliamentary scrutiny, given the significant legal consequences of failure to comply with the code. I have reconsidered the issue, and amendment 126 will apply affirmative procedure to the first code and to any replacement code. Any adjustments to the code will be subject to negative procedure. I believe that that is a balanced approach. Amendment 77 is therefore intended to reassure Parliament by providing in the text of the bill more detail on what the code will cover.

Amendment 126 will also allow for an increased level of parliamentary scrutiny of the first, and any future, code. Patrick Harvie’s amendment 127 also aims to ensure that the code of practice for letting agents will be subject to affirmative procedure. That would mean that any change to the code, no matter how minor, would be subject to affirmative procedure. Amendment 126, in my name, provides for the first code and any full revision of the code to be subject to affirmative procedure, so I invite Patrick Harvie not to move amendment 127, in favour of the more balanced approach.

I turn to amendment 130, which is in the name of Patrick Harvie. I share his wish to see progress being made to develop the code of practice, but I want to ensure that the code is drafted with proper consideration of its aims, the desired outcomes and how it will be enforced. There is no question that there will be any delay on my part in implementing the code. It is, however, important that we allow sufficient time to enable the Scottish Government to consult fully the industry and the public.

Furthermore, the code cannot be finalised until the associated tribunals legislation has been commenced. The Tribunals (Scotland) Act 2014 was recently enacted by Parliament. Tribunal reform is progressing and the first-tier tribunal is expected to be up and running by 2016.

I wish to reassure Mr Harvie about my commitment to progressing development of the code, which I expect to be laid before Parliament within 18 months of the bill’s enactment. I ask him not to move amendment 130, because it does not allow sufficient time for the practicalities of full public consultation.

I turn to amendments 137, 138, 139 and 143. I have given careful consideration to the amendments because, like Mr Harvie, I too have heard of the many and varied practices of letting agents, and of the adverse effect that they can have on tenants. That is why we are proposing regulation of the letting agent industry.

However, matters such as rent, deposits, providing documentation and compliance with the repairing standard are legal responsibilities of the landlord. There are already a number of legal requirements relating to such matters. For example, the Tenancy Deposit Schemes (Scotland) Regulations 2011 set out what the legal obligations on a landlord are if they choose to take a deposit. Letting agents need to comply with the law when managing a property and acting on behalf of a landlord. That is why it is important that the code of practice will set out the standards that both tenants and landlords should expect, and why it is important that letting agents can demonstrate that they have the necessary training for registration.
Let me make it clear that I want the regime to be effective. I am willing to consider what people have to say on the important issues that are covered by the amendments in the group and their views on what should be included in the code of practice, but I think that the right time to do that will be when we consult on the draft code. It will be subject to public consultation, and because it is to be dealt with using affirmative procedure, the committee will have an opportunity to consider the detail of the code once it is drafted. I therefore cannot support amendments 137, 138, 139 and 143.

I turn to amendments 140, 141 and 142. I sympathise with people who are struggling to find affordable rented property while they are in receipt of state benefits, and with people whose immigration status is uncertain. However, there are a number of practical difficulties with the amendments. It is ultimately for the landlord, not the letting agent, to decide to whom they will let their property, although the letting agent may provide advice and support to the landlord. I am not clear about how amendment 140 could be enforced, because most landlords would want to check that the tenant could afford the rent.

On amendment 141, let me be clear that I disapprove of the use of the term “no DSS”. Discrimination and the other matters that Patrick Harvie raises in his amendments will be taken up by the Scottish Government with the letting agent industry through the process of developing the code of practice. The Scottish Government will encourage equal opportunities throughout the industry, in order to address the matters that Patrick Harvie raises. I therefore cannot support amendments 140, 141 and 142.

Amendment 144, in the name of Mary Fee, proposes a specific reference to the need for a letting agent to "comply with the Letting Agent Code of Practice."

However, the bill already provides for compliance with the code of practice to be a key aspect of the fit-and-proper-person test for registration. The code will be enforced by application to a tribunal, and decisions found against a letting agency will be reported back to ministers.

Like Mary Fee, and as I have already noted with reference to Patrick Harvie’s amendments, I know of the many and varied practices of letting agents who try to avoid protecting tenancy deposits with one of the three approved schemes. The tenancy deposit scheme has its own enforcement requirements, so proposed paragraph (a) in amendment 144 is unnecessary. Unintentionally, that proposed provision could also be problematic if a landlord wanted to receive the deposit from the letting agent so that the landlord could put it into a scheme, which is permitted.

With regard to proposed paragraph (b) in amendment 144, I am well aware of letting agents who have charged premiums and of the effect that those charges can have on tenants. That is why we have already clarified the law to make crystal clear what is allowed.

On proposed paragraphs (c) and (d) in amendment 144, I sympathise with people who are struggling to find affordable rented property while they are in receipt of state benefits, especially families. All Scottish Government policies reflect Scottish values of fairness and opportunity, and promote equality and social cohesion. As I said in my response to Patrick Harvie’s amendments 140 to 142, the Scottish Government will discuss equality issues with the letting agents industry through the process of developing the code of practice. We will take that seriously. We encourage the discussion of equality issues, which will be part of the code of practice.

I invite Mary Fee not to move her amendment.

Patrick Harvie (Glasgow) (Green): I begin by acknowledging the extensive treatment of the amendments in this group by the minister.

On what we might call the procedural aspects—Alex Johnstone’s seeking a requirement that ministers make regulations setting out the code, and the minister’s objection that that is not compatible with affirmative procedure—I understand the minister’s argument, but I suggest that there should be, at the very least, a requirement that regulations setting out the code be laid before Parliament within a clearly defined period. I hope that the Government is comfortable with that, to some extent. It has been said by the minister that 18 months might be a reasonable expectation. I would have no objection to lodging an amendment at stage 3 that would set out more or less what my amendment 130 suggests, but which would set out a period of 18 months after royal assent, rather than a year. Accordingly, I will not move amendment 130.

Similarly, given the minister’s decision to apply affirmative procedure for the first code and revisions to it, amendment 127 will not be necessary, either.

My other amendments in the group seek to explore what the code will cover. It has been clear, during the course of the committee’s discussions, that the content of the code is going to be crucial to whether any of the bill will have the effect that is being sought. As the minister said, several of my amendments address matters that are legal requirements, or matters in relation to which some legal requirements exist. My intention in lodging amendments that engage with those issues is
simply to explore whether the code of practice will be a relevant instrument in a situation in which a letting agent has not complied with a legal requirement.

For example, we know of several workarounds—including some legal ones—whereby landlords can avoid complying with the intention of the deposit protection scheme. I want to ensure that, when tenants find themselves in that situation—at the mercy of the kind of letting agents whom most responsible letting agents want to see being challenged—they know that they can use the code of practice as their means of redress. The amendments on rent levels, deposits and the provision of information will help to ensure clarity that the code of practice will be relevant in those circumstances.

I am sure that members will acknowledge that, with regard to repairs, people often start off asking for repairs to be done and then eventually stop complaining about it because they figure out that they will just have to put up with basic repairs not being done. That applies to landlords as well as letting agents, but as we have before us a bill that will enable us to place requirements on letting agents, I suggest that we can make a start by setting out a clear time limit within which repairs must be done.

11:00

On the three amendments relating to discrimination—amendments 140 to 142—it is regrettable that the minister focused on the use of the term “no DSS”. I hope that we would all like use of the term to be ended, but more important than use of the term is the practice. If people stop using the term but continue the practice of discriminating against benefits recipients, we will not be much further forward.

I hope that the minister will give some indication that those matters will be addressed in the code when it is laid before Parliament. Discriminating against people purely because they receive benefits, not because they cannot afford the service that they seek to buy, is completely unreasonable and destructive to the social cohesion to which the Government has a commitment.

I will say something about amendment 142 on discrimination on the ground of immigration status. If the minister has a further chance to respond—I know that that is at your discretion, convener—I encourage her to say something more specific about that amendment.

Members will be aware of the statement of concern about the impact of the Immigration Act 2014 on housing as well as health, which are devolved matters. The United Kingdom Government has passed immigration legislation that requires landlords to check immigration status.

A wide range of organisations—including the Scottish Association of Landlords and Shelter—and individuals have set out their serious concerns not only that it is inappropriate in principle for that requirement to be placed on the private rented sector, but that the measure has the potential to increase discrimination and inequality in our society. In particular, it potentially disadvantages prospective legitimate tenants whose status is unclear, those who are not able to produce required documents quickly, and people who are members of visible minority communities who seek accommodation.

The signatories of that statement said:

“Rather than targeting so-called ‘illegal’ migrants the tenant checking scheme may drive both those with irregular status and prospective legitimate tenants with unclear status or documents to unscrupulous landlords, boosting the rogue market”.

That is the opposite of what the bill is intended to achieve and it may be the consequence of the UK Government’s legislation, which clearly impacts on the devolved policy area of housing. If the minister could be encouraged to respond not only to my amendment 142 but to the concerns that have been set out by the wide range of organisations that are working in the private rented sector in Scotland that signed the statement, that would be helpful.

Mary Fee: Amendment 144 in my name relates to the code of practice. Working with Citizens Advice Scotland, I have drafted the amendment to clarify issues that I have previously acknowledged in relation to the introduction of a duty that any “person carrying out letting agency work must comply with the Letting Agent Code of Practice.”

Amendment 144 would also ensure that anyone who is acting as a letting agent must comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011 and section 120 of the Housing (Scotland) Act 2006.

Proposed paragraph (d) of the second subsection that my amendment would insert into section 41 would prohibit letting agents from discriminating against anyone receiving state benefits under the acts that are listed in the paragraph, and from discriminating against anyone who is responsible for a child. Citizens Advice Scotland has briefed me that it has cases in which potential tenants have been discriminated against because they have children or are in receipt of housing benefit.

I listened with interest to the minister’s earlier comments. However, amendment 144 would strengthen the bill and ensure that the code of
practice will be clear and unambiguous. More important is that it would ensure compliance.

James Kelly (Rutherglen) (Lab): There has been much discussion about the code of practice throughout consideration of the bill. Many people feel that it is important that the code of practice is meaningful and has teeth if it is to be effective. Mary Fee’s amendment 144, which would establish absolute compliance with the code, would bring that into force.

Amendments 137 to 139 and 143, in the name of Patrick Harvie, deal with practical issues that we have discussed, and specify certain requirements in relation to advance rents, deposit levels, the requirement to provide a tenant with a standard tenancy, and repairs. Those changes would be meaningful and would make a difference.

Similarly, amendments 140 to 142, in the name of Patrick Harvie, address the issue of discrimination and set out specific provisions to ensure that people would not be discriminated against. The minister has expressed sympathy with many of the issues that the amendments raise. However, if we actually mean to make a difference in those areas, the code of practice must be more specific. The amendments seek to address some of the practicalities and would make a real difference.

Margaret Burgess: I will make a couple of comments in response to issues that Patrick Harvie raised. I anticipate that most of those issues will be part of the code of practice, which will go through affirmative procedure, which will give stakeholders, the public and the committee the opportunity to have their views heard.

As the committee is aware, immigration is a reserved issue, but the Scottish Government does not agree with the UK Government’s position that landlords must check the immigration status of tenants. We have made that very clear to the UK Government. When the code of practice is developed and consulted on, all such matters will be taken into account, as will our position on the issue. We cannot break the law, but we have made it clear to the UK Government that we do not think that landlords should have to do that, and we will continue to make that argument. We anticipate that the code of practice will cover areas of discrimination and equality legislation, and the other issues that Patrick Harvie raised.

In response to Mary Fee’s point, there is already provision in the bill to ensure that someone who breaches the code will lose their registration or be fined a considerable sum of money. What she proposes would not add to that.

I agree with James Kelly that the code of practice is important; it is right that we consult properly on what will be in it. I took on board the earlier concerns, so we will take forward the code and any subsequent replacement code through affirmative procedure.

Alex Johnstone: It seems like quite a few minutes ago now, but I listened with some interest to the minister’s response to amendment 76 in my name. I accept that, because there is a procedural issue, it is appropriate for me to seek leave to withdraw the amendment at this stage, with a view to coming back and having another crack at it at stage 3. So, I seek leave to withdraw amendment 76.

Amendment 76, by agreement, withdrawn.

Amendment 77 moved—[Margaret Burgess]—and agreed to.

Amendment 137 moved—[Patrick Harvie].

The Convener: The question is, that amendment 137 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 137 disagreed to.

Amendments 138 to 143 moved—[Patrick Harvie].

The Convener: The question is, that amendment 138 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 138 disagreed to.
The Convener: The question is, that amendment 139 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 139 disagreed to.

The Convener: The question is, that amendment 140 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 140 disagreed to.

The Convener: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 141 disagreed to.

The Convener: The question is, that amendment 142 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 142 disagreed to.

The Convener: The question is, that amendment 143 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 143 disagreed to.

Amendment 144 moved—[Mary Fee].

The Convener: The question is, that amendment 144 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 144 disagreed to.

Amendment 130 not moved.

Section 41, as amended, agreed to.
Section 42 agreed to.

Section 43—Applications to First-tier Tribunal to enforce code of practice

The Convener: The next group is on enforcement of code of practice. Amendment 131, in the name of Patrick Harvie, is grouped with amendments 78, 132, 79, 133 and 145.

11:15

Patrick Harvie: The amendments in my name in this group are somewhat simpler than the previous ones, as members will be glad to know.

My proposals have two basic objectives. One is captured in both amendment 131 and amendment 132, which is to ensure that a tenant who wishes to apply to the first-tier tribunal for a determination that their letting agent has failed to comply with the code of practice can authorise someone to do that on their behalf. I do not specify who that might be, but we can envisage a range of voluntary organisations or support services that might wish to take on that role.

There will clearly be tenants who are assertive enough and clear enough in their own minds to raise a complaint about their letting agent failing to comply with the code, but there will be others who do not feel competent enough or feel that they need a bit of help, and it seems reasonable that that initial application could be made by somebody on their behalf who can work with them.

I hope that the Government will be willing to accept that.

Amendment 133 is a little more substantial. It suggests that, when a letting agent has been found in breach of the code and has an enforcement order against them, the tenant will not be due to pay any rent for the period until the enforcement order is complied with. It may be that the Government is sympathetic to the intention of my amendment but would like to apply it in different circumstances, or limit its application, but I hope that the minister will acknowledge the argument that, when there has been a serious breach of the code and when an enforcement order has been made, for the time between that enforcement order and the order being complied with, the letting agent should not be under any expectation that they can charge rent for that period to a tenant who is not having a service delivered to the standard that we all hope to set.

I hope that the minister will respond positively to both my suggestions.

I move amendment 131.

Margaret Burgess: I begin by responding to amendments 131 and 132, in the name of Patrick Harvie.

The bill already provides for 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. I know that there may be cases in which a tenant needs some support to make an application to the tribunal, but amendments 131 and 132 propose that tenants should be able to authorise third parties to act for them in that regard, and I do not believe that putting that provision in the bill is necessary.

The arrangements for representation would be a matter for the tribunal’s rules in due course, and I made it clear at the previous meeting that there would be an expectation that people could be accompanied at a tribunal. There is nothing in the bill as drafted to prevent a tenant from seeking support from a third party in assisting them with progressing a complaint. I therefore ask Patrick Harvie to withdraw amendment 131 and not to move amendment 132.

Amendments 78 and 79, in my name, seek to expand the provision in section 43 to allow the Scottish ministers to make an application to the first-tier tribunal. That will strengthen the enforcement provisions in the bill by enabling the Scottish ministers to act on information obtained either through their own compliance checks or from information received from third parties, including tenants.

I have some concerns about amendment 133, in the name of Patrick Harvie. The stopping of rent until the letting agent complies with the enforcement order could primarily penalise the landlord, rather than the agent. I accept Patrick Harvie’s intention in lodging the amendment, but we are dealing here with the letting agent and the code of practice. If the applicant is the tenant and they are suffering, or have suffered, a loss as a result of the letting agent’s failure to comply with the code of practice, the tribunal could make an order under section 43(8)(b) to provide compensation to the tenant.

There are other enforcement measures that the Scottish ministers can take if a letting agent does not comply with an enforcement order that would have a greater impact on the letting agent than the stopping of rent payments would. The tribunal is able to inform the Scottish ministers of the failure to comply, which could result in the letting agent’s registration being revoked. In addition, it is an offence to fail to comply with an enforcement order, and that could result in a fine upon conviction. On the basis that there are other penalties in the bill that rightly target the letting agent rather than the landlord, I therefore invite Patrick Harvie not to move amendment 133.

I turn to amendment 145. In the context of the fit-and-proper-person test, the Scottish ministers currently have discretion over whether they wish to
take into account a contravention of an enforcement order and are not required to do so. However, amendment 145 seeks to compel the Scottish ministers to deregister a letting agent who commits an offence by not complying with an enforcement order.

Any letting agent that fails to comply with an enforcement order without reasonable excuse commits an offence under section 46. The Scottish ministers will be able to deregister a letting agent in those circumstances. Through the regulations, we will take a robust line with letting agents to promote compliance, but ministers should retain discretion on this matter to ensure that there is a proportionate response that is dependent on the circumstances of each case.

Amendment 145 goes on to require the Scottish ministers to note the deregistration in the register and to make provision thereafter for the consequences of that deregistration for tenants of properties managed by the agent. However, it is more appropriate for the landlord to make those arrangements rather than the Scottish ministers.

I appreciate that Mary Fee wants to ensure that there is a robust consequence for failing to comply with an enforcement order, but the bill already provides for a robust approach. I therefore ask Mary Fee not to move her amendment.

Mary Fee: The convener will be glad to hear that my comments on my amendment 145 will be brief. The amendment would provide extra protection for potential victims of rogue letting agents who may be acting outside the code. It provides that anyone found to be acting in such a manner must be removed from the register by the Scottish ministers and that that must be noted on the register.

The amendment would also allow for ministers to make provision for tenants in properties where an agent has been removed from the register, because it is currently unclear what the circumstances would be if that were to happen.

I heard the minister’s comments about enforcement but come back to my previous point, which is that we must make the sector as strong as possible. The rules surrounding regulation have to be clear and unambiguous and my amendment would strengthen the bill. I also support the other amendments in the group.

Patrick Harvie: On amendment 133 about the stopping of rent, I understand the minister’s concern that, in effect, what looks like a penalty could be passed on to the landlord rather than borne by the letting agent, but it seems to me that that is a matter between the landlord and the letting agent. If the agreement between a landlord and a letting agent specifies that the letting agent will pay the landlord for every month that it manages the property, the stopping of rent would fall to the letting agent and not to the landlord.

The priority should surely be to ensure that tenants who are not being given the service that they have a right to expect should not have to pay for it during that period. However, I am content not to move the amendment on the basis that I will revise it and come to the chamber at stage 3 with an amendment that tries to take account of the concerns that the minister has expressed.

I am a wee bit disappointed that the Government does not accept the relatively small change proposed in amendments 131 and 132. Enabling tenants to authorise someone else to make an application to the tribunal on their behalf goes further than simply allowing somebody to be accompanied or supported during that process. Some people will, for whatever reason, find it beyond their level of confidence to make an application, but somebody else would be able to do it for them.

I have been aware of situations in Glasgow in which a number of students have been treated badly by the same letting agents in similar circumstances but, because they have been due to move on shortly, they have not thought that it is worth the hassle or the time to make any kind of formal complaint. However, if the amendments were passed, a third party, such as the student welfare rights service, could make an application on behalf of all of the affected students. That would not only give the application greater weight with the tribunal but ensure that the treatment of all tenants in that circumstance—rather than just that of a small minority who are willing to raise the matter themselves—can be addressed in the application.

In short, I will not move amendment 133, but I will seek to return to the issue at stage 3. For the moment, I will press amendment 131.

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.
Amendment 131 disagreed to.
Amendment 78 moved—[Margaret Burgess]—and agreed to.
Amendment 132 not moved.
Amendment 79 moved—[Margaret Burgess]—and agreed to.
Amendment 133 not moved.

Section 43, as amended, agreed to.
Sections 44 and 45 agreed to.

Section 46—Enforcement orders: offence

Amendment 145 moved—[Mary Fee].
The Convener: The question is, that amendment 145 be agreed to. Are we agreed?

Members: No.
The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.
Amendment 145 disagreed to.
Section 46 agreed to.

After section 46
Amendments 80 to 84 moved—[Margaret Burgess]—and agreed to.
Sections 47 to 50 agreed to.

Section 51—Meaning of letting agency work

The Convener: The next group is on meaning of letting agency work. Amendment 85, in the name of Alex Johnstone, is grouped with amendments 87 and 128.

Alex Johnstone: Sometimes, when you are reading a bill section by section, in the appropriate order, something leaps out at you that just does not seem right. Amendment 85 is inspired by such an experience.

Amendment 85 would leave out section 51(1)(b). Section 51 provides the definition of letting agency work. Section 51(1)(a) is clear when it describes letting agency work as

"things done by a person in the course of that person's business in response to relevant instructions" so that a landlord can

"enter into a lease or occupancy arrangement".

However, section 51(1)(b) is more problematic because it includes in letting agency work activities such as

"repairing, maintaining, improving, insuring or otherwise managing a house which is ... subject to a lease".

Such a range of activity is not really letting agency work and would bring many people into the regulatory net who should not be included, such as roofers, painters, decorators, builders, insurance companies, house factors and possibly many others. Accordingly, I propose that we remove subsection (1)(b) from section 51 to clarify that. I look forward to hearing how the minister interprets it.

I move amendment 85.

Margaret Burgess: Amendment 87 adjusts the existing power in section 51(3) to change the meaning of "letting agency work" through secondary legislation. It makes it clear that the Scottish ministers can specify that work carried out by certain bodies or work under certain types of schemes is to be excluded from the regulatory regime. The power to exempt schemes is limited to schemes that are for the purpose of helping people to secure tenancies in the private rented sector and which are operated by a body on a not-for-profit basis.

Such schemes may include rent deposit guarantee schemes, which carry out activities such as facilitating lettings—which is "letting agency work" within the meaning of part 4. The schemes are not intended to be brought under the letting agent regulatory regime and so that power to exempt is needed.

The power to specify bodies is intended to allow the Scottish ministers the option of excluding organisations such as not-for-profit bodies whose letting agency work includes activities other than those relating to rent deposit schemes. The powers are required to allow ministers to respond flexibly to any future changes in the letting agency sector, and amendment 128 will enable provision of that kind to be made in an order subject to negative procedure.

An order that otherwise modifies the meaning of letting agency work will continue to be subject to the affirmative procedure as before.

I turn to amendment 85 from Alex Johnstone. I am aware that, at stage 1, the Law Society raised some concerns about the definition of letting
agency work in section 51. I have considered those concerns, and I am satisfied that the definition captures all the activity that should be regulated. Alex Johnstone talked about roofers, slaters and various workmen, but the key factor is that that work has to be done in the managing of the property. It is not about someone doing work as another contractor; it is work that is involved with the managing of the property, and that is in the bill as it stands.

Amendment 85 would remove on-going property management functions from the meaning of letting agency work when a property is being managed. I consider that those functions form a core part of the remit of many letting agents. The amendment could narrow the coverage of the regulatory regime, and therefore I cannot support it.

Accordingly, I invite Alex Johnstone to withdraw amendment 85, and I ask the committee to support amendments 87 and 128.

Alex Johnstone: I press amendment 85. I have absolute faith in the intent of the minister, but I am not 100 per cent confident that the wording that appears has the effect that the minister intends. As a consequence, we still need to clarify the issue. I therefore press my amendment and will continue to inquire into the matter before stage 3.

The Convener: The question is, that amendment 85 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 85 disagreed to.

Amendment 86 moved—[Margaret Burgess]—and agreed to.

Amendment 87 moved—[Margaret Burgess].

The Convener: The question is, that amendment 87 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Abstentions
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

The Convener: The result of the division is: For 5, Against 0, Abstentions 2.

Amendment 87 agreed to.

Section 51, as amended, agreed to.

Section 52—Interpretation of Part 4

Amendments 88 and 89 moved—[Margaret Burgess]—and agreed to.

Section 52, as amended, agreed to.

Sections 53 and 54 agreed to.

11:36
Meeting suspended.

11:45
On resuming—

Section 55—Issue, renewal, transfer and transmission of a Part 1A site licence

The Convener: The next group is on part 1A site licence: site inspection before issue or renewal. Amendment 146, in the name of Mary Fee, is the only amendment in the group.

Mary Fee: Amendment 146, in my name, is required to protect tenants and residents on mobile home sites. Licences must not be approved if concerns or complaints have been raised. To ensure that unscrupulous site owners do not continue to operate, the local authority must make an inspection to assess whether any issues are being addressed or have been resolved. Citizens Advice Scotland has briefed in favour of amendment 146, as clients have approached it over issues that could be tackled under the amendment. The amendment would improve governance in the sector and would provide additional safeguards for residents.

I move amendment 146.

Margaret Burgess: Amendment 146 seeks to impose further requirements on local authorities as part of their duties under the new licensing regime. I agree that local authorities should be thorough when considering whether a licence should be granted and that it is important for site visits to be carried out. However, I want to leave local authorities with some flexibility to focus resources on the most problematic sites. That is why I have lodged an amendment that will enable ministers to
issue guidance to which local authorities will have to have regard in carrying out their functions under the new licensing regime in the bill.

The Scottish Government will develop draft guidance in consultation with all stakeholders. The guidance will be able to cover site visits, including the issue of when they should be carried out, and to set out various circumstances in which a local authority is expected to inspect a site. I believe that that strikes the right balance between flexibility and the clear expectation that a site visit will be necessary in certain circumstances.

I reassure Mary Fee that I am keen to ensure that the regime is robust and that it is effectively enforced by local authorities. I believe that the guidance route will be effective. However, section 60 will allow ministers to make regulations on the procedure that is to be followed when licensing a site, and those regulations could include a requirement for local authorities to visit sites as part of the licensing process.

I understand the thinking behind amendment 146, but it would require a local authority to visit a site if there had been a single complaint and even if the local authority had already visited the site in relation to that complaint and found it to be without merit. I therefore believe that amendment 146 is not necessary, and I recommend that it be resisted.

Mary Fee: I thank the minister for her comments. In light of her points about developing guidance on when site visits should be carried out and considering the responsibilities that are put on local authorities, I am happy to seek to withdraw amendment 146, and I look forward to the guidance being published.

Amendment 146, by agreement, withdrawn.

The Convener: The next group is on part 1A site licence: giving of reasons for local authority decision. Amendment 90, in the name of the minister, is grouped with amendments 92, 96 and 97.

Margaret Burgess: During the Delegated Powers and Law Reform Committee’s consideration of the bill, it highlighted the importance of a local authority providing reasons for its decisions. Although there are measures in the bill that will require local authorities to provide reasons in most situations, the DPLR committee believed that those should be applied more consistently. The amendments in this group were lodged in response to the committee’s comments, which we considered carefully. They will place a consistent duty on local authorities to provide reasons for their decisions on licence applications, including on the renewal, transfer, and revoking of a licence.

Amendments 92, 96 and 97 will require local authorities to tell the relevant people about their decisions and provide reasons. Amendment 90 addresses the situation before a decision has been made, when a local authority is considering refusing to consent to a licence transfer. The authority will be required to indicate that to the applicant and set out its reasons, allowing the applicant 28 days to respond.

I move amendment 90.

Amendment 90 agreed to.

The Convener: The next group is on part 1A site licence: time limit for determining application. Amendment 91, in the name of the minister, is the only amendment in the group.

Margaret Burgess: The bill includes provision whereby, if a local authority does not make a decision on a site licence application within 12 months, the application will be deemed to have been approved. The measure was included as a backstop; the Scottish Government expects local authorities to make decisions in a shorter timescale.

At stage 1, stakeholders expressed concern that the approach would give local authorities an unacceptably long time in which to determine applications. In light of that, amendment 91 will remove the 12-month deadline from the bill and give the Scottish ministers the power to set time limits in regulations. That approach will enable the Government to consult the industry and local authorities about realistic timescales, which can be adapted as necessary. Amendment 91 will also enable ministers to set different timescales for different types of application. For example, a shorter timescale might be set for the renewal of an existing licence than would apply to an application for a new licence. That is a sensible way forward.

I move amendment 91.

The Convener: The question is, that amendment 91 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.
Amendment 91 agreed to.
Amendment 92 moved—[Margaret Burgess]—and agreed to.

Section 55, as amended, agreed to.

Section 56—Duration of a Part 1A site licence

The Convener: The next group is on duration of part 1A site licence. Amendment 93, in the name of the minister, is the only amendment in the group.

Margaret Burgess: An issue that was raised at stage 1 was the move from a system in which licences run in perpetuity to one of fixed-term three-year licences. Fixed-term licences provide for a regular check that a site licence holder continues to be a fit and proper person, and give the opportunity to review and update site licence conditions. I therefore do not support a system in which licences run in perpetuity. The current system has proved to be weak and ineffective.

However, I listened to the points that stakeholders made at stage 1. In light of that, amendment 93 will provide that licence periods run for five years rather than three. The longer period will give greater stability to site owners and residents and reduce the administrative work for local authorities.

In its stage 1 report, the committee highlighted the importance of the provision of clear and accurate information to residents and site owners on what the changes will mean in practice. The Scottish Government has committed to providing such information when it puts the new licensing system in place.

Other Government amendments to the bill will further strengthen the right of residency that is provided by agreements under the Mobile Homes Act 1983, making it clear that the right will remain even if a site owner loses his or her licence.

Amendment 93 provides greater stability for residents, site owners and local authorities, while maintaining the important principle that a site licence runs for a specific period.

I move amendment 93.

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 93 agreed to.

Section 56, as amended, agreed to.

Section 57—Duty to inform local authority where change

The Convener: The next group is on duty to inform where change: period and offence. Amendment 94, in the name of the minister, is grouped with amendments 95, 107 and 108.

Margaret Burgess: These amendments will make it an offence not to provide a local authority with the relevant information on changed circumstances in specific timescales. If convicted of an offence, someone can be fined up to level 3 on the standard scale, which is £1,000.

The amendments strengthen the measures in section 57 that require a site licence holder to tell a local authority of any relevant changes in circumstances. With the move to licences for five years, rather than the three years that the bill originally proposed, it is even more important that licence holders are required to tell a local authority if their circumstances change. I ask the committee to support the amendments.

I move amendment 94.

The Convener: The question is, that amendment 94 be agreed to. Are we agreed?

Mary Fee indicated disagreement.

The Convener: I ask members to say no, please, and not just to shake their heads.

There will be a division.

For
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 94 agreed to.

Amendment 95 moved—[Margaret Burgess].
The Convener: The question is, that amendment 95 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Eddie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against
Fee, Mary (West Scotland) (Lab)
Kelly, James (Rutherglen) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 95 agreed to.

Section 57, as amended, agreed to.

Section 58—Revocation of a Part 1A site licence: fit and proper person

Amendments 96 and 97 moved—[Margaret Burgess]—and agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

Section 60—Power to make provision in relation to procedure

The Convener: The next group is on part 1A site licence: fit-and-proper-person test. Amendment 105, in the name of the minister, is grouped with amendments 147, 148 and 106.

Margaret Burgess: Amendment 105 makes it clear that local authorities must have regard to whether a site owner has breached an agreement under the Mobile Homes Act 1983 in applying the fit-and-proper-person test for site licensing decisions. Those are personal contracts that individuals have with site owners, and local authorities are not usually involved with them, but they are very relevant to how site owners conduct their business. The amendment will ensure that local authorities can take into account all relevant factors when they make decisions about site licences.

Amendment 106 involves a technical change that specifically enables local authorities to share information that is relevant to the application of the fit-and-proper-person test as part of the process of making site licensing decisions. That will enable greater consistency of decision making across different local authorities and reduce the risk that a site owner may pass the test in one area but fail it in another due to a lack of relevant information.

Mary Fee’s amendments 147 and 148 seek to make it explicit that a local authority must, when it is running the fit-and-proper-person test, take into account any issues around the site owner providing utilities to residents, such as a situation in which a site owner has profiteered from regulations that will be subject to the negative procedure. Will the minister comment further on that?

Margaret Burgess: As I said, the amendments arose from a concern of the Delegated Powers and Law Reform Committee. We will provide it with a detailed explanation in a supplementary delegated powers memorandum, which will be lodged on my behalf after stage 2. The main amendment is amendment 98, which adjusts the power’s focus. The other amendments are consequential. We lodged the amendments to satisfy the Delegated Powers and Law Reform Committee’s request. I have described how we will proceed.

12:00

Amendment 98 agreed to.

Amendments 99 to 104 moved—[Margaret Burgess]—and agreed to.

Section 60, as amended, agreed to.

Section 61—Fit and proper person considerations

The Convener: The next group is on part 1A site licence: fit-and-proper-person test. Amendment 105, in the name of the minister, is grouped with amendments 147, 148 and 106.

Margaret Burgess: Amendment 105 makes it clear that local authorities must have regard to whether a site owner has breached an agreement under the Mobile Homes Act 1983 in applying the fit-and-proper-person test for site licensing decisions. Those are personal contracts that individuals have with site owners, and local authorities are not usually involved with them, but they are very relevant to how site owners conduct their business. The amendment will ensure that local authorities can take into account all relevant factors when they make decisions about site licences.

Amendment 106 involves a technical change that specifically enables local authorities to share information that is relevant to the application of the fit-and-proper-person test as part of the process of making site licensing decisions. That will enable greater consistency of decision making across different local authorities and reduce the risk that a site owner may pass the test in one area but fail it in another due to a lack of relevant information.

Mary Fee’s amendments 147 and 148 seek to make it explicit that a local authority must, when it is running the fit-and-proper-person test, take into account any issues around the site owner providing utilities to residents, such as a situation in which a site owner has profiteered from...
providing utilities. We believe that such a situation is already covered in the bill, as a local authority “must have regard to all of the circumstances of the case”, which would include any profiteering from utilities. However, I recognise that some of the more important matters are set out on the face of the bill, and I am therefore happy to include this issue in that category.

There are some issues around Mary Fee’s amendments as they stand that we need to do some further work on. Specifically, I want to ensure that the correct guidance and the correct bodies are identified in the legislation. I am therefore happy to lodge an amendment at stage 3 that is specific on the matters that Mary Fee has raised but also takes into account the further work that we need to do on identifying all the relevant guidance. I hope that that undertaking is sufficient for Mary Fee not to move amendments 147 and 148.

I ask the committee to support my amendments 105 and 106.

Mary Fee: I will be brief and will not rehearse the comments that I initially intended to make.

I am grateful for the minister’s comments on my amendments 147 and 148, which seek to provide additional protection for residents of mobile home sites who may be subjected to profiteering. I am happy not to move the amendments, given the assurances that she has given.

Amendment 105 agreed to.
Amendments 147 and 148 not moved.
Section 61, as amended, agreed to.
Section 62 agreed to.

After section 62

Amendment 106 moved—[Margaret Burgess]—and agreed to.

Section 63—Offences relating to relevant permanent sites

Amendments 107 and 108 moved—[Margaret Burgess]—and agreed to.

The Convener: The next group is on power to vary maximum fine. Amendment 109, in the name of the minister, is the only amendment in the group.

Margaret Burgess: Amendment 109 seeks to remove the power for ministers to vary the maximum fine for licence offences. I have noted the concerns about the power that were expressed by the Delegated Powers and Law Reform Committee and supported by this committee in its stage 1 report, and the suggestions for amending it. However, as it is not clear how the provision can be amended to meet the Delegated Powers and Law Reform Committee’s views, I have concluded that the safest course of action is to remove the power to vary the maximum fines, which is what amendment 109 does.

I move amendment 109.

Amendment 109 agreed to.
Section 63, as amended, agreed to.

Section 64—Improvement notices

The Convener: The next group is on improvement notices and penalty notices. Amendment 110, in the name of the minister, is grouped with amendments 111 to 113.

Margaret Burgess: Amendment 112 addresses a concern expressed at stage 1 by removing the provision that residents do not need to pay the site owner for utilities such as gas and electricity in the event of a penalty notice being issued by a local authority. That could lead to utility bills not being paid and residents potentially having their services cut off. Although I recognise the need for appropriate penalties for site owners who do not comply with the terms of the legislation, I do not want such penalties to impact negatively on residents, and I think that amendment 112 achieves the right balance.

The remainder of the amendments in the group are technical ones that affect the period in which a licence holder must carry out steps to fulfil a local authority improvement order or penalty notice. An offence cannot be committed until the period set out in the notice has expired.

I ask the committee to support all the amendments in the group, and I move amendment 110.

Amendment 110 agreed to.
Amendment 111 moved—[Margaret Burgess]—and agreed to.
Section 64, as amended, agreed to.

Section 65—Penalty notices

Amendments 112 and 113 moved—[Margaret Burgess]—and agreed to.
Section 65, as amended, agreed to.
Sections 66 to 69 agreed to.

Section 70—Part 1A of the 1960 Act: miscellaneous provision

The Convener: The next group is on guidance on operation of part 5. Amendment 114, in the
name of the minister, is the only amendment in the group.

Margaret Burgess: Amendment 114 enables ministers to publish guidance on the operation of the bill’s provisions with regard to mobile home site licensing, and requires local authorities to have regard to that guidance in carrying out their functions in relation to the licensing regime.

I have listened to concerns raised at stage 1 that there is not enough information about how the new regime will operate or how it will be enforced by local authorities, and I agree with the committee’s recommendation about the importance of residents, site owners and local authorities having clear and accurate information. It has always been the Scottish Government’s intention to provide information to accompany the new licensing system, including guidance for local authorities.

The Government’s view is that local authorities should be able to take a risk-based approach and focus their work on sites with problems, and we feel that that work would be enhanced by a requirement on local authorities to take into account published guidance in carrying out their duties. However, the bill as drafted does not give ministers the power to issue guidance to which a local authority “must have regard”, and amendment 114 seeks to address that.

I move amendment 114.

Amendment 114 agreed to.

The Convener: The next group is on agreements to which the Mobile Homes Act 1983 relates. Amendment 115, in the name of the minister, is grouped with amendment 116.

Margaret Burgess: The committee wanted to be sure that residents had a clear right to remain on a site if it lost its licence, and amendments 115 and 116 ensure that that is the case by replacing the bill’s current provisions on residents’ rights with a new, even stronger, section.

The amendments also make provision to address the committee’s concern that the bill did not contain a measure to prevent the cost of enforcement action from being passed on to residents through pitch fees. As a result, if a local authority recovers the cost of enforcement action from a site owner, the site owner cannot pass the costs on to residents through pitch fees.

The amendments address two important areas of concern for residents, and I invite the committee to support them.

I move amendment 115.

Amendment 115 agreed to.

Section 70, as amended, agreed to.
Housing (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 20
- Sections 21 to 84
- Sections 85 and 86
- Schedule 1
- Schedule 2
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 72

Sarah Boyack

149 In section 72, page 50, leave out lines 8 to 13 and insert <the principle that, unless an alternative determination appears to the authority to be reasonable in the circumstances, every owner is liable in equal shares for the scheme costs.>

Sarah Boyack

153 In section 72, page 50, line 14, after <section> insert <where subsection (1)(a) applies>

Sarah Boyack

154 In section 72, page 50, line 15, at end insert—

<(... )> Before making a payment under this section where subsection (1)(b) applies, a local authority must publish notice of its intention to pay the missing share in two or more newspapers (of which one must, if practicable, be a local newspaper) circulating in the locality in which the tenement is situated.>

Sarah Boyack

150 In section 72, page 50, line 22, at end insert—

<4B Power to permit registered social landlord to pay share of housing costs

(1) The Scottish Ministers may by regulations make provision that permits a registered social landlord which is the owner, or is responsible for the maintenance, of any part of a tenement building to—

(a) pay a sum representing an owner’s share of scheme costs in circumstances equivalent to those set out in section 4A(1),

(b) recover payments made under such provision from the owner who failed to pay a share of any scheme costs, and

(c) make in favour of itself a charge to recover any such payments.

(2) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as appear to them to be appropriate.
(3) Regulations under subsection (1) may modify, or disapply any provision of, any enactment (including this Act).”.

Sarah Boyack

151 In section 72, page 50, line 25, at end insert—

<(  ) in section 32(2) (orders and regulations), after “except” insert “regulations under section 4B or”.

Jim Eadie

7 In section 72, page 50, line 36, after <2004”, insert—

<(  ) for subsection (3), substitute—

“(3) The repayable amount is recoverable in—

(a) 30 equal annual instalments payable on the same date (specified in the charge) in each calendar year, or
(b) monthly instalments over such shorter period of time as the local authority determines to be reasonable in the circumstances.

(3A) Where a local authority determines a repayment period under subsection (3)(b), it must provide the owner of, or any other person interested in, any living accommodation subject to the repayment charge with assistance under section 71(1).

Sarah Boyack

152 In section 72, page 50, line 36, after <2004”, insert—

<(  ) for subsection (3), substitute—

“(3) The repayable amount is recoverable in instalments at such frequency, and over such period of time not exceeding 30 years, as the local authority determines to be reasonable in the circumstances.

(3A) The local authority must provide the owner of, or any other person with an interest in, any living accommodation subject to the repayment charge with assistance under section 71(1).

(3B) The Scottish Ministers may publish guidance on the factors to be considered by the local authority in determining what frequency and period is reasonable for the purposes of subsection (3).

(3C) The local authority must have regard to any guidance published under subsection (3B).

Malcolm Chisholm

35 In section 72, page 50, line 36, after <2004”, insert—

<(  ) in subsection (4), after the word “register” where it second appears, insert “, and on its being so registered has priority over all existing and future burdens on the same living accommodation”.
After section 72

Margaret Burgess

After section 72, insert—

<Notice of potential liability for costs: notice of discharge

(1) In section 10A of the Title Conditions (Scotland) Act 2003 (asp 9) (notice of potential liability for costs: further provision), after subsection (3) insert—

“(3A) The owner of a burdened property may apply to register a notice (a “notice of discharge”) if—

(a) a notice of potential liability for costs in relation to the property has not expired,

(b) the liability for costs under section 10(2) to which the notice of potential liability relates has, in relation to the property which is the subject of the application, been fully discharged, and

(c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—

(a) must be in the form prescribed by order made by the Scottish Ministers, and

(b) on being registered, discharges the notice of potential liability for costs as it applies to the property which is the subject of the application.”.

(2) In the Tenements (Scotland) Act 2004—

(a) in section 13 (notice of potential liability for costs: further provision), after subsection (3) insert—

“(3A) The owner of a flat may apply to register a notice (a “notice of discharge”) if—

(a) a notice of potential liability for costs in relation to the flat has not expired,

(b) the liability for costs under section 12(2) to which the notice of potential liability relates has, in relation to the flat which is the subject of the application, been fully discharged, and

(c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—

(a) must be in the form prescribed by order made by the Scottish Ministers, and

(b) on being registered, discharges the notice of potential liability for costs as it applies to the flat which is the subject of the application.”.

(b) in section 29(1) (interpretation), in the definition of “register” after “costs” insert “, a notice of discharge”).>
After section 73

Jim Eadie

9 After section 73, insert—

<Home maintenance framework

(1) Before section 42 of the 2006 Act, insert—

“Home maintenance framework

41A Home maintenance framework

(1) Where any premises consist of two or more houses, the owners of those houses must prepare jointly a framework (a “home maintenance framework”) in relation to any part of the premises which is owned in common by those owners.

(2) A home maintenance framework must set out how the maintenance and repair of such parts of the premises will be managed and must in particular include—

(a) arrangements for an annual inspection of any roof areas owned in common by the owners,

(b) a payment plan or other arrangements to fund maintenance and repairs to any part of the premises which is owned in common, and

(c) arrangements for the appointment of a responsible person or agent to manage the implementation of the framework.”

(2) In section 42 of the 2006 Act, after subsection (2) insert—

“(2A) Where any premises consist of two or more houses, the local authority may consider for the purposes of subsection (2)(b) that those houses are unlikely to be maintained to a reasonable standard if it appears to the authority that a satisfactory home maintenance framework has not been prepared under section 41A in relation to the houses.”>

Section 75

James Kelly

56 In section 75, page 51, line 25, at end insert—

<( ) In section 44(1) of the 2006 Act (maintenance plans for two or more houses), after “premises,” insert “and any garden area associated with the premises,”.>

After section 76

Margaret Burgess

118 After section 76, insert—

<Charging orders

(1) In Schedule 9 to the 1987 Act (recovery of expenses by charging order)—

(a) in paragraph 4, sub-paragraph (b)(i) is repealed, and

(b) for paragraph 6, substitute—
“6 Every annuity charged by a charging order may be recoverable as a debt due to the person for the time being entitled to it.”.

(2) In section 108(2) of the Civic Government (Scotland) Act 1982 (c.45) (recovery of expenses by charging order), for the words from “modifications” to “paragraph” in the last place where it appears substitute “modification, that is to say, in sub-paragraph (b)(ii) of paragraph 4 of that Schedule”.

(3) In section 19(3) of the Crofters (Scotland) Act 1993 (c.44) (priority of sums due), the words “heads (i), (ii) and (iii) of” are repealed.

After section 77

Margaret Burgess

119 After section 77, insert—

<First-tier Tribunal: disqualification of members from exercise of certain functions

(1) This section applies to the following functions and jurisdictions of the First-tier Tribunal—

(a) a function or jurisdiction of the sheriff transferred to the Tribunal under section 17 or by virtue of Part 1 of schedule 1,

(b) a function conferred on the Tribunal, by virtue of Part 3 and Parts 2 to 4 of schedule 1, by—

(i) the 2004 Act,

(ii) the 2006 Act,

(c) a function conferred on the Tribunal by or under Part 4.

(2) A member of the First-tier Tribunal is disqualified from exercising a function or jurisdiction to which this section applies if the member is—

(a) a member of the House of Commons,

(b) a member of the Scottish Parliament,

(c) a member of the European Parliament,

(d) a Minister of the Crown,

(e) a member of the Scottish Government.

(3) The Scottish Ministers may by order modify subsection (2) by—

(a) adding a disqualification to,

(b) varying the description of a disqualification for the time being mentioned in,

(c) removing a disqualification from,

that subsection.>

Margaret Burgess

120 After section 77, insert—

<Private rented housing panel: disqualification from membership

In schedule 4 to the Rent (Scotland) Act 1984, after paragraph 1 insert—
“1A (1) A person is disqualified from appointment to, and from remaining a member of, the private rented housing panel if the person is or becomes—

(a) a member of the House of Commons,
(b) a member of the Scottish Parliament,
(c) a member of the European Parliament,
(d) a Minister of the Crown,
(e) a member of the Scottish Government.

(2) The Scottish Ministers may by order modify sub-paragraph (1) by—

(a) adding a disqualification to,
(b) varying the description of a disqualification for the time being mentioned in,
(c) removing a disqualification from,

that sub-paragraph.

(3) An order under sub-paragraph (2) is subject to the negative procedure.”.

Section 79

Margaret Burgess

121 In section 79, page 53, line 20, leave out <Subsection (4)> and insert <A duty on the Regulator to consult in accordance with paragraph (i) or (ii) of subsection (4)(a)>.

Margaret Burgess

122 In section 79, page 53, line 27, leave out <the duties under subsection (4)> and insert <that duty>.

Margaret Burgess

123 In section 79, page 53, line 28, at end insert—

<(4B) The Regulator must—

(a) issue guidance on subsection (4A), such guidance to include—

(i) the circumstances in which it considers that subsection (4A) is likely to apply,
(ii) the actions it expects to take in those circumstances, and
(iii) how, in those circumstances, it intends to communicate with any of the persons mentioned in paragraph (b) who are affected by its actions, and

(b) before issuing or revising any guidance, consult—

(i) tenants of registered social landlords or their representatives,
(ii) registered social landlords or their representatives, and
(iii) secured creditors of registered social landlords or their representatives.>
Margaret Burgess

124 In section 79, page 53, line 28, at end insert—

<(4C) Where the Regulator proposes to direct a transfer of some (but not all) of a registered social landlord's assets, the Regulator must—

(a) before making a direction, obtain an independent valuation of those assets, and

(b) when making a direction, have regard to that valuation.

After section 79

Margaret Burgess

155 After section 79 insert—

<Registered social landlord becoming a subsidiary of another body

(1) After section 104 of the 2010 Act insert—

“Registered social landlord becoming a subsidiary of another body

104A Registered social landlord becoming a subsidiary of another body

(1) This section applies to a registered social landlord which is—

(a) a registered society, or

(b) a registered company.

(2) An arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary has effect only if the Regulator consents to that arrangement before it is completed.

(3) Chapter 3 of Part 10 makes provision for Regulator consent for the purpose of this section.”.

(2) After section 124 of the 2010 Act insert—

“CHAPTER 3

REGISTERED SOCIAL LANDLORD BECOMING A SUBSIDIARY OF ANOTHER BODY

124A Regulator’s consent

(1) The special procedure set out in sections 114 to 121 of Chapter 1 applies in relation to an arrangement to which the Regulator’s consent is required under section 104A as it applies in relation to a disposal to which Chapter 1 applies.

(2) The Regulator must determine that the special procedure is not to apply or is to cease to apply where the Regulator considers that—

(a) the registered social landlord’s viability is in jeopardy for financial reasons,

(b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73, and

(c) the determination under this subsection would substantially reduce the likelihood of a person taking such a step.

(3) Where the Regulator makes a determination under subsection (2), the Regulator may give or refuse consent to the arrangement.
124B Purchaser protection

Failure by the Regulator or by a registered social landlord to comply with any provision of sections 114 to 121 of Chapter 1 in relation to an arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary does not invalidate the Regulator's consent to the arrangement.”.

(3) In section 164 of the 2010 Act (connected bodies), the definition of “subsidiary” is repealed.

(4) In section 165 of the 2010 Act (interpretation), after the definition of “social landlord” insert—

““subsidiary” has the same meaning as in the Companies Act 2006 (c.46) or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968 (c.55),”.

Section 82

Alex Johnstone

57 In section 82, page 54, line 19, at end insert—

<(< ) under section (Scottish starter tenancy)(1),>

James Kelly

37 In section 82, page 54, line 20, at end insert—

<(< ) under section (Rent reviews and rent increases)(1),>

James Kelly

38 In section 82, page 54, line 20, at end insert—

<(< ) under section (Security of tenure)(1),>

Drew Smith

58 In section 82, page 54, line 20, at end insert—

<(< ) under section (Houses let for holiday purposes)(1),>

Margaret Burgess

126 In section 82, page 54, line 21, at end insert—

<(< ) under section 41(1) which set out the first code of practice or replace the code of practice,>

Patrick Harvie

127 In section 82, page 54, line 21, at end insert—

<(< ) under section 41(1),>

Margaret Burgess

128 In section 82, page 54, line 22, leave out <51(3)> and insert <51(3)(b)>
Schedule 2

Margaret Burgess
39 In schedule 2, page 64, line 2, at end insert—
   <( ) In section 24(5)(d), for “or 2” substitute “, 2 or 2A”.
   ( ) In section 31(5)(c), for “or 2” substitute “, 2 or 2A”.

Margaret Burgess
40 In schedule 2, page 64, line 31, at end insert—
   <( ) In section 5(4)(a), for “or 2” substitute “, 2 or 2A”.

Margaret Burgess
41 In schedule 2, page 65, line 22, at end insert—
   <Housing (Scotland) Act 2006 (asp 1)
     In section 22 of the 2006 Act—
     (a) subsection (4)(c) is repealed, and
     (b) subsection (6) is repealed.
>

Margaret Burgess
129 In schedule 2, page 65, line 29, at end insert—
   <( ) In section 124, for “122” substitute “121”.

Section 85

Alex Johnstone
42 In section 85, page 55, line 7, leave out subsection (4)

Margaret Burgess
43 In section 85, page 55, line 8, leave out <3> and insert <2>

Mary Fee
44 In section 85, page 55, line 8, leave out <3> and insert <1>

Long Title

Alex Johnstone
45 In the long title, page 1, line 1, leave out <the abolition of the right to buy,
>
3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Tenement management schemes**
149, 153, 154, 150, 151, 7, 152, 35

**Discharge of costs notices applying to owners of property**
117

**Home maintenance framework duty**
9

**Maintenance plans: areas**
56

**Charging orders**
118

**First-tier Tribunal and private rented housing panel: disqualification from membership**
119, 120

**Scottish Housing Regulator: transfer of assets following inquiries**
121, 122, 123, 124

**Registered social landlord disposals and restructuring**
155, 129
Amendments already debated

Abolition of right to buy
With 12 – 42, 43, 44, 45

Notes on amendments in this group
Amendment 42 pre-empts amendments 43 and 44
Amendments 43 and 44 are direct alternatives

Short Scottish secure tenancy created on antisocial behaviour grounds
With 50 – 39, 40

Scottish starter tenancy
With 51 – 57

Enforcement of repairing standard
With 6 – 41

Rent reviews and rent increases – private rented housing
With 33 – 37

Security of tenure – private rented housing
With 34 – 38

Houses let for holiday purposes
With 55 – 58

Letting Agent Code of Practice
With 76 – 126, 127

Meaning of letting agency work
With 85 – 128
INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

EXTRACT FROM THE MINUTES

16th Meeting, 2014 (Session 4)

Wednesday 28 May 2014

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

Also present: Sarah Boyack and Margaret Burgess

Housing (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to without division: 117, 118, 119, 120, 121, 122, 123, 124, 155, 126, 128, 39, 40, 41, and 129.

Amendment 43 was agreed to (by division: For 4, Against 2, Abstentions 1).

The following amendments were disagreed to (by division)—
150 (For 2, Against 5, Abstentions 0)
152 (For 2, Against 5, Abstentions 0)
56 (For 2, Against 5, Abstentions 0)
37 (For 2, Against 5, Abstentions 0)
38 (For 2, Against 5, Abstentions 0)
58 (For 2, Against 5, Abstentions 0)
44 (For 2, Against 5, Abstentions 0).

The following amendments were moved and, no member having objected, withdrawn: 149 and 9.

The following amendments were not moved: 153, 154, 151, 7, 35, 57, 127, 42 and 45.

The following provisions were agreed to without amendment: sections 72, 73, 74, 75, 76, 77, 78, 80, 81, 83, 84, 86, and the long title.

The following provisions were agreed to as amended: sections 79 and 82, schedule 2 and section 85.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Infrastructure and Capital Investment Committee
Wednesday 28 May 2014

[The Convener opened the meeting at 10:00]

Housing (Scotland) Bill: Stage 2

The Convener (Maureen Watt): Good morning, everyone, and welcome to the Infrastructure and Capital Investment Committee’s 16th meeting in 2014. I remind everybody to switch off their mobile devices, because they affect the broadcasting system.

Agenda item 1 continues our stage 2 consideration of the Housing (Scotland) Bill. I welcome Margaret Burgess, who is the Minister for Housing and Welfare, and her officials. I remind members that the officials are here strictly in a supporting capacity and cannot speak during proceedings or be questioned by members.

I hope that everyone has a copy of the bill, the third marshalled list of amendments and the third list of groupings. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move the amendment and to speak to all other amendments in the group. I will then call the other members who have amendments in the group; they should speak to their amendments and to the other amendments in the group, but should not move their amendments at that point. Finally, the member who lodged the first amendment in the group will be asked to wind up the debate and to press or withdraw their amendment.

Members who have not lodged amendments in the group but who wish to speak should catch my eye in the usual way. If a member wishes to withdraw their amendment after moving it, I must check whether any member objects to its being withdrawn. If any member objects, the committee will immediately move to a vote. If any member does not want to move their amendment when it is called, they should say, “Not moved.” Any other MSP can move the amendment, but I will not specifically invite other members to do so. If no one moves the amendment, I will proceed to the next amendment.

The committee is required to indicate formally that it has considered and agreed to each section and schedule of the bill, so I will put the question on each section and schedule at the appropriate point.

Section 72—Tenement management scheme

The Convener: The first group of amendments is on the tenement management scheme. Amendment 149, in the name of Sarah Boyack, is grouped with amendments 153, 154, 150, 151, 7, 152 and 35. I understand that Sarah Boyack will, in Malcolm Chisholm’s stead, speak to his amendment 35.

Sarah Boyack (Lothian) (Lab): I am grateful for the opportunity to speak to my amendments. I will run through them in the order in which they appear in the groupings.

As members will be aware, repairs to common property have caused considerable controversy in Edinburgh in the aftermath of the statutory repairs scandal. I know that I am not alone among Edinburgh colleagues in that I still receive casework on that. Alongside Dave Stewart’s Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill, which is being considered, the Housing (Scotland) Bill provides an opportunity to mend problems and to learn from the experience in Edinburgh.

Section 72 is welcome, because it will give local authorities the power to pay and—crucially—to recover a share of scheme costs. Inability to proceed with work because of unwilling or unidentifiable owners has caused unacceptable delays to home repairs, and is one reason why constituents have continued to turn to councils for intervention via statutory notices, even though previous legislation enables majority decisions to be made under a tenement management scheme.

Amendment 149 is really a probing amendment on the apportionment of costs when a local authority uses the new power. It is based on the approach in the City of Edinburgh District Council Order Confirmation Act 1991, which provides the basis of the City of Edinburgh Council’s statutory notice system. I am interested to hear the minister's comments on the amendment. I have lodged amendment 149 because, under the 1991 act, the council can apportion the cost of statutory repair work among owners on an equal-share basis. That does not prevent owners from pursuing their fellow owners through civil action when the amount paid does not reflect the situation that is set out in title deeds, but it is a simple way to process and administer the provisions from the council’s perspective, and it would avoid the council’s having to pay costly legal expenses when an owner challenges the apportionment.

Amendment 149 would allow alternative determination methods to be used, when they are considered to be reasonable. For example, if there is only one missing share, it would be very straightforward to determine it as being the
remaining shares have been paid according to the tenement management scheme, but the amendment would, in the event that a local authority were to step in to pay for more than one owner’s share, allow the missing shares to be split evenly between those owners. Where owners who are liable for a missing share are unwilling or unable to work with the other owners to find a constructive way forward, the amendment would enable a process that would minimise the risk of expensive and protracted legal action, for which the councils would have to pay, to determine the cost for the owners concerned.

Amendments 153 and 154 seek to clarify the requirement that an owner be notified before a local authority steps in to pay a missing share. One of the scenarios that would allow the local authority to pay a missing share is if the owner cannot be identified or found. In such circumstances, it would not be possible to notify the owner directly, so amendment 154 would require the authority to publish notice of its intention to pay the missing share in two newspapers, including—if it is practical to do so—a local newspaper. To complete the circle, amendment 153 makes it clear that only in circumstances in which the identity of the owner is known would the local authority be required to notify that owner directly rather than advertise in the press.

The requirement to publish notification in the press when an owner cannot be identified has been used before—for example, in the Antisocial Behaviour etc (Scotland) Act 2004. During the process of drafting the amendments, it was noted that there has been a recent trend away from publishing notices due to the falling circulations of newspapers, so if anyone has an alternative suggestion, I would be willing to listen to it. However, my current suggestion is that a notice be published in newspapers, because an understandable transparency comes from that.

I see amendments 150 and 151 as probing amendments, too, but I am very concerned about the issues that they address. They would allow local authorities to pay a missing share to registered social landlords. Amendment 150 would enable Scottish ministers to make regulations to achieve that, following a period of consultation to consider the issue. Such a power would apply only in cases in which the RSL is the owner of, or is responsible for, maintenance of any part of a tenement building. The regulations would have the power to amend primary legislation, so amendment 151 would require that the use of affirmative procedure apply to any such regulations.

Amendments 150 and 151 follow on from the debate that we had in response to Dave Stewart’s Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill. The issue was raised by the Scottish Federation of Housing Associations, which said that, in general, housing associations undertake repairs with agreement from owners, but are in some circumstances required to pay the costs for people who are not prepared to pay up, and so the RSLs in effect bear the cost beyond what they should pay in order to ensure the safety and security of their assets. Civil remedies to recover costs in such cases can be protracted and unsuccessful. That money could otherwise be used to improve existing stock or could go towards much-needed new homes.

Since evidence was taken during the stage 1 process for Dave Stewart’s Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill, I have been made aware that in Edinburgh there are currently 11 examples of housing associations taking properties out of their letting pools because they cannot carry out common repairs and the properties do not meet the standard at which they are prepared to let houses. That means that there is currently lost income of about £40,000. Moreover, the properties are deteriorating, which is bad news for everybody else in the building, and the situation is leading to housing associations selling off properties where there is a minority ownership. That is bad news, because it will lead to less of a spread of tenancies throughout the city, and it is very bad for the income of housing associations.

Amendment 152 seeks to amend the recovery time for repayment charges when a local authority has paid a missing share. It has similarities to amendment 7, which is in the name of Jim Eadie, but it would go slightly further. The current provisions in the Housing (Scotland) Act 2006 state that a repayment charge is recoverable over a period of 30 years. However, in the evidence that was taken during consideration of Dave Stewart’s Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill, there was a consensus that 30 years is too long a period for recovery of such expenses, so amendment 152 does not take the approach of using 30 annual instalments, but instead would give the local authority much greater flexibility by allowing recovery of

“instalments at such frequency, and over such period of time not exceeding 30 years, as the local authority determines to be reasonable in the circumstances.”

It would also give ministers the option of producing guidance on the factors that are to be considered by the local authority in determining what constitutes a reasonable frequency and period of recovery. Such guidance would be useful to ensure that repayment charges were being assessed in a consistent and fair way across the country.
One of the reasons why I was keen to remove the 30 years provision is that, in my experience as both an owner and a representative, houses need to be repaired and maintained much more frequently than every 30 years. That is also true in relation to other amendments that Jim Eadie has prepared, such as amendment 9 in the third group of amendments that we will consider today. We need to create an expectation among owners that repairing is not a once-in-a-lifetime activity, and that they need to repair their properties more regularly. Amendment 152 will create that expectation.

Amendment 35, in the name of Malcolm Chisholm, is on tenement management schemes. One of the key benefits of the approach that is taken in section 72 will be the ability of local authorities not just to pay for a missing share but to be able to recover the costs from the relevant owner. At the moment, local authorities’ finances are being squeezed, but in principle the certainty of being able to recover their costs for carrying out works that will benefit the owner of a property is a good one, and amendment 35 seeks to minimise the risk of non-recovery even further by providing that a repayment charge that is issued in respect of repair work would be secured by prior ranking over all other burdens on a property. That would mean that, in the event of a property’s being sold, repayment of the charge would take precedence over all the other burdens, thereby ensuring full recovery of costs by the local authority.

Thank you for giving me the opportunity to explain the reasoning behind the amendments. I have done so in detail because the provisions that they would insert are not in the bill as introduced, and I know from having experienced many problems with the statutory repairs process in Edinburgh that the details are crucial. I particularly want to test out the different choices for how the legislation could be framed.

I move amendment 149.

The Convener: Jim Eadie will speak to amendment 7 and the other amendments in the group.

Jim Eadie (Edinburgh Southern) (SNP): I welcome the opportunity to speak to amendment 7, which is one of a number of amendments that I have lodged that arise from extensive discussion between myself and elected representatives and officials of the City of Edinburgh Council.

The purpose of amendment 7 is to facilitate recovery of funds when a local authority has covered the costs of a missing share for a common repair. Common repairs can be complex and pose a significant challenge for the City of Edinburgh Council due to the high percentage of older tenements in mixed ownership. Although the proposal to introduce changes that take the onus for debt recovery away from responsible owners who are willing to arrange and pay for repair and maintenance work is welcome, it is unlikely that local authorities would be unable to make use of the current powers.

The 30-year period for the recovery of funds through repayment charges is, arguably, excessive, and many local authorities will have limited resources to lend funds over such a long period. Local authorities cannot borrow for that expenditure without the express permission of Scottish ministers, because the money would technically be revenue and not capital. Increased flexibility about the repayment period will allow more local authorities to make use of existing powers. That will help to facilitate more repair work and improve standards in the private sector.

The current system does not take affordability into account. There is a set repayment period of 30 years, regardless of the amount that is owed or the financial circumstances of the owner. Amendment 7 would link a reduced payment period with a duty on local authorities to provide support through their scheme of assistance. That would address affordability issues through provision of financial assistance or access to advice and information, depending on the circumstances of the case and the range of support that is available through the scheme of assistance.

The Minister for Housing and Welfare (Margaret Burgess): Amendment 149 seeks to have the owners’ share of tenement management scheme costs calculated as the local authority thinks reasonable, but with the principle of favouring equal shares among owners. I am concerned because the amendment could weaken the tenement management scheme, and it lacks control to protect home owners.

The tenement management scheme is designed to be a process of voluntary agreement between owners that is based on clarity over costs and how they are shared. Amendment 149 would provide for circumstances in which the shares could be altered, potentially to the benefit of owners who would have higher than average shares of the costs. That could result in some owners having an incentive to hold out for a local authority to intervene to reduce their costs, while other owners might resist local authority intervention, because of uncertainty about how their share of the costs would be determined.

10:15
Amendment 149 would introduce to the existing arrangements under the tenement management scheme a significant change that has not been subject to consultation. It would not be appropriate to introduce the change at this point in the bill’s progress without first having considered the views of local authorities and of owners. I therefore invite Sarah Boyack to seek to withdraw amendment 149. If she does not, I ask the committee to reject it.

Amendments 153 and 154 seek changes to the procedure for notification of owners by a local authority when it decides to cover a missing share. Section 30(3) of the Tenements (Scotland) Act 2004 already provides a procedure for service of a notice on a person who cannot be identified or found, which involves delivery of a notice to the property. The approach that is provided for in the bill is consistent with other notices under the 2004 act. To require that a notice be advertised in the press would incur additional and unnecessary costs for local authorities. I can see no reason to alter the current arrangements for one particular type of notice, nor do I see any advantage, from amendment 154, to justify the additional costs to local authorities. For those reasons, the amendments are unnecessary. In some cases, because of the costs, the amendments might deter local authorities from using the useful power that we are giving them. I therefore invite Sarah Boyack not to move amendments 153 and 154 and, if she does move them, I ask the committee to reject them.

Amendments 150 and 151 seek to introduce a regulation-making power that would enable registered social landlords to pay for a missing share and recover the costs using a repayment charge. Through the bill, we will introduce discretionary powers for local authorities to step in and provide a missing share where a majority decision allows work to go ahead, and to recover that using a repayment charge. It is right that local authorities, as the strategic housing authorities, should have that role and debt-recovery power. RSLs will be able to engage with the local authority if enforcement or assistance is needed in their area, and I encourage them to do so.

I want to be sure that covering of missing shares by RSLs does not occur at the expense of services for tenants, but amendments 150 and 151 do not provide those assurances. I am also concerned that there has not been any consultation on the proposals. It is not appropriate to introduce such a significant change without first listening carefully to views—in particular the views of lenders, who could be adversely affected by the proposal. I would also want to listen to the views of RSLs and the regulator, because some RSLs have constitutional arrangements that could prevent expenditure that is not expressly for the benefit of members. As I do not currently support the introduction of discretionary powers for RSLs to provide a missing share and to recover that through a repayment charge, I do not see the need to introduce such a regulation-making power at this time.

The Scottish Government’s proposed work on cross-tenure housing quality standards later this year will provide stakeholders with the opportunity to raise issues regarding housing quality. Contributions to the scope and design of a forum to discuss quality standards are currently being requested, with a planned consultation to follow next year. I want to await the outcome of that consultation before making any changes. I therefore ask Sarah Boyack not to move amendments 150 and 151 and, if she moves them, I ask the committee not to support them.

I understand why Jim Eadie and Sarah Boyack have, respectively, lodged amendments 7 and 152, which in some ways reflect the committee’s views in its stage 1 report: 30 years is excessively long for councils to recover their costs. I appreciate the arguments in favour of a shorter period, but I am concerned that they ignore the risks that a shorter period could pose to vulnerable home owners—particularly those who are elderly, living on fixed incomes and with only modest savings.

A repayment charge is a powerful debt-recovery tool. It allows local authorities to convert a debt into a security without recourse to the courts and—this is important—without the consent of the property owner. That power must be balanced by safeguards for owners. As matters stand, the 30-year repayment period provides such a safeguard in practice. Sarah Boyack’s amendments would give councils wide discretion to recover potentially significant sums from owners through repayment charges, over short periods of time and without owners’ consent. They would be able to do so without there being a robust replacement safeguard for owners who might not be able to make such payments, which worries me.

Sarah Boyack has proposed guidance for councils, but I am not convinced that replacing the 30-year repayment period with guidance offers robust compensatory protection against the risks to vulnerable owners. I am clear that any change to local authorities’ powers in this area would have to be accompanied by strong arrangements to ensure that repayment charges were fair to owners, both in respect of the amount of the charges and the period over which they should be made.

The proposed change refers to what the council considers to be “reasonable”. However, there is nothing about a council coming to a view on “reasonable” that requires it to take account of...
information on the financial and personal circumstances of affected property owners. There is a real risk, therefore, of a council requiring payments at a level that the property owner cannot afford. That could be a problem for many owners: for example, young families who are struggling with a mortgage, or elderly persons who are living on pensions, with only modest savings. For such groups the proposed change could mean real hardship and distress.

Furthermore, the amendments do not include any specific right to appeal for an owner who may be subjected to unaffordable financial arrangements. I am concerned about that type of major omission, however well intentioned the proposed change may be.

On council recovery of costs, councils already have the option to negotiate a shorter repayment period, or to seek full and immediate recovery through the courts. The existing 30-year repayment period is a backstop. Owners whose property is subject to a repayment charge generally cannot sell the property or create any new borrowing over it without first repaying the council, and the average period between house sales is about seven years. In practice, councils would receive repayment long before the 30-year period.

A reduction in the repayment period does not necessarily make repayment more likely. There is in the amendments no provision that would alter what happens for non-payment. If an owner does not pay, whatever the timescale, the council cannot seek to sell the property as a result of the charge. A council can only seek recovery as a civil debt.

With a shorter period there would be situations in which the council would have to place another charge on the property to ensure it received payment, with additional costs for the council and the property owner.

For all those reasons I cannot support Sarah Boyack’s amendments, so I ask the committee to reject them.

Amendment 35, in the name of Malcolm Chisholm, seeks to ensure that local authorities receive payment before other registered charges on a property are paid. A repayment charge that has been registered by a local authority already has priority over all future burdens. It also has priority over nearly all existing burdens. The exception includes charges that are already registered by the local authority, and a small number of other charges that could be created by other local authorities. As a local authority is already entitled to receive repayment prior to other registered charges in nearly all cases, I do not see any reason to change the current position. I invite Sarah Boyack not to move amendment 35 on Malcolm Chisholm’s behalf, and I ask the committee to reject it if it is moved.

I am aware that I am not supporting any of the amendments in the group and I hope that I have explained why. I understand that there are significant concerns, particularly in the City of Edinburgh Council, regarding the issues that Sarah Boyack and Jim Eadie have raised. We acknowledge the intention behind the amendments, but if we were to make such changes it would require legislation and consultation. My officials are more than willing to explore the issues with the City of Edinburgh Council and to discuss how the council might address its concerns within the existing legislative framework. If it is found that that is not possible and changes are needed, we will carry out proper consultation and bring the changes back in other legislation.

I am absolutely not just dismissing the amendments out of hand; I recognise the reason behind them, but if we were to introduce such changes at this stage, or even at stage 3, we would simply be rushing them through and we would not achieve what we are all looking for. For that reason, I ask the committee not to support the amendments.

Sarah Boyack: I am very disappointed by the minister’s overall response, because the amendments address issues that have been raised through the consultation processes for two bills—the Housing (Scotland) Bill and Dave Stewart’s Dangerous and Defective Buildings (Recovery of Expenses) (Scotland) Bill—and they relate to how we remedy the problems of existing legislation. If we adopted the general principle that the minister has set out, that would lead us to the crazy situation in which if something was not in a minister’s original set of proposals for a bill, we would not amend the bill in that regard. That would defeat the whole purpose of having stage 2 and stage 3, without which we would just approve bills en bloc. If that is the minister’s reason for not accepting the amendments, I find it incredibly weak.

There is no intention to weaken the tenement management scheme. Amendment 149 tries to address a problem that has been identified by the City of Edinburgh Council. We have the bill in front of us and this is the opportunity to get it right, rather than waiting for an unspecified further piece of legislation. That is one of the problems that we have in housing legislation. This bill amends and corrects a variety of pieces of housing legislation in order to make them effective and useful.

As the minister said, Jim Eadie and I lodged amendments on the basis of practical experience and representations from a variety of
stakeholders. The principle of just kicking everything into the long grass does not fix the problem. The interrelationship between different pieces of housing legislation that have been developed at different times is in itself a problem.

For that reason, I will not necessarily press all my amendments to a vote, but I will have discussions with colleagues about all this and bring the amendments back at stage 3. I do not think that it is acceptable to reject the amendments simply on the basis that they were not consulted on. That is a poor approach to addressing legislation. I do not think that the bill as currently formulated does the job that it needs to do. We know what does not work in existing housing legislation and some of the provisions in the bill will not help to overcome those problems—hence the representations that we have had from the SFHA and the City of Edinburgh Council, which have concerns that the way in which the bill is worded means that it will not address the challenges that exist.

If the minister was prepared to have a meeting with Jim Eadie and me between stage 2 and stage 3, I would be prepared not to press my amendments. I am not convinced that the detail of what the minister has told us today is correct in every respect. I think that there are gaps in her response to the detail of what we have suggested.

On amendment 150, I am particularly concerned about the point about discretionary power not currently being used. Amendment 150 tries to address a current problem, not a future problem. This bill is the place to address the issue of social landlords walking away from mixed tenement buildings because they cannot be sure that they have properties that are capable of being let. That is a current problem; it is not something to be addressed in the future.

I do not know what the procedure is for this. If the minister was prepared to have discussions between now and stage 3, I would be prepared not to press my amendments. As I said, some of the amendments are probing amendments. If the minister is prepared to at least have the discussion—I am not saying that I have to agree with her in every respect—I would seek to do so before stage 3. If she has taken the view that we should just dismiss all my amendments because my proposals were not in the bill as drafted, I will press my amendments today and come back with them at stage 3, because I do not think that that is a credible response to amendments that were lodged to address existing problems, which we perceive that the bill does not address correctly.

10:30

Margaret Burgess: We have accepted a number of non-Government amendments at stage 2, and we have lodged a number of Government amendments following discussions at stage 1.

I am certainly willing to meet Sarah Boyack and Jim Eadie prior to stage 3. It is not a case of dismissing their amendments out of hand simply because there have not been consultations; we want to ensure that any amendments do what they are intended to do. We are not sure that that is the case for this group of amendments, or that some of the amendments are necessary. I repeat: I am more than willing to meet both Jim Eadie and Sarah Boyack to discuss their concerns.

The Convener: Sarah, are you pressing or withdrawing your amendment?

Sarah Boyack: The first set of amendments that I proposed—

The Convener: We are talking about amendment 149.

Sarah Boyack: I will not press it at this point.

Amendment 149, by agreement, withdrawn.

Amendments 153 and 154 not moved.

Amendment 150 moved—[Sarah Boyack].

The Convener: The question is, that amendment 150 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 150 disagreed to.

Amendments 151 and 7 not moved.

Jim Eadie: May I just say a word by way of response to the minister?

I am grateful for the minister’s response, in particular her recognition that my amendment 7 reflects the committee’s views at stage 1. I particularly welcome her statement that she is not discounting amendment 7 or any of the other amendments in the group out of hand, and the fact that she is willing to instruct her officials to enter a
constructive and meaningful dialogue to see whether a middle way can be found on amendment 7 in particular.

I recognise the statement that there is a need to strike a balance between the rights of councils to recover debts and the rights of owner-occupiers to repay their debt at an appropriate level over a reasonable period. The issue requires further discussion and consultation. I very much welcome the willingness to consult further on the matter and to engage in meaningful discussions on the issue.

Sarah Boyack: I have a strong view about the 30-years issue. It is not the right period of time to set. Therefore, I move amendment 152.

The Convener: The question is, that amendment 152 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 152 disagreed to.
Amendment 35 not moved.
Section 72 agreed to.

After section 72

The next group is on discharge of costs notices applying to owners of properties. Amendment 117, in the name of the minister, is the only amendment in the group.

Margaret Burgess: Amendment 117 proposes changes to the Title Conditions (Scotland) Act 2003 and to the Tenements (Scotland) Act 2004 to aid the conveyancing process in a particular situation that arises when a notice of potential liability for costs under those acts is registered against a property. The effect of such a notice is that a new owner may become liable for any relevant costs incurred in relation to maintenance or other work. The notice of potential liability expires after three years unless it is renewed. An issue may arise when a home owner wishes to sell their property during the three-year period or a renewal period. Even if the outstanding amount is paid, the title will still show that the property is encumbered with a potential liability for costs. Naturally, buyers may be wary of purchasing a property that is encumbered in that way.

Currently, the keeper of the registers of Scotland can deal with that administratively, but that may no longer be possible with the commencement of the Land Registration etc (Scotland) Act 2012. The change in the keeper’s practice will not bring transactions to a halt, but it will mean more to-ing and fro-ing between solicitors. To avoid such problems arising in conveyancing transactions, amendment 117 will provide for a statutory discharge procedure for home owners. There will be no obligation to use the new procedure and notices of potential liability will continue to expire at the end of three years unless renewed, as is currently laid down in legislation.

I move amendment 117.
Amendment 117 agreed to.
Section 73 agreed to.

After section 73

The next group is on the home maintenance framework duty. Amendment 9, in the name of Jim Eadie, is the only amendment in the group.

Jim Eadie: I am pleased to speak to and move amendment 9, the purpose of which is to require owners to prepare a maintenance plan to cover common repairs, with a view to encouraging responsible home ownership and the avoidance of emergency repairs. Sarah Boyack said in an earlier discussion that there is a need to create an expectation and culture among home owners that repairs are not a one-off event but something that needs to be addressed throughout the lifetime of someone’s ownership of a property. Amendment 9 seeks to achieve that.

In Edinburgh, 76 per cent of all private homes are in some form of disrepair and 38 per cent of private homes are considered to be in urgent disrepair. There is a clear need to encourage home owners to invest in their homes in order to preserve the fabric of the city and to keep buildings safe. Proactive maintenance helps prevent the need for emergency repairs, which can be costly and can potentially pose a danger to residents and the general public. The requirement to establish a maintenance plan would encourage owners to work together and take responsibility for the maintenance of their homes and would mark a shift in culture from reactive repairs to proactive maintenance. That would also help to reinforce the message that home owners have to take responsibility for the maintenance of their homes.

It can be difficult for an owner to take the first step towards organising a common repair if they
do not already know their neighbours, and that can lead to small jobs being put off. Establishing a relationship with neighbours to agree a maintenance plan would make it easier for owners to organise repairs when it becomes evident that work needs to be carried out. Under amendment 9, local authorities would have to establish local enforcement policies that could include a requirement for home owners to register details of their maintenance plan with the local authority or the use of powers in the Housing (Scotland) Act 2006 to require home owners to establish a maintenance plan.

I move amendment 9.

Margaret Burgess: I thank Jim Eadie for raising this issue because it gives me an opportunity to set out some of the existing powers and duties in this area. Under section 8 of the Tenements (Scotland) Act 2004, there is a general duty for owners to maintain any part of a tenement building that provides support or shelter to any other part. In addition, local authorities have a discretionary power under section 42 of the Housing (Scotland) Act 2006 to require property owners to draw up maintenance plans, which can include common areas where there is evidence of disrepair or which there is reason to believe will not be maintained to a reasonable standard. Historic Scotland is running a pilot voluntary building maintenance scheme in Stirling, and I will assess the results of the pilot. I would want to be able to do that before considering the introduction of a mandatory maintenance scheme.

Amendment 9 would place additional costs on all owners of property with common areas, regardless of their property’s state of repair. Every owner would require to arrange annual inspections of jointly owned roof areas and to appoint persons to implement maintenance plans. I am not convinced that such requirements are justified or that local authorities cannot address the problems of poor maintenance with their existing powers. I hope that that explanation will allow Jim Eadie to seek to withdraw amendment 9.

Sarah Boyack: The minister’s comments are illustrative. Although powers and requirements exist, none of them is being implemented, which leads to a problem.

I have questions about how Jim Eadie’s proposal would work and how it would relate to tenement management schemes. If amendment 9 was agreed to, it would have to be backed up by guidance on its implementation from the Scottish Government, so that a level playing field would apply across the country. I presume that Jim Eadie would suggest an enforcement scheme that is similar to the one that the City of Edinburgh Council outlined in its stage 1 submission.

The idea that buildings do not need annual maintenance inspections does not reflect reality. We have a problem with buildings that need to be jointly maintained but which undergo no regular maintenance inspections. If local authorities currently have powers to deal with that, those powers are not being used. Amendment 9 puts the issue centre stage and it would be useful to have its provisions in the bill.

Margaret Burgess: There are existing powers. Where there is a problem, officials will want to discuss with local authorities why they are not using the powers and how they can be encouraged to use those powers.

Jim Eadie: Amendment 9 has the City of Edinburgh Council’s support and is designed to tackle an issue that it identified as requiring to be addressed. I appreciate the minister’s willingness to engage in dialogue with the council. For that reason, I am content not to press the amendment and to ask to withdraw it.

Amendment 9, by agreement, withdrawn.

Section 74 agreed to.

Section 75—Maintenance plans

The Convener: The next group is on maintenance plans: areas. Amendment 56, in the name of James Kelly, is the only amendment in the group. Mark Griffin will speak to and move the amendment.

Mark Griffin (Central Scotland) (Lab): Amendment 56 would clarify the position on premises and gardens. The 2006 act refers to premises, which we feel could be interpreted to mean simply buildings. The amendment would ensure that shared gardens were covered in maintenance plans.

Across Scotland, local authorities and registered social landlords have massive difficulties when their tenants share a garden with private tenants and the garden is not maintained to an acceptable standard. Local authorities can step in if the situation in the garden breaches health and safety standards, but amendment 56 would ensure that action was taken before that point. I ask committee members to support it.

I move amendment 56.

Margaret Burgess: If I understand it correctly, amendment 56 seeks to enable local authorities to require owners to prepare a maintenance plan for common garden areas. Local authorities can already require owners to prepare a maintenance plan when the property consists of a single house or two or more houses, and the plan can include any part of the premises.
A plan can already include a garden area. Section 194(1) of the 2006 act says that a house “includes ... any yard, garden, garage, out-house or other area”, so the amendment is not required to achieve its intended purpose. I invite Mr Griffin to withdraw it and, if he does not do so, I ask the committee to reject it.

10:45

Mark Griffin: I thank the minister for her comments. As I said, the amendment seeks to clarify the position. We want to ensure that gardens are included in order to prevent an interpretation that focuses only on buildings.

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 56 disagreed to.

Section 75 agreed to.

Section 76 agreed to.

After section 76

The Convener: The next group is on charging orders. Amendment 118, in the name of the minister, is the only amendment in the group.

Margaret Burgess: Amendment 118 is a technical amendment to the Housing (Scotland) Act 1987. The bill provides an opportunity to tidy up schedule 9 to the 1987 act. Schedule 9 relates to recovery of expenses by charging order. However, the schedule still contains references to feu duties, which are no longer appropriate, as feudal tenure and feu duties were abolished by the Abolition of Feudal Tenure etc (Scotland) Act 2000.

Amendment 118 therefore repeals those references in paragraph 4(b)(i) of schedule 9 and adjusts the references in paragraph 6 of the schedule. It also makes minor consequential changes to the Crofters (Scotland) Act 1993 and the Civic Government (Scotland) Act 1982. As this is a technical amendment to deal with outdated references to feudal tenure, I do not intend to say any more on it.

I move amendment 118.

Amendment 118 agreed to.

Section 77 agreed to.

After section 77

The Convener: The next group is on the first-tier tribunal and Private Rented Housing Panel: disqualification from membership. Amendment 119, in the name of the minister, is grouped with amendment 120.

Margaret Burgess: Amendment 119 disqualifies specified office-holders from hearing cases transferred from the jurisdiction of the sheriff and letting agents redress cases as part of the first-tier tribunal. Amendment 120 disqualifies the same office-holders from being appointed as or remaining members of the Private Rented Housing Panel and, in consequence, the Homeowner Housing Panel.

The disqualifications will safeguard the independence of those tribunal jurisdictions and prevent potential conflicts of interest. The amendments also include the ability to amend the list of disqualified offices by secondary legislation, as is the case with some other existing tribunals. Having the power to amend the list will provide the flexibility to consider operational implications more fully when more is known about the organisational structure of the first-tier tribunal, which will include all of those housing-related jurisdictions.

I move amendment 119.

Amendment 119 agreed to.

Amendment 120 moved—[Margaret Burgess]—and agreed to.

Section 78 agreed to.

Section 79—Scottish Housing Regulator: transfer of assets following inquiries

The Convener: The next group is on the Scottish Housing Regulator: transfer of assets following inquiries. Amendment 121, in the name of the minister, is grouped with amendments 122 to 124.

Margaret Burgess: The purpose of section 79 is to protect the tenants, and indeed the lenders, of registered social landlords, by enabling the Scottish Housing Regulator to act quickly in the event of an RSL suddenly being in imminent danger of becoming insolvent. As I said when I gave evidence to the committee at stage 1, the
risk of that happening is low, and the regulator works hard to avoid such eventualities arising.

Section 79 is therefore a precautionary measure, which the Government hopes will never need to be used. It identifies four tests that need to be met before the regulator can set aside the usual requirement for it to consult the tenants and lenders of an RSL before directing a transfer of the RSL’s assets. The four tests are that the RSL’s viability is in jeopardy for financial reasons, that there is a risk of someone taking steps to have the RSL declared insolvent, that a direction to transfer assets would substantially reduce the likelihood of someone taking steps to have the RSL declared insolvent, and that there is insufficient time for the regulator to consult tenants and lenders before making a direction. Unless all four tests are met, the normal duty on the regulator, under section 67 of the Housing (Scotland) Act 2010, to consult tenants and lenders before directing a transfer of assets remains in force.

Amendment 121 and consequential amendment 122 provide that the regulator must consider separately whether there is time to consult tenants and lenders. They recognise that, in practice, more time would be needed to consult tenants than lenders. It would invariably take several weeks to conduct a genuine consultation with tenants, whereas lenders could be consulted in less time. The amendments ensure that section 79 sets aside the duty to consult only where there is real lack of time, and I invite the committee to support them.

Amendment 123 addresses the committee’s recommendation in its stage 1 report that the Government should issue guidance on how the regulator will act under section 79. The Government agrees in principle with that recommendation, but the Housing (Scotland) Act 2010 prohibits ministers from directing or otherwise seeking to control how the regulator performs its statutory functions. For that reason, it would not be right for ministers to issue the guidance that the committee has in mind. Instead, the regulator itself should be required to do so, and that is what amendment 123 achieves. It requires the regulator to describe the sort of circumstances in which it would not be able to consult tenants and/or lenders, what it would do in such circumstances and how it would communicate with those affected by a decision not to consult. It also requires the regulator to consult the representatives of tenants, landlords and lenders before issuing that guidance. I hope that amendment 123 addresses the concerns behind the committee’s recommendation and that the committee will support it.

Finally in this group, amendment 124 requires the regulator to obtain an independent valuation before directing an RSL to transfer some of its assets and to have regard to the valuation when directing the transfer. It has the effect of reinstating the 2010 act’s requirement to obtain a valuation, which paragraph 79(b) would have removed. The Council of Mortgage Lenders argued that such a duty is necessary and should be retained, and the Government has been persuaded by that argument, which is why we have lodged the amendment.

However, amendment 124 does make one change to the approach taken in the 2010 act. At present, the 2010 act requires that, where the regulator has obtained an independent valuation, it should then direct the transfer of assets at a price that it considers would be fetched if they were to be sold by a willing seller to a willing buyer. In practice, the need for the regulator to direct a transfer of assets is likely to arise in circumstances where the transfer is necessary to avoid the transferring RSL becoming insolvent. In such circumstances, neither the selling RSL nor the purchasing RSL is likely to be entirely willing, in the sense in which we usually understand that concept.

Amendment 124 recognises that by replacing the willing-seller-and-buyer test with a duty on the regulator to have regard to the valuation that it has been required to obtain. That is a more sensible approach, which avoids the risk of the regulator having to set a price that is not realistic in the circumstances in which a transfer has to be made. I hope that the committee will agree with that approach and will support the amendment.

I move amendment 121.

Amendment 121 agreed to.

Amendments 122 to 124 moved—[Margaret Burgess]—and agreed to.

Section 79, as amended, agreed to.

After section 79

The Convener: The next group is on registered social landlord disposals and restructuring. Amendment 155, in the name of the minister, is grouped with amendment 129.

Margaret Burgess: Amendments 155 and 129 give effect to the Government’s commitment to require tenants to be balloted before their registered social landlord becomes a subsidiary or part of a group structure of another body. When I gave evidence to the committee on 12 March, I explained that the Government is sympathetic to the argument of the Glasgow and West of Scotland Forum of Housing Associations that, when RSLs become subsidiaries or part of group structures, they lose control over their affairs in the same way as happens when RSLs transfer their
assets to other RSLs. I explained that we would consult on proposals to give tenants the same right to be balloted when changes involving group structures and subsidiaries are proposed as they already enjoy when a transfer is proposed.

We consulted stakeholders between 12 March and 9 April, and a majority of those who responded supported the proposal. I confirmed in the stage 1 debate that we would lodge stage 2 amendments to give effect to the measure. Amendment 155 will deliver the policy objective. It replicates the requirements in the Housing (Scotland) Act 2010 for a ballot when a transfer is proposed for cases in which there is a proposal for an RSL to become a subsidiary or part of the group structure of another RSL. The two types of change will therefore be treated in the same way, in recognition that both situations involve an RSL losing control over its affairs and that tenants should be consulted before either type of change happens. The amendment highlights the Government’s commitment to ensuring that tenants are consulted about changes that would have major implications for them before they happen.

Amendment 129 is technical and will have no legal effect; it simply tidies up a reference that is already in a section of the 2010 act.

I hope that the committee will support the amendments.

I move amendment 155.

Amendment 155 agreed to.

Sections 80 and 81 agreed to.

Section 82—Subordinate legislation

Amendment 57 not moved.

Amendment 37 moved—[Mark Griffin].

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 37 disagreed to.

Amendment 58 moved—[Mark Griffin].

The Convener: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 58 disagreed to.

Amendment 126 moved—[Margaret Burgess]—and agreed to.

Amendment 127 not moved.

Amendment 128 moved—[Margaret Burgess]—and agreed to.

Section 82, as amended, agreed to.

Sections 83 and 84 agreed to.

Schedule 2—Minor and consequential amendments

11:00

Amendments 39 to 41 and 129 moved—[Margaret Burgess]—and agreed to.

Schedule 2, as amended, agreed to.
Section 85—Commencement

The Convener: If amendment 42 is agreed to, I will not be able to call amendments 43 and 44, because of pre-emption. Amendments 43 and 44 are direct alternatives.

Amendment 42 not moved.

Amendment 43 moved—[Margaret Burgess].

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

Against
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Abstentions
Johnstone, Alex (North East Scotland) (Con)

The Convener: The result of the division is: For 4, Against 2, Abstentions 1.

Amendment 43 agreed to.

Amendment 44 moved—[Mary Fee].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fee, Mary (West Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 44 disagreed to.

Section 85, as amended, agreed to.

Section 86 agreed to.

Long Title

Amendment 45 not moved.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Housing (Scotland) Bill.
**Housing (Scotland) Bill**  
[As Amended at Stage 2]

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Housing (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about housing, including provision about the abolition of the right to buy, social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes.

PART 1

RIGHT TO BUY

1 Abolition of the right to buy
   (1) Sections 61 to 81, 84 and 84A of the 1987 Act (right to buy provisions) are repealed.
   (2) Section 52 of the 2001 Act (reports on right to buy) is repealed.
   (3) Sections 145 to 147 of the 2010 Act (duties to collect information in relation to right to buy) are repealed.

2 Amendment of right to buy provisions
   In the 1987 Act—
   (a) in section 61ZA(1) (limitation on the right to purchase: new tenants), after “occupation” insert “as a tenant”, and
   (b) in section 61F (limitation on the right to purchase: new supply social housing), repeal the words “created before the relevant day” in each place where they occur.

PART 2

SOCIAL HOUSING

Allocation of social housing

3 Reasonable preference in allocation of social housing
   In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (1) substitute—
“(1) A social landlord must, in relation to all houses held by it for housing purposes, secure that in the selection of its tenants a reasonable preference is given to the persons mentioned in subsection (1ZA).

(1ZA) The persons are—

(a) persons who—

(i) subject to subsection (1A), are homeless persons and persons threatened with homelessness (within the meaning of Part 2), and

(ii) have unmet housing needs,

(b) persons who—

(i) are living under unsatisfactory housing conditions, and

(ii) have unmet housing needs, and

(c) tenants of houses which—

(i) are held by a social landlord, and

(ii) the social landlord selecting its tenants considers to be under-occupied.

(1ZB) For the purposes of subsection (1ZA), persons have unmet housing needs where the social landlord considers the persons to have housing needs which are not capable of being met by housing options which are available.”.

4 Rules on priority of allocation of housing: consultation

(1) After section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), insert—

“20A Rules on priority of allocation of housing: consultation

(1) Before making or altering its rules governing the priority of allocation of houses, a social landlord must—

(a) consult the persons mentioned in subsection (2), and

(b) prepare and publish a report on the consultation.

(2) The persons are—

(a) applicants on its housing list (within the meaning of section 19),

(b) tenants of the landlord,

(c) bodies for the time being registered in the register of tenant organisations maintained by the landlord under section 53(3) of the Housing (Scotland) Act 2001 (asp 10), and

(d) such other persons as the landlord thinks fit.

(3) A social landlord may publish a consultation report mentioned in subsection (1)(b) in such manner as it thinks fit (and may in particular publish a joint report with any other social landlord).”.

(2) In section 21 of the 1987 Act, after subsection (3) insert—

“(3A) In making or altering its rules governing the priority of allocation of houses, a social landlord must have regard to—
(a) any local housing strategy (within the meaning of section 89(1)(b) of the Housing (Scotland) Act 2001) for its area, and

(b) any guidance published by the Scottish Ministers.

(3AA) Before publishing any guidance mentioned in subsection (3A), the Scottish Ministers must consult such persons as they consider appropriate.

(3B) The Scottish Ministers may by regulations prescribe persons of a description or type who a social landlord must include in its rules governing the priority of allocation of houses.

(3C) Regulations under subsection (3B) are subject to the affirmative procedure.”.

(3) The title of section 21 of the 1987 Act becomes “Rules relating to the housing list and to transfer of tenants”.

6 Factors which may be considered in allocation: ownership of property

(1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (2)(a)(viii) substitute—

“(viii) where any of the circumstances in subsection (2C) apply to that person, the ownership of, or value of, heritable property owned by—

(A) the applicant,

(B) a person who normally resides with the applicant, or

(C) a person who it is proposed will reside with the applicant.”.

(2) After subsection (2B) insert—

“(2C) The circumstances are that—

(a) in the case of a property which has not been let, the owner cannot secure entry to that property,

(b) it is probable that occupation of the property will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14) from some other person residing in that property,

(c) it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that property or elsewhere,

(d) occupation of the property may endanger the health of the occupants and there are no reasonable steps which can be taken by the applicant to prevent that danger.”.

7 Determination of minimum period for application to remain in force

(1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing)—

(a) in subsection (2)(a)(iii), at the beginning insert “except to the extent permitted by section 20B,”, and

(b) in subsection (2)(b)(i), at the beginning insert “except to the extent permitted by section 20B,”.
(2) After section 20A of the 1987 Act (inserted by section 4(1)), insert—

**20B Determination of minimum period for application to remain in force**

(1) A social landlord may impose a requirement that an application must have remained in force for a minimum period before the applicant is eligible for the allocation of housing falling within section 20(1) if, before making that application, any of the circumstances mentioned—

(a) in subsection (5) applied in relation to the applicant, or

(b) in paragraphs (a) to (g) of subsection (5) applied in relation to a person who it is proposed will reside with the applicant.

(2) But a social landlord may not impose a requirement under subsection (1) if the landlord—

(a) in relation to the same application has previously relied on the same circumstance as it applied to an applicant or a person who it is proposed will reside with the applicant to impose a requirement under subsection (1), or

(b) is a local authority and has a duty to the applicant under section 31(2) (duty to secure accommodation where applicant is homeless).

(3) In considering whether to impose a requirement under subsection (1), a social landlord must have regard to any guidance about this section (including the matters mentioned in subsection (4)) published by the Scottish Ministers.

(3A) Before publishing any guidance mentioned in subsection (3), the Scottish Ministers must consult such persons as they consider appropriate.

(4) The Scottish Ministers may by regulations prescribe—

(a) the maximum period preceding the application which a social landlord may consider in relation to any circumstances mentioned in subsection (5),

(b) the maximum period for an application to have remained in force which a social landlord may impose in relation to any circumstances mentioned in subsection (5), and

such regulations may make different provision for different cases.

(5) The circumstances are—

(a) the person has—

(i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person,

(ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person, or

(iii) acted in an antisocial manner, or pursued a course of conduct which is antisocial conduct, in relation to an employee of the social landlord in the course of making the application,

(b) the person has been, or has resided with a person who has been, convicted of—
(i) using a house or allowing it to be used for immoral or illegal purposes, or
(ii) an offence punishable by imprisonment which was committed in, or in the locality of, a house occupied by the person,

(c) an order for recovery of possession has been made against the person in proceedings under—
   (i) the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118),
   (ii) the Housing Act 1985 (c.68),
   (iii) this Act,
   (iv) the Housing (Scotland) Act 1988 (c.43),
   (v) the Housing (Scotland) Act 2001 (asp 10),

(d) the person’s tenancy has been terminated by the landlord under section 18(2) of the Housing (Scotland) Act 2001 (repossession where abandoned tenancy),

(e) the person’s interest in a tenancy has been terminated by the landlord under section 20(3) of the Housing (Scotland) Act 2001 (abandonment by joint tenant),

(f) in relation to a house where the person was a tenant, a court has ordered recovery of possession on the ground set out in paragraph 3 or 4 of schedule 2 to the Housing (Scotland) Act 2001,

(g) there is or was any outstanding liability (for payment of rent or otherwise) in relation to a house which—
   (i) is attributable to the person’s tenancy of the house, and
   (ii) either—
      (A) section 20(2A) would not be satisfied in respect of that debt, or
      (B) in the case of a debt which is no longer outstanding, section 20(2A) would not have been satisfied at any time while that debt remained outstanding,

(h) the person knowingly or recklessly made a false statement in any application for housing held by a social landlord,

(i) the person has refused one or more offers of housing falling within section 20(1) and the landlord considers the refusal of that number of offers to be unreasonable.

(6) In subsection (5)—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).
(7) The Scottish Ministers may by regulations modify subsections (5) and (6).

(7A) After the social landlord imposes a requirement under subsection (1) (whether or not previously varied under this subsection), it may—

(a) withdraw the requirement, or

(b) vary the requirement in order to shorten the period imposed for the application to have remained in force.

(8) An applicant may by summary application appeal to the sheriff against any decision of a social landlord under subsection (1).

(9) Regulations under subsection (4) and under subsection (7) are subject to the affirmative procedure.”.

8 Creation of short Scottish secure tenancy: antisocial behaviour

(1) In section 34 of the 2001 Act (short Scottish secure tenancies)—

(a) in subsection (7), for “or 2” substitute “, 2 or 2A”, and

(b) after subsection (8), insert—

“(9) A landlord must have regard to any guidance published by the Scottish Ministers—

(a) before creating a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, and

(b) when taking any steps in relation to such a tenancy with a view to—

(i) extending the term of the tenancy under section 35A, or

(ii) raising proceedings for the recovery of possession of the house under section 36.

(10) Before publishing any guidance mentioned in subsection (9), the Scottish Ministers must consult such persons as they consider appropriate.”.

(2) In section 35 of the 2001 Act (conversion to a short Scottish secure tenancy)—

(a) for subsection (2) substitute—

“(2) The landlord may serve a notice under subsection (3) only where—

(a) the tenant (or any one of joint tenants) or a person residing or lodging with, or a subtenant of, the tenant is subject to an antisocial behaviour order under—

(i) section 234AA of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), or

(b) the tenant (or any one of joint tenants), a person residing or lodging with, or a subtenant of, the tenant, or a person visiting the house has, within the period of 3 years preceding the date of service of the notice—
(i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person, or

(ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.”.

(aa) in subsection (3)(b), after “order” insert “or, as the case may be, has behaved as described in subsection (2)(b)”.

(b) after subsection (6), insert—

“(7) In this section—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”.

(3) In section 37(1) of the 2001 Act (conversion to Scottish secure tenancy), in paragraph (a) for “or 2” substitute “, 2 or 2A”.

(4) In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy)—

(a) after paragraph 2 insert—

“Other antisocial behaviour

2A (1) A person mentioned in sub-paragraph (2) has, within the period of 3 years preceding the date of service of the notice—

(a) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, or

(b) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.

(2) The persons are—

(a) the prospective tenant,

(b) any one of prospective joint tenants,

(c) a person visiting a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, and

(d) a person who it is proposed will reside with the prospective tenant.

(3) In sub-paragraph (1)—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and
“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40), and

(b) for paragraph 6 substitute—

“Accommodation for person in receipt of housing support

6 The house is to be let expressly on a temporary basis to a person—

(a) to whom no other paragraph of this schedule applies, and

(b) who is in receipt of a housing support service.”.

(5) In section 31(5) of the 1987 Act (permanent accommodation where duty to secure accommodation for persons found to be homeless), in paragraph (c) for “or 2” substitute “, 2 or 2A”.

9 Grant of short Scottish secure tenancy: homeowners

In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy), after paragraph 7 insert—

“Temporary letting where other property owned

7A(1) The house is to be let expressly on a temporary basis to a person—

(a) pending the making of arrangements in relation to a property mentioned in sub-paragraph (2) which will allow the person’s housing needs to be met.

(2) The property is heritable property owned by the person or a person who it is proposed will reside with that person.”.

10 Short Scottish secure tenancy: term

(1) In section 34 of the 2001 Act (short Scottish secure tenancies)—

(a) after subsection (5), insert—

“(5A) Subsection (5) does not apply to a tenancy mentioned in subsection (6A).”,

(b) after subsection (6) insert—

“(6A) A tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 has a term of 12 months from the day on which the tenancy is granted.”.

(2) In section 35 of the 2001 Act (conversion to short Scottish secure tenancy)—

(a) after subsection (3) insert—

“(3A) A short Scottish secure tenancy created by virtue of this section has a term of 12 months from the day on which the landlord serves a notice under subsection (3).”, and

(b) for subsection (4), substitute—

“(4) Where a tenancy becomes a short Scottish secure tenancy by virtue of this section—

(a) subsection (5) of section 34 does not apply to the tenancy, but

(b) otherwise subsection (6) of that section does apply to the tenancy.”.

(3) In section 37 of the 2001 Act (conversion to Scottish secure tenancy), after subsection (4) insert—
“(5) Subsection (6) applies to a tenancy which—
(a) became a short Scottish secure tenancy by virtue of section 35, and
(b) becomes a Scottish secure tenancy by virtue of this section.

(6) The term of the tenancy is the term which applied immediately before the tenancy became a short Scottish secure tenancy.”.

11 Short Scottish secure tenancy: extension of term

(1) After section 35 of the 2001 Act, insert—

“35A Extension of term of short Scottish secure tenancy
(1) The landlord under a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 may extend the term of that tenancy by 6 months from the day which would otherwise be the day of expiry of the tenancy.

(2) Such an extension may not be made unless—
(a) the tenant is in receipt of housing support services, and
(b) the landlord has, on or before the day which is 2 months before the day which would otherwise be the day of expiry of the tenancy, served on the tenant a notice informing the tenant of—
(i) the extension, and
(ii) the reasons for the extension.

(3) A landlord may not give a notice if the landlord has previously given a notice under subsection (2) in relation to that short Scottish secure tenancy.”.

(2) In section 37 of the 2001 Act (conversion to Scottish secure tenancy)—

(a) in subsection (1)—
(i) the words “, in the period of 12 months following the creation of the tenancy,” are repealed,
(ii) after “36(2)” insert “before the expiry of the relevant period”, and
(iii) for “that” substitute “the relevant”,
(b) after subsection (1), insert—
“(1A) In this section, the “relevant period” is—
(a) the period of 12 months following the creation of the tenancy, or
(b) if an extension notice has been served under section 35A, the period of 18 months following the creation of the tenancy.”.

(c) in subsection (2)—
(i) for “period of 12 months following the creation of the tenancy” substitute “relevant period”, and
(ii) for “that period of 12 months”, in both places where it occurs, substitute “the relevant period”.
12 Short Scottish secure tenancy: recovery of possession

In section 36 of the 2001 Act (recovery of possession)—

(a) in subsection (2), after paragraph (a) insert—

“(aa) in the case of a short Scottish secure tenancy created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, the landlord considers that any obligation of the tenancy has been broken,”,

(b) in subsection (3), after paragraph (a) insert—

“(aa) state the reason why the landlord is seeking recovery of possession (including, in a case where subsection (2)(aa) applies, the obligations which the landlord considers to have been broken),”,

(c) after subsection (4), insert—

“(4A) A tenant may, before the end of the period of 14 days beginning with the day of service of a notice under subsection (2), apply to the landlord for a review of a decision to seek recovery of possession of the house which is the subject of the tenancy.

(4B) If an application for a review under subsection (4A) is made, the landlord must, before the day specified in the notice by virtue of subsection (3)(b)—

(a) confirm its decision to seek recovery of possession or withdraw its notice under subsection (2),

(b) notify the tenant of its decision on the review, and

(c) where its decision on the review is to confirm the decision to seek recovery of possession, notify the tenant of the reasons.

(4C) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with a review following an application under subsection (4A).”,

(ca) in subsection (5)(a), after “34(5)” insert “or, in a case where subsection (2)(aa) applies, the end of the term applicable to the tenancy in accordance with section 34(6A), 35(3A) or 35A(1)”,

(d) in subsection (7), after “16” insert “, but subject to the modification mentioned in subsection (8)”, and

(e) after subsection (7), insert—

“(8) In relation to the recovery of possession of the house which is the subject of a short Scottish secure tenancy, section 14(4) is to be read as if for paragraph (b) there were substituted—

“(b) a date, not earlier than 4 weeks from the date of service of the notice on or after which the landlord may raise proceedings for recovery of possession,”.

Scottish secure tenancy

13Assignation, sublet and joint tenancy of Scottish secure tenancy

(1) In section 11 of the 2001 Act (Scottish secure tenancy)—

(a) in subsection (6), the words “, or is intended to be,” are repealed, and
(b) after subsection (6) insert

“(6A) An application under subsection (5) may be made only where the house in question has been the only or principal home of the person falling within subsection (6) throughout the period of 12 months ending with the date of the application.

(6B) For the purposes of subsection (6A) a period may be considered in relation to a person only if, at any time before that period began, the landlord was notified by—

(a) the person, or
(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person’s only or principal home.”.

(2) In section 32 of the 2001 Act (assignation, subletting, etc.)—

(a) in subsection (1)—

(i) the word “and” immediately preceding paragraph (b) is repealed,
(ii) in paragraph (b), after “been” insert “the tenant’s and”,
(iii) in paragraph (b), for “6” substitute “12”, and
(iv) after paragraph (b), insert “ and

“(c) in the case of a sublet, only where the house has been the tenant’s only or principal home throughout the period of 12 months ending with the date of the application for the landlord’s consent to the sublet under paragraph 9 of schedule 5.”,

(b) after subsection (1), insert—

“(1A) For the purposes of an assignation mentioned in subsection (1)(b), a period may be considered in relation to a person only if—

(a) the person was the tenant of the house throughout that period, or
(b) at any time before that period began, the landlord was notified by—

(i) the person, or
(ii) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person’s only or principal home.

(1B) For the purposes of a sublet mentioned in subsection (1)(c), a period may be considered in relation to a tenant only if—

(a) the tenant was the tenant of the house throughout that period, or
(b) at any time before that period began, the landlord was notified by—

(a) the tenant, or
(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the tenant’s only or principal home.”, and

(c) in subsection (3)—
(i) the word “or” immediately preceding paragraph (e) is repealed, and
(ii) after paragraph (e), insert—

“(f) in the case of consent to an assignation by a local authority or a registered social landlord, if the proposed assignee is not a person to whom that local authority or registered social landlord would give a reasonable preference when selecting tenants under section 20(1) of the 1987 Act, or

(g) in the case of consent to an assignation, if the assignation would in the opinion of the landlord, result in the house being under-occupied.”.

14  Succession to Scottish secure tenancy
In schedule 3 to the 2001 Act (succession to Scottish secure tenancy: qualified persons)—
(a) in paragraph 2(2), for “6” insert “12”,
(b) in paragraph 3, for “at the time of” substitute “throughout the period of 12 months ending with”,
(c) in paragraph 4(b), for “at the time of” substitute “throughout the period of 12 months ending with”, and
(d) after paragraph 4, insert—

“Only or principal home

4A For the purposes of paragraph 2, 3 or 4 a period may be considered in relation to a person only if, at any time before that period began, the landlord was notified by—

(a) the person, or

(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person’s only or principal home.”.

15  Grounds for eviction: antisocial behaviour
(1) In section 14 of the 2001 Act (proceedings for possession), after subsection (2A) insert—

“(2B) Where such proceedings are to include a ground for recovery of possession set out in paragraph 2 of schedule 2, the landlord must have regard to any guidance published by the Scottish Ministers before raising such proceedings in relation to recovering possession of the house.

(2C) Before publishing any guidance mentioned in subsection (2B), the Scottish Ministers must consult such persons as they consider appropriate.”.

(2) In section 16 of the 2001 Act (powers of court in possession proceedings)—
(a) in subsection (2), after paragraph (a) insert—

“(aa) whether or not paragraph (a) applies, that—

(i) the landlord has a ground for recovery of possession set out in paragraph 2 of that schedule and so specified, and

(2)
(ii) the landlord served the notice under section 14(2) before the day which is 12 months after—
   (A) the day on which the person was convicted of the offence forming the ground for recovery of possession, or
   (B) where that conviction was appealed, the day on which the appeal is dismissed or abandoned,”; and

(b) after subsection (3), insert—
“(3A) Subsection (2) does not affect any other rights that the tenant may have by virtue of any other enactment or rule of law.”.

16 Recovery of possession of properties designed for special needs

In schedule 2 to the 2001 Act (grounds for recovery of possession of house)—

(a) in paragraph 11(a), the words “longer a” are repealed, and

(b) in paragraph 12(a), the words “longer a” are repealed.

PART 3

PRIVATE RENTED HOUSING

Transfer of sheriff’s jurisdiction to First-tier Tribunal

17 Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.

18 Repairing standard

(1) The 2006 Act is amended as follows.

(2) In section 18—

(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,

(b) in subsection (2)(b), for “sheriff” substitute “Tribunal”.

(3) The title of section 18 becomes “Contracting out with consent of First-tier Tribunal”.

(4) In section 57—
(a) in subsection (2), for “sheriff” substitute “relevant authority”,
(b) after subsection (2) insert—
“(2A) In subsection (2), the relevant authority is—
(a) where the requirement or thing which the person is authorised or entitled
to do relates to the repairing standard, the First-tier Tribunal,
(b) in any other case, the sheriff.”.
(5) Part 2 of schedule 1 makes minor and consequential amendments.

19 Right to adapt rented houses
(1) After section 66 of the 2006 Act insert—
“66A Appeals in relation to section 52
(1) A tenant aggrieved by a decision by a landlord—
(a) to impose any condition on a consent to carry out work in pursuance of
section 52(2), or
(b) to refuse to consent to the carrying out of any such work,
may appeal to the First-tier Tribunal within 6 months of being notified of that
decision.
(2) The First-tier Tribunal may, on cause shown, hear an appeal after the deadline
set by subsection (1).
(3) The First-tier Tribunal must, unless the Tribunal considers the condition or, as
the case may be, refusal appealed against to be reasonable, determine an appeal
under subsection (1) by quashing the decision and directing the landlord to
withdraw the condition (or to vary it in such manner as the Tribunal may
specify) or, as the case may be, to consent to the application (with or without
such conditions as the Tribunal may specify).
(4) In determining whether a condition or refusal appealed against under
subsection (1) is reasonable, the First-tier Tribunal must, where the appeal
relates to an application made for the purposes of section 52(2)(a), have regard
to any code of practice issued by the Commission for Equality and Human
Rights which relates to section 52 or 53.
(5) The First-tier Tribunal’s determination on an appeal under subsection (1) is
final.”.
(2) Part 3 of schedule 1 makes minor and consequential amendments.

20 Landlord registration
(1) The 2004 Act is amended as follows.
(2) In section 92(2), for “sheriff” substitute “First-tier Tribunal”.
(3) In section 97—
(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,
(b) in subsection (2), for “sheriff” substitute “First-tier Tribunal”.
(4) Part 4 of schedule 1 makes minor and consequential amendments.
21 Houses in multiple occupation

(1) The Scottish Ministers may by regulations—
(a) provide that the First-tier Tribunal may make an order of the kind mentioned in section 153(2) of the 2006 Act instead of the sheriff;
(b) provide that the following may be made to the First-tier Tribunal instead of the sheriff—
(i) appeals against decisions of local authorities to which section 158 of that Act applies,
(ii) applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act,
(iii) applications for a warrant for the ejection of the occupant from land or premises where the occupant has not complied with a requirement under paragraph 2 of schedule 5 to that Act in relation to the land or premises.

(2) Regulations under subsection (1) may—
(a) disapply the following provisions of the 2006 Act—
(i) section 153(2),
(ii) section 159(1),
(iii) paragraph 9(2) of schedule 4,
(iv) paragraph 3(1) of schedule 5,
(b) make such other consequential modifications to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

Landlord registration: time limit for determining application

22 Landlord registration: time limit for determining application

(1) After section 85A of the 2004 Act, insert—

“85B Time limit for determining application

(1) This section applies where a relevant person makes an application to a local authority in accordance with section 83.
(2) The local authority must determine the application under section 84 within 12 months of receiving the application.
(3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the local authority, by such period as the Tribunal thinks fit.
(4) The First-tier Tribunal may not extend a period unless the local authority applies for the extension before the period expires.
(5) The relevant person is entitled to be a party to any proceedings on such an application.
(6) The decision of the First-tier Tribunal on such an application is final.
(7) If the local authority does not determine the application within the period required by this section—
(a) the authority is to be treated as having entered, on the day by which the
authority was required to determine the application, the relevant person
in the register maintained by the authority under section 82(1), and
(b) unless otherwise removed from the register in accordance with this Part,
that person is to be treated as being removed from the register on the
expiry of the period of 12 months beginning with that day.

(8) Where subsection (7) applies the authority must—
(a) enter the name of the relevant person in the register maintained by the
authority under section 82(1), and
(b) state in the register a registration number in relation to that person
(which is to be treated as having been given under section 84(5A)).

(9) Subject to the modifications in subsection (10), the relevant person is for all
purposes to be treated as having been registered by virtue of section 84(2)(a).

(10) The modifications are—
(a) in the case of an application to which section 84(3)(a) and (b) applies,
the relevant person is to be treated as having been registered by virtue of
section 84(3), and
(b) in the case of an application to which section 84(4)(a) and (b) applies,
the relevant person is to be treated as having been registered by virtue of
section 84(4),
(c) section 84(6) does not apply, and
(d) section 89(2)(b), (3)(b) and (3A)(b) are to be read as if for the words “no
longer applies” there were inserted “does not apply”.

(2) In section 86(1)(a) of the 2004 Act (entry in the register), after “section 84(2)” insert “or
section 85B(8)(a)”.

**Repairing standard**

### 22A Carbon monoxide alarms
In section 13 of the 2006 Act—
(a) the word “and” after paragraph (e) of subsection (1) is repealed,
(b) after paragraph (f) of subsection (1) insert “, and
    (g) the house has satisfactory provision for giving warning if carbon
    monoxide is present in a concentration that is hazardous to health.”,
(c) after subsection (5) insert—
    “(6) In determining whether a house meets the standard of repair mentioned in
    subsection (1)(g), regard is to be had to any building regulations and any
    guidance issued by the Scottish Ministers on provision for giving warning if
    carbon monoxide is present in a concentration that is hazardous to health.”.

### 22B Electrical safety inspections
(1) In section 13 of the 2006 Act (the repairing standard), after subsection (4) insert—
“(4A) In determining whether a house meets the standard of repair mentioned in subsection (1)(c) and (d) in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances, regard is to be had to any guidance issued by the Scottish Ministers on electrical safety standards.”.

(2) After section 19 of the 2006 Act insert—

“19A Duty to ensure regular electrical safety inspections

(1) The landlord must ensure that regular inspections are carried out for the purpose of identifying any work which—

(a) relates to installations for the supply of electricity and electrical fixtures, fittings and appliances, and

(b) is necessary to ensure that the house meets the repairing standard.

(2) The duty in subsection (1) is complied with if—

(a) an inspection has been carried out before the tenancy starts (but not earlier than 5 years before the start of the tenancy), and

(b) inspections are carried out during the tenancy at such intervals to ensure that there is a period of no more than 5 years between each inspection.

(3) The landlord must—

(a) before the start of the tenancy, provide the tenant with a copy of the record of the most recent inspection carried out, and

(b) provide the tenant with a copy of the record of any inspection carried out during the tenancy.

(4) For the purposes of sections 16(4), 17, 22 and 24 and schedule 2, references to a duty under section 14(1) include the duties under this section.

(5) In relation to a tenancy which started before the day of commencement of section 22B(2) of the Housing (Scotland) Act 2014 (asp 00)—

(a) subsections (2)(a) and (3)(a) do not apply, but

(b) the landlord must ensure that an inspection is carried out no later than the end of the period of 12 months beginning on that day (unless the tenancy ends before the end of that period).

19B Electrical safety inspections

(1) An inspection carried out in pursuance of section 19A must be carried out by a competent person.

(2) The person carrying out the inspection must prepare a record of the inspection including the following information—

(a) the date on which the inspection was carried out,

(b) the address of the house inspected,

(c) the name and address of the landlord or the landlord’s agent,

(d) the name, address and relevant qualifications of the person who carried out the inspection,

(e) a description, and the location, of each installation, fixture, fitting and appliance inspected,
(f) any defect identified,
(g) any action taken to remedy a defect.

(3) A copy of the record must be—
(a) given to the landlord, and
(b) retained by the landlord for a period of 6 years.

(4) The Scottish Ministers must publish guidance on the carrying out of inspections.

(5) In determining who is competent to carry out an inspection, the landlord must have regard to the guidance.”.

22C Power to modify repairing standard etc.

(1) After section 20 of the 2006 Act insert—

“20A Power to modify repairing standard etc.

(1) The Scottish Ministers may by regulations vary or extend the repairing standard and a landlord’s duty to ensure a house meets that standard.

(2) Regulations under subsection (1) may, in particular, make provision about—
(a) the tenancies to which this Chapter applies,
(b) determining whether a house meets the repairing standard,
(c) carrying out inspections in relation to the repairing standard.

(3) Regulations under subsection (1) may modify sections 12 to 14 and any other provision of this Chapter.”.

(2) In section 191(5) of the 2006 Act, after “section” insert “20A,.”.

Enforcement of repairing standard

23 Third party application in respect of the repairing standard

(1) In section 22 of the 2006 Act (tenant application to private rented housing panel)—

(a) after subsection (1), insert—

“(1A) A person mentioned in subsection (1B) may apply to the private rented housing panel for determination of whether a landlord has failed to comply with the duty imposed by section 14(1)(b) (a person who makes such an application being referred to as a “third party applicant”).

(1B) The persons are—
(a) a local authority,
(b) a person specified by order made by the Scottish Ministers.”;

(b) in subsection (2), for “(1) must set out the tenant’s” substitute “(1) or (1A) must set out the tenant’s, or as the case may be, the third party applicant’s”,

(c) in subsection (3), for “such application may be made unless the tenant” substitute “application under this section may be made unless the person making the application”,

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(d) in subsection (4), for “such application” substitute “application under this section”, and
(e) after subsection (4), insert—

“(4A) The tenant of the house concerned is entitled to be a party in the determination of any application made under subsection (1A).”.

(2) The title of section 22 of the 2006 Act becomes “Application in respect of the repairing standard”.

(3) In section 22A(1) of the 2006 Act (information to be given to a local authority), after “22(1)” insert “, or under section 22(1A) where the applicant is not a local authority”.

(4) In section 23 of the 2006 Act (referral to private rented housing committee)—
(a) in subsection (1), after “22(1)” insert “or 22(1A)”,
(b) in subsection (2)(b), after “tenant” insert “or third party applicant”,
(c) in subsection (4), after “application”, where it first occurs, insert “under section 22(1)”,
(d) after subsection (4) insert—

“(4A) The president must, as soon as practicable after rejecting an application under section 22(1A) give notice of the rejection to—
(a) the third party applicant, and
(b) the tenant.”, and
(e) in subsection (5), for “Such a notice” substitute “A notice under subsection (4) or (4A)”.  

(5) In section 24(1) of the 2006 Act (determination by private rented housing committee) for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”.  

(6A) In section 181 of the 2006 Act (rights of entry: general)—
(a) after subsection (1) insert—

“(1A) Any person authorised by a third party applicant is entitled to enter any house in respect of which an application under section 22 may be made for the purposes of enabling or assisting the third party applicant to decide whether to make an application under section 22(1A).”, and

(b) in subsection (2), for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”.  

(6B) In section 182 of the 2006 Act (warrants authorising entry)—
(a) in subsection (1), after “subsection (1)” insert “, (1A)”, and

(b) after subsection (3) insert—

“(3A) In relation to an application for a warrant under section 181(1A), the reference to the occupier in subsection (3) is to be read as including the tenant, the landlord and any known agent of the landlord.”.  

(6C) In section 184 of the 2006 Act (rights of entry: supplemental), after subsection (4) insert—
“(4A) In relation to the exercise of the right conferred by section 181(1A), the reference to occupants in subsection (4) is to be read as including the tenant, the landlord and any known agent of the landlord.”.

(6D) In section 187 of the 2006 Act (formal communications), in subsection (3)(b), for “the recorded delivery service” substitute “a service which provides for the delivery of the communication to be recorded”.

(7) In section 194(1) of the 2006 Act (interpretation), after the definition of “tenant” insert—

“third party applicant” has the meaning given by section 22(1A),”.

(8) Section 35(3) of the Private Rented Housing (Scotland) Act 2011 (asp 14) is repealed.

24 Procedure for third party applications

(1) In paragraph 1 of schedule 2 to the 2006 Act (notification)—

(a) in sub-paragraph (1), for “a tenant’s application” substitute “an application”,

(b) in sub-paragraph (2), for “either party” substitute “the landlord or the tenant”,

(c) in sub-paragraph (3), for “both parties” substitute “the landlord and the tenant”, and

(d) after sub-paragraph (3), insert—

“(4) In the case of an application under section 22(1A), the committee must, in addition to carrying out the matters mentioned in sub-paragraphs (1) to (3)—

(a) serve on the third party applicant a notice containing the matters mentioned in sub-paragraph (1)(a) to (c),

(b) if the committee thinks fit following a request of the third party applicant, change the day specified for the purposes of sub-paragraph (1)(c),

(c) notify—

(i) the third party applicant of any change under sub-paragraph (2)(b),

(ii) the landlord and the tenant of any change under paragraph (b).”.

(2) In paragraph 2 of schedule 2 to the 2006 Act (inquiries)—

(a) in sub-paragraph (3)(a), for “or tenant” substitute “, the tenant or, as the case may be, third party applicant”,

(b) in sub-paragraph (3)(b), for “or tenant” substitute “, tenant or, as the case may be, third party applicant”,

(c) in sub-paragraph (4)(a), for “in the notice served under” substitute “in accordance with”, and

(d) in sub-paragraph (4)(b), for “in a notice served under paragraph 1(2)(b)” substitute “in accordance with paragraph 1(2)(b) or (4)(b)”.

(3) In paragraph 3(1) of schedule 2 to the 2006 Act (evidence), after “tenant” insert “, third party applicant”.

(4) In paragraph 5 of schedule 2 to the 2006 Act (expenses)—

(a) after sub-paragraph (2)(b), insert—
“(ba) the third party applicant,,” and
(b) in sub-paragraph (2)(c), for “or tenant” substitute “; tenant or third party applicant”.

(5) In paragraph 6 of schedule 2 to the 2006 Act (recording and notification of decisions)—
(a) in sub-paragraph (1)(a), for “a tenant’s” substitute “an”,
(b) the word “and” at the end of sub-paragraph (3)(c) is repealed, and
(c) for sub-paragraph (3)(d), substitute—
“(d) in the case of an application under section 22(1A), the third party applicant, and
(e) the local authority (unless the local authority is the third party applicant in relation to the decision).”.

(6) After paragraph 7(1) of schedule 2 to the 2006 Act (withdrawal of application), insert—
“(1A) A third party applicant may withdraw an application under section 22(1A) at any time.”.

(7) In paragraph 8(1) of schedule 2 to the 2006 Act (further provision on procedure), after “22(1)” insert “and 22(1A)”.

25 Appeals in relation to third party applications

(1) In section 64 of the 2006 Act (Part 1 appeals)—
(a) in subsection (4)(a), for “a tenant’s” substitute “an”,
(b) after subsection (4), insert—
“(4A) A third party applicant aggrieved by a decision by a private rented housing committee which—
(a) is mentioned in subsection (4)(a) to (f),
(b) was made following an application by the applicant under section 22(1A),
may appeal to the sheriff within 21 days of being notified of that decision.”,
and
(c) in subsection (5), after “tenant” insert “or a third party applicant”.

(2) In section 65(2) of the 2006 Act (determination of appeals), after “64(4)” insert “, (4A)”.

(3) After section 66(3) of the 2006 Act (appeals procedure), insert—
“(3A) In an appeal by a landlord under section 64(4) which relates to a decision following an application under section 22(1A)—
(a) the third party applicant is to be a party to the proceedings,
(b) the tenant is entitled to be a party to the proceedings.

(3B) In an appeal by a tenant under section 64(4) which relates to a decision following an application under section 22(1A), the landlord and the third party applicant are to be parties to the proceedings.

(3C) In an appeal by a third party applicant under section 64(4A)—
(a) the landlord is to be a party to the proceedings,
(b) the tenant is entitled to be a party to the proceedings.”.

**PART 4**

**LETTING AGENTS**

*Inclusion in the register*

26 **Register of letting agents**

(1) The Scottish Ministers must establish and maintain a register of letting agents (the “register”).

(2) The register must contain an entry for each person entered in the register setting out—

(a) the name and address of the person entered in the register, and

(b) such information relating to that person as the Scottish Ministers may by regulations prescribe.

(3) The Scottish Ministers must make the information contained in the register publicly available by such means as they consider appropriate.

27 **Application for registration**

(1) A person may apply to the Scottish Ministers—

(a) to be entered in the register, or

(b) to renew that person’s existing entry in the register.

(2) The application must—

(a) state the name and address of the applicant,

(b) state whether the applicant is—

(i) trading as a sole trader,

(ii) a partnership,

(iii) a company, or

(iv) a body with some other legal status,

(c) in the case where the applicant is a company registered under the Companies Act 2006 (c.46), state the company’s registered number,

(d) in the case where the applicant is not a natural person, state the name and address of the individual who holds the most senior position within the management structure of the relevant partnership, company or body,

(e) state the name and address of any other person who—

(i) owns 25% or more of an applicant which is not a natural person, or

(ii) otherwise is (or is to be) directly concerned with the control or governance of the applicant’s letting agency work (whether or not the applicant is a natural person), and

(f) include such other information as the Scottish Ministers may by regulations prescribe.
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(3) The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

28 Offence of providing false information in an application

(1) It is an offence for a person, in an application under section 27, to—

(a) provide information which the person knows is false in a material particular, or
(b) knowingly fail to specify information required by section 27(2).

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

29 Decision on application

(1) The Scottish Ministers must determine an application under section 27 in accordance with this section.

(2) The Scottish Ministers must enter the applicant in the register or renew an existing entry if they are satisfied that—

(a) the applicant is a fit and proper person to carry out letting agency work,
(b) any other person who is required to be identified in an application by virtue of section 27 is a fit and proper person in relation to letting agency work, and
(c) the applicant meets such training requirements as the Scottish Ministers may by regulations prescribe.

(2A) Regulations under subsection (2)(c) may, in particular, prescribe—

(a) the matters on which training must have been undertaken,
(b) the persons who must have undertaken training,
(c) qualifications which must be held by the applicant or other persons,
(d) the period within which training must have taken place.

(3) An applicant who is entered in the register, or whose entry is renewed, is to be known as a “registered letting agent”.

(4) The Scottish Ministers must refuse to enter the applicant in the register or to renew an existing entry if they are not satisfied in accordance with subsection (2).

(5) Before refusing to enter the applicant in the register or to renew an existing entry, the Scottish Ministers must give to the applicant a notice stating that—

(a) they are considering refusing the application and their reasons for doing so, and
(b) the applicant has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(6) In making their decision under this section the Scottish Ministers must consider the application and any representations made in accordance with subsection (5)(b).

(7) The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the applicant of—

(a) their decision,
(b) in the case of a decision to enter the applicant in the register, the date of entry in the register,
(c) in the case of a decision to renew an existing entry, the date of renewal, and
(d) in the case of a refusal to enter the applicant in the register or to renew an existing entry, their reasons for the refusal and the date of that refusal.

(8) If the Scottish Ministers refuse to renew an existing entry they must remove the registered letting agent from the register on the date of final refusal.

(9) For the purposes of subsection (8) the date of final refusal is the date on which—
(a) the period mentioned in section 36(2) expires without an appeal being made,
(b) where such an appeal is made, the appeal is finally determined or abandoned.

29A Time limit for determining application

(1) This section applies where a person (referred to in this section as the “applicant”) makes an application in accordance with section 27.

(2) The Scottish Ministers must determine the application under section 29 within 12 months of receiving the application.

(3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the Scottish Ministers, by such period as the Tribunal thinks fit.

(4) The Tribunal may not extend a period unless the Scottish Ministers apply for the extension before the period expires.

(5) The applicant is entitled to be a party to any proceedings on an application under subsection (3).

(6) The decision of the Tribunal on such an application is final.

(7) If the Scottish Ministers do not determine the application within the period required by this section—
(a) on the day by which they were required to determine the application, they are to be treated as having entered the applicant in the register or, as the case may be, having renewed the applicant’s existing entry in the register, and
(b) the applicant is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day unless—
(i) before the expiry of the period, the applicant made a subsequent application in accordance with section 27 to renew the applicant’s entry in the register, or
(ii) the applicant is otherwise removed from the register in accordance with this Part.

(8) Where subsection (7) applies the Scottish Ministers must—
(a) notify the applicant—
(i) that subsection (7) applies, and
(ii) of the day on which, in accordance with subsection (7)(a), they are treated as having entered the applicant in the register or, as the case may be, having renewed the applicant’s existing entry in the register, and
(b) enter the name of the applicant in the register or, as the case may be, renew the applicant’s existing entry in the register.

(9) Subject to the modifications in subsection (10), the applicant is for all purposes to be treated as a registered letting agent entered in the register or, as the case may be, whose entry has been renewed by virtue of section 29(2).

(10) The modifications are—

(a) section 34 does not apply,

(b) paragraphs (a) and (b) of section 35(1) are to be read as if for the words “no longer” there were substituted “not”, and

(c) subsections (1)(b) and (4)(b) of section 38 are to be read as if after the word “under” there were inserted “section 29A(7)(b) or”.

30 Fit and proper person considerations

(1) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers must have regard to all of the circumstances of the case, including any material falling within subsections (2) and (3).

(2) Material falls within this subsection if it shows that the person has—

(a) been convicted of an offence—

(i) involving fraud or other dishonesty,

(ii) involving violence,

(iii) involving drugs,

(iv) involving firearms,

(v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46),

(b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15),

(c) contravened any provision of—

(i) the law relating to housing,

(ii) landlord and tenant law,

(iii) the law relating to debt.

(3) Material falls within this subsection if it shows the extent to which any person mentioned in subsection (1) has—

(a) complied with any Letting Agent Code of Practice made under section 41,

(b) complied with any Letting Code issued under section 92A of the 2004 Act,

(c) failed to comply with a duty applying to that person in accordance with section 32 to use a letting agent registration number,

(d) contravened any provision of any letting agent enforcement order issued under section 43,

(e) failed to pay any costs for which the person is liable under this Part arising from an application to the First-tier Tribunal under section 43,
(f) failed to provide information in accordance with section 46A or 46B(2)(d)(i),

(g) obstructed a person acting in the proper exercise of the persons’ functions under sections 46B to 46D,

(h) failed to comply with a requirement made by a person who is so acting.

(4) The Scottish Ministers may by order modify this section by adding to, removing or varying any material in subsections (2) and (3).

31A Fit and proper person: criminal record information

(1) This section applies where the Scottish Ministers have reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 30(2) is, or has become, inaccurate.

(2) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers may have regard to—

(a) the information referred to in section 113A(3)(a) of the Police Act 1997 (c.50) (prescribed details of every relevant matter relating to the person which is recorded in central records), and

(b) whether the person is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c.42).

Duties of registered letting agents

32 Letting agent registration number

(1) The Scottish Ministers must allocate a number to each registered letting agent (the “letting agent registration number”).

(2) A registered letting agent must take all reasonable steps to ensure that the agent’s letting agent registration number is included in—

(a) any document sent to a landlord, tenant, prospective landlord or prospective tenant in the course of the agent’s letting agency work,

(b) any property advertisement or communication in relation to the agent’s letting agency work, and

(c) any other document or communication of a type specified by the Scottish Ministers by order.

(3) For the purposes of this section—

(a) “advertisement” includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons, and

(b) “communication” includes electronic communications sent or placed on a web page on a website operated by or on behalf of the registered letting agent.

33 Duty to inform: change of circumstances

(1) This section applies if, in consequence of a change in circumstances, any information provided by a registered letting agent to the Scottish Ministers by virtue of section 27 or, as the case may be, this section, becomes inaccurate.

(2) The registered letting agent must notify the Scottish Ministers in writing, as soon as practicable after the inaccuracy arises, of the change that has occurred.
(3) The notice must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

(4) It is an offence for a person to fail to comply with subsection (2) without reasonable excuse.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Removal from the register**

34 **Duration of registration**

(1) The Scottish Ministers must remove a registered letting agent from the register if, on the expiry of the registration period, the registered letting agent has not made an application in accordance with section 27.

(2) The registration period is—
   
   (a) in the case of a letting agent whose registration has not previously been renewed, the period of 3 years beginning with the date on which the entry was made,
   
   (b) in any other case, the period of 3 years beginning the day after the end of the previous registration period.

35 **Revocation of registration**

(1) The Scottish Ministers may remove a registered letting agent from the register if they are satisfied that—
   
   (a) the agent is no longer a fit and proper person to carry out letting agency work,
   
   (b) any other person who is required to be identified in an application by virtue of section 27 is no longer a fit and proper person in relation to letting agency work or,
   
   (c) the agent does not meet the training requirements prescribed under section 29(2)(c).

(2) Before removing a registered letting agent from the register under this section the Scottish Ministers must give to the agent a notice stating that—
   
   (a) they are considering removing the agent from the register and their reasons for doing so, and
   
   (b) the agent has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(3) In making their decision under this section the Scottish Ministers must consider any representations made in accordance with subsection (2)(b).

(4) The Scottish Ministers must, as soon as practicable after making a decision to remove a registered letting agent from the register, notify the agent of—
   
   (a) their decision and their reasons for that decision,
   
   (b) the date of removal from the register.
Appeals

36 Appeals

(1) A person may appeal to the First-tier Tribunal against a decision by the Scottish Ministers—

(a) under section 29 to refuse to enter that person in the register or to renew that person’s existing entry in the register,

(b) under section 35 to remove that person from the register.

(2) An appeal must be made before the end of the period of 21 days beginning with the date of notification of the decision.

(3) In determining an appeal the Tribunal may make an order requiring the Scottish Ministers to enter the person in the register.

Consequences of refusal or removal

37 Note on register where refusal or removal

(1) Where the Scottish Ministers refuse to enter a person in the register or to renew a person’s existing entry in the register under section 29, they must, after the date of final refusal, note that fact in the register.

(2) Where the Scottish Ministers remove a person from the register under section 35 they must, after the date of final refusal, note that fact in the register.

(3) For the purposes of this section the date of final refusal is the later of the date on which—

(a) the period mentioned in section 36(2) expires without an appeal being made,

(b) where such an appeal has been made, the appeal is finally determined or abandoned.

(4) Where a fact is noted by virtue of subsection (1) or (2) it must—

(a) remain on the register for the period of 12 months beginning with the date on which the Scottish Ministers are required to note it in the register, and

(b) be removed from the register at the end of that period.

(5) But where a person in respect of whom the Scottish Ministers note a fact by virtue of subsection (1) or (2) is subsequently entered in the register before the end of the period mentioned in subsection (4)(a), the Scottish Ministers must remove the fact from the register.

38 No payment for letting agency work where refusal or removal

(1) This section applies where the Scottish Ministers—

(a) refuse to enter a person in the register or to renew the person’s existing entry in the register under section 29,

(b) remove a person from the register under section 34,

(c) remove a person from the register under section 35.

(2) After the relevant date—

(a) no costs incurred by the person in respect of letting agency work are recoverable,
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(b) no charge imposed by the person which relates to letting agency work in a period after the relevant date is recoverable.

(2A) Subsection (2)(a) does not apply in relation to costs incurred before the relevant date in a case where the person is removed from the register under section 34.

(3) The Scottish Ministers must, as soon as practicable after the relevant date, publish in such manner as they think fit a notice of—

(a) the refusal or removal mentioned in subsection (1),
(b) the relevant date, and
(c) the effect of subsection (2).

(4) For the purposes of this section, the relevant date—

(a) in the case of a refusal or removal mentioned in subsection (1)(a) or (c), is the later of the date on which—

(i) the period mentioned in section 36(2) expires without an appeal being made,
(ii) where such an appeal has been made, the appeal is finally determined or abandoned,
(b) in the case of a removal mentioned in subsection (1)(b), is the day after the day on which the person is removed from the register under section 34.

Offences where no registration

39 Offence of operating as a letting agent without registration

(1) It is an offence for a person who is not a registered letting agent to carry out letting agency work, unless subsection (2) applies to that person.

(2) This subsection applies to a person from the day on which the person is removed from the register under section 35 until—

(a) where the period mentioned in section 36(2) expires without an appeal being made, the expiry of that period,
(b) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for acting in the way charged.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding £50,000, or to both.

40 Offence of using a registration number where no registration

(1) It is an offence for a person who is not entered in the register, without reasonable excuse, to use a number purporting to be a letting agent registration number in any document or communication.

(2) Subsection (1) does not apply to a person who is removed from the register under section 35 until—
(a) where the period mentioned in section 36(2) expires without an appeal being made, the expiry of that period,
(b) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Code of practice**

41 **Letting Agent Code of Practice**

(1) The Scottish Ministers may, by regulations, set out a code of practice which makes provision about—

(a) the standards of practice of persons who carry out letting agency work,
(b) the handling of tenants’ and landlords’ money by those persons, and
(c) the professional indemnity arrangements to be kept in place by those persons.

(2) The code of practice is to be known as the Letting Agent Code of Practice.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate on a draft of the code of practice.

42 **Prohibition on contracting out**

(1) The terms of any agreement of a kind mentioned in subsection (2) are of no effect in so far as they purport to—

(a) exclude or limit any duty a letting agent has under the Letting Agent Code of Practice, or
(b) impose any penalty, disability or obligation in the event of a person enforcing compliance by the letting agent with such a duty.

(2) The agreements are—

(a) an agreement between a landlord and a letting agent,
(b) an agreement between a tenant and a letting agent,
(c) an agreement (including a lease) between a landlord and a tenant.

**Letting agent enforcement orders**

43 **Applications to First-tier Tribunal to enforce code of practice**

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is—

(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
(b) in relation to an application by a landlord, a letting agent appointed by the landlord,
(c) in relation to an application by the Scottish Ministers, any letting agent.

(3) An application under subsection (1) must set out the applicant’s reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order —

(a) — lettings agent enforcement order —

(i) must specify the period within which each step must be taken,

(ii) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.

(b) a landlord include a former landlord.

44 Variation and revocation of enforcement orders

(1) The First-tier Tribunal may, at any time—

(a) vary a letting agent enforcement order, or

(b) where it considers that the steps required by the order are no longer necessary, revoke it.

(2) References in this Part (including this section) to a letting agent enforcement order are to be treated as references to the order as so varied.

45 Failure to comply with enforcement order

(1) The First-tier Tribunal may, after the period within which a letting agent enforcement order requires steps to be taken, review whether the letting agent has complied with the order.

(2) If the Tribunal decides that the letting agent has failed to comply with the letting agent enforcement order it must notify the Scottish Ministers of that failure.

(3) But the Tribunal may not make such a decision if it is satisfied that the letting agent has a reasonable excuse for failing to comply.
46 Enforcement orders: offence

(1) A letting agent who, without reasonable excuse, fails to comply with a letting agent enforcement order commits an offence.

(2) A letting agent cannot be guilty of an offence under subsection (1) unless the First-tier Tribunal has decided that the letting agent has failed to comply with the order (but such a decision does not establish a presumption that the letting agent has committed an offence under subsection (1)).

(3) A letting agent who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Monitoring of compliance

46A Power to obtain information

(1) The Scottish Ministers may, for the purpose of monitoring compliance with the provisions of this Part, serve a notice on a person who appears to be a letting agent requiring the person to provide them with information specified in the notice.

(2) The Scottish Ministers may by regulations make further provision about the requiring of information under subsection (1) and, in particular, may make provision about—

   (a) the form of the notice and manner of service,
   (b) the time within which information must be provided.

(3) Nothing in this section authorises the Scottish Ministers to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.

46B Power to carry out inspections

(1) For the purpose of monitoring compliance with the provisions of this Part, an authorised person may carry out an inspection of premises which appear to be being used for the purpose of carrying out letting agency work.

(2) For the purposes of carrying out the inspection, the authorised person may—

   (a) enter and inspect the premises,
   (b) require the production of any book, document, data or record (in whatever form it is held) and inspect it, and take copies of or extracts from it,
   (c) take possession of any book, document, data or record (in whatever form it is held) which is on the premises and retain it for as long as the authorised person considers necessary,
   (d) require any person to—

      (i) give the authorised person such information as the authorised person considers necessary,
      (ii) afford the authorised person such facilities and assistance as the authorised person considers necessary.

(3) Nothing in this section authorises the authorised person to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.
(4) In this section—

“authorised person” means a person authorised by the Scottish Ministers,
“premises” includes any place and any vehicle, vessel, or moveable structure.

### 46C Warrants for entry

(1) A sheriff, justice of the peace or stipendiary magistrate may by warrant authorise a person to enter premises (if necessary using reasonable force) for the purpose of carrying out an inspection under section 46B.

(2) A warrant may be granted under subsection (1) only if the sheriff, justice or magistrate is satisfied by evidence on oath—

(a) that there are reasonable grounds for entering the premises in question, and

(b) that—

(i) entry to the premises has been or is likely to be refused and that notice of the intention to apply for a warrant under this section has been given to the occupier,

(ii) a request for entry, or the giving of such notice, would defeat the object of the proposed entry,

(iii) the premises are unoccupied, or

(iv) the occupier is temporarily absent and it might defeat the object of the entry to await the occupier’s return.

### 46D Inspections: supplemental

(1) A person entering any premises under section 46B(2)(a) or in accordance with a warrant granted under section 46C may take on to the premises such other persons and such equipment as the person considers necessary.

(2) A right to enter any premises conferred by section 46B(2)(a) may be exercised only at a reasonable time.

(3) The occupier of the premises concerned must be given at least 24 hours’ notice before a person carries out an inspection under section 46B unless the person carrying out the inspection considers that giving such notice would defeat the object of the proposed inspection.

(4) A person carrying out an inspection under section 46B must, if required to do so, produce written evidence of the person’s authorisation to carry out the inspection.

(5) On leaving any premises which a person is authorised to enter by a warrant granted under section 46C, the person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the person found them.

(6) A person who takes possession of any item under section 46B(2)(c) must leave a statement on the premises from which the item was removed—

(a) giving particulars of what has been taken, and

(b) stating that the person has taken possession of it.
**46E Information and inspection: offence**

(1) It is an offence for a person who has been required to provide information in accordance with section 46A or section 46B(2)(d)(i)—

- (a) without reasonable excuse, to fail or refuse to provide the information,
- (b) to knowingly or recklessly make any statement in respect of that information which is false or misleading in a material particular.

(2) It is an offence for a person—

- (a) to intentionally obstruct a person acting in the proper exercise of the persons’ functions under sections 46B to 46D,
- (b) without reasonable excuse, to fail to comply with any requirement made under section 46B(2)(b) or (d)(ii) by a person who is so acting.

(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**General**

**47 Transfer of jurisdiction of actions involving letting agents**

(1) The Scottish Ministers may by regulations provide that the functions and jurisdiction of the sheriff in relation to the actions between the following persons relating to the carrying out of letting agency work are transferred to the First-tier Tribunal—

- (a) a tenant and a relevant letting agent,
- (b) a landlord and a relevant letting agent.

(2) A relevant letting agent is—

- (a) in relation to a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
- (b) in relation to a landlord, a letting agent appointed by the landlord.

(3) References in this section to—

- (a) a tenant include—
  - (i) a person who has entered into an agreement to let a house, and
  - (ii) a former tenant,
- (b) a landlord include a former landlord.

**48 Offences by bodies corporate etc.**

(1) Where—

- (a) an offence under this Part has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual,
the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

49 Delegation of functions relating to the register

(1) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than a function relating to the making of an order or regulations) to such person as they may determine.

(2) A delegation under subsection (1) may be varied or revoked at any time.

50 Landlord registration where agent is a registered letting agent

(1) In section 84(4) of the 2004 Act (registration), for paragraph (d) substitute—

“(d) either—

(i) the person is a registered letting agent, or

(ii) in the case of a person who is not a registered letting agent, the person is a fit and proper person to act for the landlord such as is mentioned in subsection (3)(c) in relation to the lease or, as the case may be, arrangement.”.

(2) In section 88 of the 2004 Act (registered person: appointment of agent)—

(a) in subsection (2B)—

(i) the word “or” at the end of paragraph (a) is repealed, and

(ii) after subsection (b), insert “, or

(c) the person appointed is a registered letting agent.”,

(b) for subsection (4), substitute—

“(4) The condition is that either—

(a) the person is a registered letting agent, or

(b) in the case of a person who is not a registered letting agent, the person is a fit and proper person to act for the registered person in relation to a lease or occupancy arrangement such as is mentioned in subsection (1)(b).”,

(c) in subsection (5), for “(4)” substitute “(4)(b)”.

(3) In section 89 of the 2004 Act (removal from the register)—

(a) in subsection (3)(b) for “(d)” substitute “(d)(ii)”,
(b) after subsection (3), insert—

“(3A) Where—

(a) a person is registered by the local authority by virtue of section 84(4), and

(b) paragraph (d)(i) of that section no longer applies,

the authority may remove the person from the register.”.

(4) In section 90(1) of the 2004 Act (notification of removal from register: registered person), after “89(1)” insert “, (3A)”.

(5) In section 91(1) of the 2004 Act (notification of removal from register: other persons), after “89(1)” insert “, (3A)”.

(6) In section 92(1)(b) of the 2004 Act (appeal), after “89(1)” insert “, (3A)”.

(7) In section 92ZA(1)(a)(ii) of the 2004 Act (duty to note refusals and removals), after “89(1)” insert “, (3A)”.

(8) In section 92A(1)(b) of the 2004 Act (the Letting Code), after “person” where it first occurs insert “(other than a registered letting agent)”.

(9) In section 101 of the 2004 Act (interpretation of Part 8), after the definition of “registered” insert—

“‘registered letting agent’ has the meaning given by section 29(3) of the Housing (Scotland) Act 2014 (asp 00),”.

51 Meaning of letting agency work

(1) For the purposes of this Part, “letting agency work” means things done by a person in the course of that person’s business in response to relevant instructions which are—

(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord’s house as a dwelling, or

(b) for the purpose of repairing, maintaining, improving, insuring or otherwise managing a house which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).

(2) In subsection (1)—

(a) “relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and

(b) “occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the 2004 Act.

(3) The Scottish Ministers may by order—

(a) provide that “letting agency work” does not include things done—

(i) on behalf of a specified body, or

(ii) for the purpose of a scheme of a specified description, or

(b) otherwise modify the meaning of “letting agency work” for the time being in this section.
(4) A scheme falling within a description specified by the Scottish Ministers under subsection (3)(a)(ii) must be—
   (a) operated by a body which does not carry on the scheme for profit, and
   (b) for the purpose of assisting persons to enter into leases or occupancy agreements.

52 Interpretation of Part 4

In this Part—

“house” is to be construed in accordance with section 101 of the 2004 Act,
“landlord” is to be construed in accordance with section 101 of the 2004 Act,
“letting agent registration number” has the meaning given by section 32(1),
“letting agent” means a person who carries out letting agency work,
“letting agent enforcement order” has the meaning given by section 43(7),
“register” has the meaning given by section 26(1),
“registered letting agent” has the meaning given by section 29(3),
“tenant”, in relation to an occupancy arrangement, means the person who under
the arrangement is permitted to occupy the house.

PART 5
MOBILE HOME SITES WITH PERMANENT RESIDENTS

General application

53 Licensing of sites for permanent residents

(1) In section 32(1) of the 1960 Act (application of Part 1 to Scotland), after paragraph (l) insert—

“(m) the modifications in Part 1A.”.

(2) After section 32 of the 1960 Act, insert—

“PART 1A

LICENSES UNDER PART 1A

General application

32A Licences under Part 1A

(1) Subject to the modifications mentioned in subsection (2), Part 1 applies in relation to—

(a) a relevant permanent site as it applies to a caravan site within the
meaning of section 1(4),

(b) a relevant permanent site application as it applies in relation to an
application for a site licence under Part 1, and

(c) a site licence issued or renewed under this Part (a “Part 1A site licence”) as it applies to a site licence within the meaning of section 1(1).

(2) The modifications are—
(a) the offence in section 1 does not apply to the holder of a Part 1A site licence in relation to that person’s use of the relevant permanent site which is the subject of the licence,

(b) sections 3 and 6 do not apply in relation to a relevant permanent site application,

(c) sections 4 and 9 do not apply in relation to a Part 1A site licence, and

(d) the further modifications in this Part.”.

Part 1A site licence

54 Relevant permanent site application

After section 32A of the 1960 Act (inserted by section 53(2)), insert—

“Part 1A site licence

32B Relevant permanent site application

(1) A relevant permanent site application may be made by the occupier of land to the local authority in whose area the land is situated.

(2) A relevant permanent site application must—

(a) be in writing and in such format as is determined by the local authority,

(b) specify the land in respect of which the application is made,

(c) include information specified in regulations made under section 32N, and

(d) include any information relevant to the material falling within section 32O(2) in relation to—

(i) the applicant,

(ii) any person to be appointed by the applicant to manage the site, and

(iii) any other person whom the local authority is required to be satisfied is a fit and proper person in accordance with section 32D(1)(b) or (2)(b).

(3) An applicant must, either at the time of making the application or subsequently, give to the local authority such other information as the authority may reasonably require.

32C Fee for relevant permanent site application

(1) A relevant permanent site application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.

(2) An authority may fix different fees for different applications or types of application.

(3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding a relevant permanent site application.

(4) The Scottish Ministers may by regulations subject to the negative procedure make provision about the charging of fees under subsection (1).
(5) Regulations made under subsection (4) may in particular—

(a) provide for the fee not to exceed such amount as may be prescribed by the regulations,

(b) specify matters to be taken into account by an authority when fixing a fee.”.

55  Issue, renewal, transfer and transmission of a Part 1A site licence

After section 32C of the 1960 Act (inserted by section 54), insert—

“32D  Issue and renewal of a Part 1A site licence

(1) A local authority may issue a Part 1A site licence if—

(a) the applicant is, when the Part 1A site licence is issued, entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order, and

(b) the authority is satisfied—

(i) that the applicant is a fit and proper person to hold a site licence,

(ii) in the case where an applicant is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

(iii) that any person to be appointed by the applicant to manage the site is a fit and proper person to do so, and

(iv) in the case where a person to be appointed by the applicant to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.

(2) A local authority must renew a Part 1A site licence if—

(a) the applicant is, when the Part 1A site licence is renewed, entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order, and

(b) the authority is satisfied—

(i) that the applicant is a fit and proper person to hold a site licence,

(ii) in the case where an applicant is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

(iii) that any person appointed, or to be appointed, by the applicant to manage the site is a fit and proper person to do so, and

(iv) in the case where a person appointed, or to be appointed, by the applicant to manage the site is not a natural person, that any individual who is, or is to be, directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.
(3) The local authority must not issue a Part 1A site licence to a person whom the local authority knows has held a site licence which has been revoked under this Act less than 3 years before that time.

(4) Before refusing to issue or renew a Part 1A site licence, the authority must give to the applicant a notice stating that—

(a) it is considering refusing the application and its reasons for doing so, and

(b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(5) In making its decision under this section the local authority must consider the application and any representations made in accordance with subsection (4)(b).

32E Application to transfer a Part 1A site licence

(1) This section applies where, under section 10(1), the holder of a Part 1A site licence seeks the consent of the local authority for the transfer of the licence to a person who is to become the occupier of the relevant permanent site (in this section the “transferee”).

(2) The local authority may refuse consent to the transfer on the ground that the authority is not satisfied—

(a) that the transferee is a fit and proper person to hold a site licence,

(b) in the case where the transferee is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

(c) that any person to be appointed by the transferee to manage the site is a fit and proper person to do so, and

(d) in the case where a person to be appointed by the transferee to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.

(3) The applicant and the transferee must, either at the time of making the application or subsequently, give to the local authority such information as the authority may reasonably require in order to determine if the persons mentioned in subsection (2) are fit and proper persons.

(4) Before refusing to consent to the transfer under subsection (2), the authority must give to the applicant a notice stating that—

(a) it is considering refusing the application and its reasons for doing so, and

(b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(5) In making its decision under this section the local authority must consider the application and any representations made in accordance with subsection (4)(b).
32F Time limit for determining application

(1) This section applies where a person—

(a) makes a relevant permanent site application to a local authority in accordance with section 32B, or

(b) makes an application for consent to transfer a licence mentioned in section 32E.

(2) The local authority must determine the application under section 32D or, as the case may be, sections 10 and 32E before the time limit specified under subsection (2A).

(2A) The Scottish Ministers must, by regulations subject to the negative procedure, specify a time limit for the purposes of each application to which this section applies (and in doing so may specify different limits for different applications or types of application).

(3) The period mentioned in subsection (2) may be extended by the sheriff, on summary application by the local authority, by such period as the sheriff thinks fit.

(4) The sheriff may not extend a period unless the local authority applies for the extension before the period expires.

(5) The applicant is entitled to be a party to any proceedings on such summary application.

(6) The sheriff’s decision on such summary application is final.

(7) If the local authority does not determine a relevant permanent site application within the period required by this section—

(a) the authority is to be treated as having issued a Part 1A site licence, on the day by which the authority was required to determine the application, and

(b) the relevant person is for all purposes to be treated as having been issued a Part 1A site licence by the local authority under section 32D.

(8) If the local authority does not determine an application for consent to transfer a licence mentioned in section 32E within the period required by this section, the authority is to be treated as having given its consent to the transfer on the day on which the application was made.

32G Local authority power to transfer licence where no application

(1) This section applies where—

(a) the holder of a Part 1A site licence does not seek the consent of the local authority for the transfer of the licence under section 10(1), and

(b) it appears to the authority that the licence holder is no longer the occupier of the relevant permanent site.

(2) The local authority may transfer the licence to a person whom the authority considers to be the occupier of the relevant permanent site (in this section the “transferee”).
(3) Before deciding to transfer the licence under subsection (2), the authority must give to the licence holder and the transferee a notice stating that—

(a) it is considering transferring the licence to the transferee under this section and its reasons for doing so, and

(b) the licence holder and the transferee each have the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(4) In making its decision under this section the local authority must consider any representations made in accordance with subsection (3)(b).

(5) The licence holder and the transferee must give to the local authority such information as the authority may reasonably require in order to make a decision under this section.

(6) It is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with a request under subsection (5).

(7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

32H Transfer of Part 1A site licences on death: relevant permanent sites

Where a Part 1A site licence is transferred to a person in accordance with section 10(4), that person must give to the local authority such information as the authority may reasonably require in order to make a determination under section 32L.

32I Notification of decision on Part 1A site licence

(1) A local authority must, as soon as practicable after making a decision mentioned in subsection (2), notify the persons mentioned in subsection (3) of—

(a) the making of the decision, and

(b) the right to appeal under section 32M.

(2) The decisions are—

(a) the determination of a relevant permanent site application,

(b) the determination of an application for consent to transfer a licence mentioned in section 32E,

(c) the decision to transfer a licence mentioned in section 32G.

(3) The persons are—

(a) in the case of a determination of a relevant permanent site application, the applicant,

(b) in the case of a determination of an application for consent to transfer a licence mentioned in section 32E, the applicant and the transferee,
(c) in the case of a decision of the local authority to transfer a licence under section 32G, the previous holder of the Part 1A site licence and the transferee.

(4) A local authority must give to the persons mentioned in subsection (3) its reasons for making a decision mentioned in subsection (2).”.

56 **Duration of a Part 1A site licence**

After section 32I of the 1960 Act (inserted by section 55), insert—

“32J **Duration of a Part 1A site licence**

(1) A Part 1A site licence—

(a) comes into operation at the time specified in or determined under the licence, and

(b) unless terminated by its revocation, continues in force until—

(i) the licence holder is not entitled to the benefit of planning permission for the use of the land as a caravan site, or any planning permission for the use of the relevant permanent site as a caravan site expires, or

(ii) if earlier, the day which is 5 years after the day on which the licence comes into operation.

(2) The Scottish Ministers may, by order subject to the affirmative procedure, amend subsection (1)(b)(ii) so as to substitute for the figure for the time being specified there a different figure.”.

57 **Duty to inform local authority where change**

After section 32J of the 1960 Act (inserted by section 56), insert—

“32K **Duty to inform local authority where change**

(1) The holder of a Part 1A site licence must notify the local authority which issued the licence—

(a) of the appointment of any new person to manage the site, and

(b) if, in consequence of a change of circumstances, any information provided by the licence holder to the local authority by virtue of this Part becomes inaccurate.

(2) The notification must be made—

(a) in the case of an appointment mentioned in subsection (1)(a), no later than the day on which the appointment takes effect, and

(b) in any other case, before the end of the period of 28 days beginning with the day on which the inaccuracy arises.

(3) The licence holder must, either at the time of notifying the local authority or subsequently, give to the authority such other information in relation to the appointment as the authority may reasonably require.
(4) Where a local authority requests information under subsection (3), the licence holder must provide the information before the end of the period of 28 days beginning with the day on which the request is made.”.

58 Revocation of a Part 1A site licence: fit and proper person

After section 32K of the 1960 Act (inserted by section 57), insert—

“32L Revocation of a Part 1A site licence: fit and proper person

(1) A local authority which issued a Part 1A site licence may revoke the licence if the authority is satisfied—

(a) that the licence holder is not, or is no longer, a fit and proper person to hold a site licence,

(b) in the case where the licence holder is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is not, or is no longer, a fit and proper person in relation to a site licence,

(c) that any person appointed by the licence holder to manage the site is not, or is no longer, a fit and proper person to do so, or

(d) in the case where a person appointed by the licence holder to manage the site is not a natural person, that any individual who is directly concerned with the management of the site on behalf of that manager is not, or is no longer, a fit and proper person to do so.

(2) Where a local authority proposes to revoke a Part 1A site licence under this section, the authority must serve on the licence holder a notice stating that—

(a) it is considering revoking the licence under this section and its reasons for doing so, and

(b) the licence holder has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(3) In making its decision under this section the local authority must consider any representations made in accordance with subsection (2)(b).

(4) Where a local authority revokes a licence under this section, the authority must serve on the person who held the licence a notice which—

(a) states that the authority has revoked the licence,

(b) explains the right of appeal conferred by section 32M.

(5) Where a local authority revokes a licence under this section, the authority must give to the person who held the licence its reasons for doing so.”.

59 Appeals relating to a Part 1A site licence

After section 32L of the 1960 Act (inserted by section 58), insert—

“32M Appeals relating to a Part 1A site licence

(1) A person mentioned in subsection (2) may by summary application appeal to the sheriff against—
(a) the refusal by the local authority to issue or renew a Part 1A site licence following a relevant permanent site application,
(b) the determination by the local authority of an application for consent to transfer a licence mentioned in section 32E,
(c) the decision by the local authority to transfer a licence mentioned in section 32G,
(d) the decision by the local authority to revoke a Part 1A site licence under section 32L.

(2) The persons are—

(a) in the case of a determination of a relevant permanent site application, the applicant,
(b) in the case of a determination of an application for consent to transfer a licence mentioned in section 32E—
   (i) the applicant,
   (ii) the transferee,
(c) in the case of a decision by the local authority to transfer a licence mentioned in section 32G—
   (i) the previous holder of the Part 1A site licence,
   (ii) the transferee,
(d) in the case of a decision of the local authority to revoke a Part 1A site licence under section 32L, the person who held the licence.”.

60 Power to make provision in relation to procedure and appeals

After section 32M of the 1960 Act (inserted by section 59), insert—

‘‘32N Power to make provision in relation to procedure and appeals

(1) The Scottish Ministers may, by regulations subject to the negative procedure, make provision in relation to—

(aa) the procedure to be followed in relation to—
   (i) the issue, renewal, transfer, transmission and revocation of a Part 1A site licence,
   (ii) appeals under section 32M,
(ab) the determination and consequences of an appeal under section 32M.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) the procedure to be followed by the person making an application for—
   (i) a new Part 1A site licence,
   (ii) the renewal of an existing Part 1A site licence which is due to expire,
   (iii) consent to transfer a Part 1A site licence,
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(b) the procedure to be followed by a person following the transfer of a licence,

c) the information to be provided in relation to an application mentioned in paragraph (a) or a transfer mentioned in section 32G or 32H,

d) the procedure to be followed in determining an application mentioned in paragraph (a) or in considering a transfer mentioned in section 32G or 32H,

e) the procedure to be followed after an application mentioned in paragraph (a) is determined or a transfer mentioned in section 32G or 32H is considered,

(ea) the time limits for the giving of reasons under section 32I(4) and 32L(5),

g) the time limits applying in relation to appeals,

(h) the procedure to be followed by the person making an appeal.”.

Fit and proper persons

61 Fit and proper person considerations

After section 32N of the 1960 Act (inserted by section 60), insert—

“Fit and proper persons

32O Fit and proper person considerations

(1) In deciding under this Part if a person is a fit and proper person, the local authority must have regard to all of the circumstances of the case, including any material falling within subsections (2) to (5).

(2) Material falls within this subsection if it shows that the person has—

(a) been convicted of an offence—

(i) involving fraud or other dishonesty,

(ii) involving violence,

(iii) involving drugs,

(iv) involving firearms,

(v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46),

(b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15),

(c) contravened any provision of—

(i) the law relating to caravans,

(ii) the law relating to housing,

(iii) landlord and tenant law,

(ca) committed a breach of an agreement to which the Mobile Homes Act 1983 applies,

(d) engaged in antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
(e) breached the conditions of a site licence issued under Part 1 or Part 1A of this Act.

(3) Material falls within this subsection if it relates to the failure by a person to provide information which that person is required to give to the local authority in accordance with this Part.

(4) Material falls within this subsection if it relates to a complaint made by a person of which the local authority is aware about antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) on the relevant permanent site.

(5) Material falls within this subsection if it is material of which the local authority is aware as a result of any other function carried out by the authority and it appears to the authority to be relevant to the question of whether the person is a fit and proper person.

(6) The Scottish Ministers may, by order subject to the affirmative procedure, modify this section by adding to, removing or varying any material in subsections (2) to (5).”.

62  Fit and proper person: criminal conviction certificate

After section 32O of the 1960 Act (inserted by section 61), insert—

“32P  Fit and proper person: criminal conviction certificate

(1) A local authority may, in deciding under this Part if a person is a fit and proper person, require the person in respect of whom the decision is being made to provide the local authority with a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)).

(2) A local authority may require a criminal conviction certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 32O(2) is, or has become, inaccurate.”.

62A  Fit and proper person: information sharing

After section 32P of the 1960 Act (inserted by section 62), insert—

“32PA  Fit and proper person: information sharing

(1) A local authority may, for the purpose of another local authority deciding under this Part if a person is a fit and proper person, provide to that other authority information which falls within subsection (2).

(2) Information falls within this subsection if the local authority holding the information considers that—

(a) it is likely to be relevant to the other authority’s decision under this Part as to whether a person is a fit and proper person, and

(b) it ought to be provided for that purpose.

(3) Subsections (1) and (2) apply despite any duty of confidentiality owed to any person in respect of the information by the authority disclosing the information.”.
Offences relating to relevant permanent sites

63 Offences relating to relevant permanent sites

After section 32P of the 1960 Act (inserted by section 62), insert—

“Offences relating to relevant permanent sites

32Q Offences in connection with information requirements

(1) It is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with—

(a) a requirement under section 32B,

(b) a requirement under section 32E(3),

(c) a requirement under section 32H,

(d) a requirement under section 32K.

(1A) It is an offence for a person, without reasonable excuse—

(a) to fail to notify a local authority in accordance with 32K(1) and (2), or

(b) to fail to provide information in accordance with section 32K(3) and (4).

(2) A person who commits an offence under subsection (1) or (1A) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

32R Relevant permanent sites: use without a licence

(1) It is an offence for the occupier of land to cause or permit that land to be used as a relevant permanent site unless—

(a) the occupier is the holder of a Part 1A site licence in relation to the site, or

(b) subsection (2) or (3) applies to that person.

(2) This subsection applies to a person from the day on which the person makes a relevant permanent site application to a local authority in accordance with section 32B until—

(a) that application is determined under section 32D,

(b) in the case of a refusal by the authority to issue or renew a Part 1A site licence under that section, the day on which the period during which the applicant may make an appeal under section 32M(1)(a) expires without an appeal being made, or

(c) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) This subsection applies to a person from the day on which the person’s Part 1A site licence is revoked under section 32L until—

(a) the day on which the period during which the person can make an appeal under section 32M(1)(d) expires without an appeal being made, or

(b) where such an appeal is made, the day on which it is finally determined or abandoned.
(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £50,000.

32S Relevant permanent sites: breach of licence conditions

(1) It is an offence for the holder of a Part 1A site licence to fail to comply with any condition of a Part 1A site licence issued in relation to the site.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.”.

Local authority enforcement at relevant permanent sites

64 Improvement notices

After section 32T of the 1960 Act (inserted by section 63), insert—

“Local authority enforcement at relevant permanent sites

32U Breach of licence condition: improvement notice

(1) If it appears to a local authority which issued a Part 1A site licence that the licence holder is failing or has failed to comply with a condition of the Part 1A site licence, the authority may serve an improvement notice on the licence holder.

(2) An improvement notice is a notice which—

(a) sets out the condition in question and details of the failure to comply with it,

(b) requires the licence holder to take such steps as the local authority considers appropriate and as are specified in the notice in order to ensure that that condition is complied with,

(c) specifies the period within which those steps must be taken,

(d) explains the right of appeal conferred by subsection (3).

(3) The holder of a Part 1A site licence who has been served with an improvement notice may by summary application appeal to the sheriff against—

(a) the issue of that notice,

(b) the terms of that notice.

(3A) The period specified in an improvement notice under subsection (2)(c) must begin on the later of—

(a) the day on which the period during which the person may make an appeal under subsection (3) expires, or

(b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.

(4) A local authority may—

(a) suspend an improvement notice,

(b) revoke an improvement notice,

(c) vary an improvement notice by extending the period specified in the notice under subsection (2)(c).
(5) The power to suspend, revoke or vary an improvement notice is exercisable by the local authority—
   (a) on an application made by the licence holder, or
   (b) on the authority's own initiative.

(6) Where a local authority suspends, revokes or varies an improvement notice, the authority must notify the licence holder to whom the notice relates of the decision as soon as is reasonably practicable.

32V Improvement notice: offence

(1) It an offence for a licence holder who has been served with an improvement notice to fail to take the steps specified in the notice within the period so specified.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.

(4) In proceedings against a licence holder for an offence under subsection (1), it is a defence that the licence holder had a reasonable excuse for failing to take the steps referred to in subsection (1) within the period referred to in that subsection.

32W Local authority power to carry out steps in an improvement notice

(1) This section applies where—
   (a) an improvement notice has been served in relation to a relevant permanent site, and
   (b) the licence holder fails to take the steps specified in the notice within the period so specified.

(2) The local authority which issued the improvement notice may—
   (a) take any steps required by the improvement notice to be taken by the occupier, but which have not been so taken, and
   (b) take such further action as the authority considers appropriate for ensuring that the condition specified in the improvement notice is complied with.

(3) Where a local authority proposes to take action under subsection (2), the authority must serve on the occupier of the relevant permanent site a notice which—
   (a) identifies the land and the improvement notice to which it relates,
   (b) states that the authority intends to enter onto the land,
   (c) describes the action the authority intends to take on the land,
   (d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and
   (e) sets out the dates and times on which it is intended that the action will be taken (in particular, when the authority intends to start taking the action and when it expects the action to be completed).
(4) The notice must be served sufficiently in advance of when the local authority intends to enter onto the land as to give the occupier of the relevant permanent site reasonable notice of the intended entry.”.

65 Penalty notices

After section 32W of the 1960 Act (inserted by section 64), insert—

“32X Penalty notice where no licence or breach of licence

(1) A local authority may serve a penalty notice on the occupier of a relevant permanent site if it appears to the local authority that the occupier—

(a) has caused or permitted the relevant permanent site to be used as a caravan site without being the holder of a Part 1A site licence in relation to the site, or

(b) has been served with an improvement notice and has failed to take the steps specified in the notice within the period so specified.

(2) A penalty notice is a notice which—

(a) sets out the condition in question and details of the failure to comply with it,

(b) explains the effect of subsection (3),

(c) specifies the period within which the penalty applies,

(d) explains the right of appeal conferred by subsection (6).

(3) Where a penalty notice is served under this section—

(a) no amount which a person is required to pay to the occupier of the relevant permanent site in respect of—

(i) the right to station a caravan on the site,

(ii) rent for the occupation of a caravan on the site, or

(iii) the use of the common areas of the site and their maintenance,

is payable for the period specified in the notice under subsection (2)(c), and

(b) no commission on sale payable in accordance with paragraph 8 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (c.34) is payable to the occupier of the relevant permanent site in respect of a caravan on the site for the period specified in the notice under subsection (2)(c).

(3A) The period specified in a penalty notice under subsection (2)(c) must begin on the later of—

(a) the day on which the period during which the person may make an appeal under subsection (6) expires, or

(b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.

(4) The local authority must, as soon as practicable after serving a notice under this section and in such manner as it thinks fit, notify the occupiers of caravans on the site of the existence of the notice.
(5) The ways in which a notification under subsection (4) may be carried out include by fixing a notice in a prominent place at or near the main entrance to the relevant permanent site.

(6) The occupier of a relevant permanent site in respect of which a local authority has served a penalty notice may, within the period of 28 days beginning with the day on which the notice was served, by summary application appeal to the sheriff against the decision.”.

66 Appointment of interim manager

After section 32X of the 1960 Act (inserted by section 65), insert—

“32Y Power to appoint interim manager

(1) A local authority which has issued a Part 1A site licence may apply to the sheriff for an order appointing an interim manager of the site.

(2) An order may be granted by the sheriff if—

(a) the authority has refused to renew a Part 1A site licence under section 32D,

(b) the authority has revoked a Part 1A site licence under section 32L, or

(c) the sheriff is satisfied that—

(i) the licence holder is failing or has failed, either seriously or repeatedly, to comply with a condition of the Part 1A site licence,

(ii) the site is not being managed by a person who is a fit and proper person to manage the site, or

(iii) there is no one managing the site.

(3) The appointment of an interim manager is to be on terms (including as to remuneration and expenses) specified in, or determined in accordance with, the appointment.

(4) The interim manager has—

(a) any power specified in the appointment, and

(b) any other power in relation to the management of the site required by the interim manager for the purposes specified in the appointment (including the power to enter into agreements and take other action on behalf of the occupier of the site).

(5) The Scottish Ministers may by regulations subject to the negative procedure make further provision about the appointment of an interim manager.

(6) Regulations under subsection (5) may, in particular, make provision in relation to—

(a) the procedure to be followed in making an application,

(b) the powers of an interim manager,

(c) property which vests in the interim manager on the interim manager’s appointment,

(d) the qualifications that must be held by any person appointed as interim manager,
(e) the actions that must be carried out by an interim manager during and after the manager’s appointment,
(f) the payment and recovery of the remuneration and expenses of the interim manager,
(g) the assistance to be provided to the interim manager by the licence holder and other persons,
(h) powers of entry to the relevant permanent site,
(i) criminal offences which are to apply to failures to comply with the regulations,
(j) the procedure for and consequences of the termination of the interim manager’s appointment.”.

67 Emergency action

After section 32Y of the 1960 Act (inserted by section 66), insert—

“32Z Power to take emergency action

(1) A local authority which has issued a Part 1A site licence may take emergency action in relation to the site concerned if it appears to the authority that—

(a) the licence holder is failing or has failed to comply with a condition for the time being attached to the Part 1A site licence, and

(b) as a result of that failure there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

(2) A local authority in whose area land is being used as a relevant permanent site may take emergency action in relation to the land concerned if it appears to the authority that—

(a) the occupier is causing or permitting that land to be used as a relevant permanent site,

(b) the occupier does not hold a Part 1A site licence in relation to the land, and

(c) there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

(3) The emergency action a local authority may take is such action as appears to the authority to be necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c).

(4) Where a local authority proposes to take emergency action, the authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action notice.

(5) An emergency action notice is a notice which—

(a) identifies the land to which it relates,

(b) states that the authority intends to enter onto the land,

(c) describes the emergency action the authority intends to take on the land,
(d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and

(e) specifies the powers under this section and section 26 as the powers under which the authority intends to enter onto the land.

(6) An emergency action notice may state that, if entry onto the land were to be refused, the authority would propose to apply for a warrant under section 26(2).

(7) The local authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action report within the period of 7 days beginning with the date when the authority starts taking the emergency action.

(8) An emergency action report is a notice which—

(a) describes the imminent risk of serious harm to the health or safety of persons who are or may be on the land,

(b) describes the emergency action which has been, and any emergency action which is to be, taken by the authority on the land,

(c) sets out when the authority started taking the emergency action and when the authority expects it to be completed,

(d) if the person whom the authority has authorised to take the action on its behalf is not an officer of the authority, states the name of that person, and

(e) explains the right of appeal conferred by subsection (10).

(9) The ways in which an emergency action notice and an emergency action report may be served include by fixing it in a prominent place at or near the main entrance to the relevant permanent site.

(10) A licence holder or, as the case may be, an occupier of land in respect of which a local authority has taken or is taking emergency action may by summary application appeal to the sheriff against the taking of the action by the authority.

(11) The grounds on which the appeal may be brought are—

(a) that there was no imminent risk of serious harm as mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c) (or, where the action is still being taken, that there is no such risk),

(b) that the action the authority has taken was not necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c) (or, where the action is still being taken, that it is not necessary to remove the risk).”.

68 Powers of entry

After section 32Z of the 1960 Act (inserted by section 67), insert—

“32Z1 Powers of entry in relation to relevant permanent site

(1) Section 26 (as modified by section 32) applies in relation to a relevant permanent site—
Recovery of inspection and enforcement expenses

After section 32Z1 of the 1960 Act (inserted by section 68), insert—

“32Z2 Expenses of issuing notices

(1) This section applies where a local authority has served—

(a) an improvement notice,
(b) a penalty notice,
(c) an emergency action notice, or
(d) an emergency action report.

(2) The local authority may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—

(a) expenses incurred by the authority in deciding whether to serve the notice or report,
(b) expenses incurred by the authority in preparing and serving the notice or report, and
(c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(3) The expenses referred to in subsection (2) include in particular the costs of obtaining expert advice (including legal advice).
32Z3 Expenses of taking action under improvement notice or emergency action notice

(1) A local authority which has taken action in accordance with an improvement notice or an emergency action notice may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—

(a) expenses incurred by the authority in deciding whether to take the action,

(b) expenses incurred by the authority in taking the action, and

(c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(2) The expenses referred to in subsection (1) include in particular the costs of obtaining expert advice (including legal advice).

32Z4 Expenses of local authority in relation to Part 1A licences

The local authority which issued a Part 1A site licence may require the licence holder to pay the amount of any expenses incurred by the authority in relation to—

(a) inspecting a relevant permanent site for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this Act,

(b) assessing or investigating compliance by the licence holder with the provisions of this Act following an inspection.”.

Miscellaneous

70 Part 1A of the 1960 Act: miscellaneous provision

After section 32Z4 of the 1960 Act (inserted by section 69), insert—

“Miscellaneous

32Z5 Interpretation of Part 1A

(1) In this Part—

“emergency action notice” has the meaning given by section 32Z(5),

“emergency action report” has the meaning given by section 32Z(8),

“excepted permission” means a permission (by virtue of planning permission or a site licence under Part 1) to station a caravan on the land for human habitation all year round, if the caravan is, or is to be, authorised to be occupied by—

(a) the occupier,

(b) a person employed by the occupier but who does not occupy the caravan under an agreement to which section 1(1) of the Mobile Homes Act 1983 (c.34) applies,

“improvement notice” has the meaning given by section 32U(2),

“licence holder” means the person holding the Part 1A site licence,
“Part 1A site licence” has the meaning given by section 32A(1)(c),

“penalty notice” has the meaning given by section 32X(2),

“planning permission” means planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997 (c.8),

“relevant permanent site” means land in respect of which a site licence is required under Part 1, other than land for which the relevant planning permission or the site licence—

(a) is expressed to be granted for holiday use only,

(b) is otherwise so expressed or subject to conditions that there are times of the year when no caravan may be stationed on the land for human habitation, or

(c) would meet the conditions in paragraph (a) or (b) if any excepted permission is disregarded,

“relevant permanent site application” means, irrespective of the conditions in the relevant planning permission, an application for the issue or renewal of a Part 1A site licence authorising the use of land as a caravan site, other than an application for a licence—

(a) to be expressed to be granted for holiday use only,

(b) to be otherwise so expressed or subject to conditions that there will be times of the year when no caravan may be stationed on the land for human habitation, or

(c) which would meet the conditions in paragraph (a) or (b) if any part of the application for excepted permission were disregarded.

(2) Any reference in this Part to the sheriff is to the sheriff having jurisdiction in the place where the relevant permanent site is situated.

(3) Otherwise, words and expressions (as modified by section 32) have the same meaning in this Part as in Part 1.

32Z5A Guidance

(1) The Scottish Ministers may, after consulting such persons as they consider appropriate, publish guidance about the operation of this Part.

(2) A local authority must have regard to any guidance published when carrying out its functions under this Part.”.

71 Transitional provision for existing site licences

(1) This section applies to a site licence issued under the 1960 Act which—

(a) was issued before the day on which section 56 comes into force in respect of land which is a relevant permanent site,

(b) is in force on that day.

(2) The site licence continues in force until the earliest of—

(a) the end of the period of 2 years beginning with the day on which section 56 comes into force,
(b) the day on which the licence is revoked under, or expires in accordance with, the provisions of the 1960 Act, or
(c) the day on which a Part 1A site licence is issued in relation to the site.

(3) During the period for which a site licence continues in force under this section, the provisions of Part 1A of the 1960 Act do not apply to the site licence or in respect of the land which is a relevant permanent site.

(4) In this section, “Part 1A site licence” and “relevant permanent site” have the same meanings as in section 32Z5 of the 1960 Act (as inserted by section 70).

71A Agreements to which the Mobile Homes Act 1983 applies

In Schedule 1 to the Mobile Homes Act 1983 (c.34)—

(a) after paragraph 1, insert—

“1A (1) The right to station the mobile home under in paragraph 1 is not affected by—

(a) the expiry of a Part 1A site licence in accordance with section 32J(1)(b)(ii) of the 1960 Act,
(b) the refusal to issue or renew a Part 1A site licence under section 32D of the 1960 Act,
(c) the revocation of a Part 1A site licence under section 32L of the 1960 Act, or
(d) the expiry of a site licence in accordance with section 71(2) of the Housing (Scotland) Act 2014 (asp 00).

(2) Sub-paragraph (1) applies in relation to agreements that were made at any time before the day on which that sub-paragraph comes into force (as well as in relation to agreements made on or after that day).

(3) In this paragraph—

“the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62), and

“Part 1A site licence” has the same meaning as in section 32Z5 of the 1960 Act.”.

(b) in paragraph 23, after sub-paragraph (1)(a) insert—

“(aa) no regard may be had to any costs paid, or to be paid, by the owner in connection with expenses recovered by a local authority under—

(i) section 32Z2(2) of the Caravan Sites and Control of Development Act 1960, (ii) subsection (1)(a) or (c) of section 32Z3 of that Act, or

(iii) section 32Z4 of that Act, (ab) no regard may be had to any costs paid, or to be paid, by the owner in connection with the owner being convicted of an offence under Part 1A of the Caravan Sites and Control of Development Act 1960.”.
PART 6
PRIVATE HOUSING CONDITIONS

72 Tenement management scheme

(1) In the Tenements (Scotland) Act 2004 (asp 11)—

(a) in section 4(14) (defined terms), after “section” insert “and section 4A”,

(b) after section 4, insert—

“4A Power of local authority to pay share of scheme costs

(1) The local authority for the area in which a tenement is situated may pay a sum representing an owner’s share of scheme costs if that owner—

(a) is unable or unwilling to do so, or

(b) cannot, by reasonable inquiry, be identified or found.

(2) But a local authority may not pay a sum representing an owner’s share of scheme costs which are attributable to a scheme decision mentioned in rule 3.1(e) of the Tenement Management Scheme.

(3) For the purposes of this section an owner’s share of any scheme costs is to be determined in accordance with—

(a) the Tenement Management Scheme as it applies to the owner’s tenement, or

(b) where a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners, that burden.

(4) Before making a payment under this section, the local authority must notify the owner who has failed to pay a share of any scheme costs.

(5) The local authority may recover from the owner who failed to pay a share of any scheme costs any—

(a) payments made under this section, and

(b) administrative expenses incurred by it in connection with the making of the payment.

(6) This section is without prejudice to any entitlement to recover sums in accordance with section 11 or 12.”,

(c) in section 13(1)(a) (persons who may register a notice of potential liability for costs), after paragraph (ii) insert—

“(iiia) a local authority entitled to recover costs under section 4A(5),”,

(d) in rule 5 of schedule 1 (redistribution of share of costs), after “then” insert “(unless that share has been paid by the local authority under section 4A)”, and

(e) in rule 8.4 of schedule 1 (enforcement by third party), after “concerned” insert “and a local authority entitled to recover costs under section 4A(5)”.

(2) In section 172 of the 2006 Act (repayment charges)—
(a) in subsection (1), for “or paragraph 6(1) of schedule 5” substitute “, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11)”,

(b) in subsection (2)(a), for “or paragraph 6(1) of schedule 5” substitute “, section 61(3A), subsection (6A) below, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004”, and

(c) after subsection (6A), insert—

“(6B) Subsection (6A)(c) does not apply where the recoverable amount relates to a sum the local authority is entitled to recover under section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11).”.

72A Notice of potential liability for costs: notice of discharge

(1) In section 10A of the Title Conditions (Scotland) Act 2003 (asp 9) (notice of potential liability for costs: further provision), after subsection (3) insert—

“(3A) The owner of a burdened property may apply to register a notice (a “notice of discharge”) if—

(a) a notice of potential liability for costs in relation to the property has not expired,

(b) the liability for costs under section 10(2) to which the notice of potential liability relates has, in relation to the property which is the subject of the application, been fully discharged, and

(c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—

(a) must be in the form prescribed by order made by the Scottish Ministers, and

(b) on being registered, discharges the notice of potential liability for costs as it applies to the property which is the subject of the application.”.

(2) In the Tenements (Scotland) Act 2004—

(a) in section 13 (notice of potential liability for costs: further provision), after subsection (3) insert—

“(3A) The owner of a flat may apply to register a notice (a “notice of discharge”) if—

(a) a notice of potential liability for costs in relation to the flat has not expired,

(b) the liability for costs under section 12(2) to which the notice of potential liability relates has, in relation to the flat which is the subject of the application, been fully discharged, and

(c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—

(a) must be in the form prescribed by order made by the Scottish Ministers, and
(b) on being registered, discharges the notice of potential liability for costs as it applies to the flat which is the subject of the application.

(b) in section 29(1) (interpretation), in the definition of “register” after “costs” insert “, a notice of discharge”.

73 Work notices

In section 30(1) of the 2006 Act (work which may be required under a work notice)—

(a) the word “or” at the end of paragraph (a) is repealed, and

(b) at the end of paragraph (b), insert “, or

(c) otherwise improving the security or safety of any house (whether or not situated in an HRA).”.

74 Maintenance orders

In section 42(2) of the 2006 Act (circumstances in which a maintenance order may be made)—

(a) the words “the local authority considers” are repealed,

(b) before paragraph (a), insert—

“(za) a work notice has been served in relation to the house and no certificate has been granted under section 60 in relation to the work required by that notice,”; and

(c) at the beginning of each of paragraphs (a) and (b), insert “the local authority considers”.

75 Maintenance plans

(1) In section 24 of the Building (Scotland) Act 2003 (asp 8) (information in the building standards register)—

(a) in subsection (1)—

(i) the word “and” at the end of paragraph (c) is repealed, and

(ii) after paragraph (d), insert “, and

(e) decisions to approve, devise, vary or revoke maintenance plans under Part 1 of the Housing (Scotland) Act 2006.”,

(b) in subsection (2)(a), for “(d)” substitute “(e)”.

(2) In section 47 of the 2006 Act (variation and revocation of maintenance plans)—

(a) in subsection (3), after “if” insert “subsection (3A) applies or if”, and

(b) after subsection (3), insert—

“(3A) This subsection applies where the local authority is satisfied that a property factor (within the meaning of section 2(1) of the Property Factors (Scotland) Act 2011 (asp 8)) has been appointed to manage or maintain the premises to which the plan relates.”.

(3) In section 61(1) of the 2006 Act (registration in the appropriate land register), paragraphs (e) and (f) are repealed.
76  Non-residential premises: repayment charges

(1) In section 172 of the 2006 Act (repayment charges)—
   (a) in subsection (1), for “living accommodation” in both places where it occurs substitute “property”,
   (b) in subsection (5), for “living accommodation” substitute “property”,
   (c) in subsection (6A), for “living accommodation” substitute “property”,
   (d) in subsection (7), for “living accommodation” substitute “property”,
   (e) in subsection (8), for “living accommodation” in both places where it occurs substitute “property”,
   (f) after subsection (8), insert—
      “(9) In this section and in section 173, “property” means a place which is—
         (a) living accommodation, or
         (b) non-residential premises within the meaning of section 69(3).”.

(2) In section 173 of the 2006 Act (effect of registering repayment charges etc.)—
   (a) in subsection (1), for “living accommodation” substitute “property”,
   (b) in subsection (2), for “living accommodation” in each place where it occurs substitute “property”,
   (c) in subsection (3), for “living accommodation” substitute “property”, and
   (d) in subsection (4), for “living accommodation” substitute “property”.

76A  Charging orders

(1) In Schedule 9 to the 1987 Act (recovery of expenses by charging order)—
   (a) in paragraph 4, sub-paragraph (b)(i) is repealed, and
   (b) for paragraph 6, substitute—
      “6 Every annuity charged by a charging order may be recoverable as a debt due to the person for the time being entitled to it.”.

(2) In section 108(2) of the Civic Government (Scotland) Act 1982 (c.45) (recovery of expenses by charging order), for the words from “modifications” to “paragraph” in the last place where it appears substitute “modification, that is to say, in sub-paragraph (b)(ii) of paragraph 4 of that Schedule”.

(3) In section 19(3) of the Crofters (Scotland) Act 1993 (c.44) (priority of sums due), the words “heads (i), (ii) and (iii) of” are repealed.

PART 7
MISCELLANEOUS

77  Right to redeem heritable security after 20 years: power to exempt

(1) In section 11 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling), after subsection (3C) insert—
“(3D) The right to redeem a heritable security conferred by this section does not apply to a heritable security which is in security of a debt of a description specified in an order made by the Scottish Ministers.

(3E) An order under subsection (3D) may—

(a) disapply the right to redeem conferred by this section subject to conditions or restrictions,

(b) restrict the disapplication of the right to redeem conferred by this section to—

(i) specified descriptions of debt,

(ii) specified creditors, or creditors of specified descriptions,

(ii) specified heritable securities, or heritable securities of specified descriptions,

(c) prescribe circumstances in which the disapplication of the right to redeem conferred by this section is to apply or cease to apply.

(3F) An order under subsection (3D) is subject to the negative procedure.”.

(2) In section 21 of the Land Tenure Reform (Scotland) Act 1974 (provisions for contracting out to be void), for “and 11(3A)” substitute “, 11(3A) and 11(3D)”.

77A First-tier Tribunal: disqualification of members from exercise of certain functions

(1) This section applies to the following functions and jurisdictions of the First-tier Tribunal—

(a) a function or jurisdiction of the sheriff transferred to the Tribunal under section 17 or by virtue of Part 1 of schedule 1,

(b) a function conferred on the Tribunal, by virtue of Part 3 and Parts 2 to 4 of schedule 1, by—

(i) the 2004 Act,

(ii) the 2006 Act,

(c) a function conferred on the Tribunal by or under Part 4.

(2) A member of the First-tier Tribunal is disqualified from exercising a function or jurisdiction to which this section applies if the member is—

(a) a member of the House of Commons,

(b) a member of the Scottish Parliament,

(c) a member of the European Parliament,

(d) a Minister of the Crown,

(e) a member of the Scottish Government.

(3) The Scottish Ministers may by order modify subsection (2) by—

(a) adding a disqualification to,

(b) varying the description of a disqualification for the time being mentioned in,

(c) removing a disqualification from,

that subsection.
77B Private rented housing panel: disqualification from membership

In Schedule 4 to the Rent (Scotland) Act 1984, after paragraph 1 insert—

"1A (1) A person is disqualified from appointment to, and from remaining a member of, the private rented housing panel if the person is or becomes—

(a) a member of the House of Commons,
(b) a member of the Scottish Parliament,
(c) a member of the European Parliament,
(d) a Minister of the Crown,
(e) a member of the Scottish Government.

(2) The Scottish Ministers may by order modify sub-paragraph (1) by—

(a) adding a disqualification to,
(b) varying the description of a disqualification for the time being mentioned in,
(c) removing a disqualification from,

that sub-paragraph.

(3) An order under sub-paragraph (2) is subject to the negative procedure.”.

78 Delegation of certain functions

(1) In section 21 of the 2006 Act (panel and committees), after subsection (8) insert—

“(8A) The president may delegate the president’s functions under section 23 to—

(a) the vice-president of the panel, or
(b) such other member of the panel as the president thinks fit.

(8B) A delegation under subsection (8A) does not affect the president’s—

(a) responsibility for the carrying out of delegated functions, or
(b) ability to carry out delegated functions.”.

(2) In section 16 of the Property Factors (Scotland) Act 2011 (asp 8) (panel and committees), after subsection (7) insert—

“(8) The president may delegate the president’s functions under section 18 to—

(a) the vice-president of the panel, or
(b) such other member of the panel as the president thinks fit.

(9) A delegation under subsection (8) does not affect the president’s—

(a) responsibility for the carrying out of delegated functions, or
(b) ability to carry out delegated functions.”.

79 Scottish Housing Regulator: transfer of assets following inquiries

In section 67 of the 2010 Act (transfer of assets following inquiries)—

(a) after subsection (4), insert—
“(4A) A duty on the Regulator to consult in accordance with paragraph (i) or (ii) of subsection (4)(a) does not apply where the Regulator considers that—

(a) the registered social landlord’s viability is in jeopardy for financial reasons,

(b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73,

(c) the direction would substantially reduce the likelihood of a person taking such a step, and

(d) there is insufficient time to comply with that duty and make a direction which would substantially reduce that likelihood.

(4B) The Regulator must—

(a) issue guidance on subsection (4A), such guidance to include—

(i) the circumstances in which it considers that subsection (4A) is likely to apply,

(ii) the actions it expects to take in those circumstances, and

(iii) how, in those circumstances, it intends to communicate with any of the persons mentioned in paragraph (b) who are affected by its actions, and

(b) before issuing or revising any guidance, consult—

(i) tenants of registered social landlords or their representatives,

(ii) registered social landlords or their representatives, and

(iii) secured creditors of registered social landlords or their representatives.

(4C) Where the Regulator proposes to direct a transfer of some (but not all) of a registered social landlord's assets, the Regulator must—

(a) before making a direction, obtain an independent valuation of those assets, and

(b) when making a direction, have regard to that valuation.”,

(b) in subsection (6), paragraph (a) and the word “and” immediately following it are repealed.

79A Registered social landlord becoming a subsidiary of another body

(1) After section 104 of the 2010 Act insert—

“Registered social landlord becoming a subsidiary of another body

104A Registered social landlord becoming a subsidiary of another body

(1) This section applies to a registered social landlord which is—

(a) a registered society, or

(b) a registered company.

(2) An arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary has effect only if the Regulator consents to that arrangement before it is completed.
(3) Chapter 3 of Part 10 makes provision for Regulator consent for the purpose of this section.”.

(2) After section 124 of the 2010 Act insert—

“CHAPTER 3

REGISTERED SOCIAL LANDLORD BECOMING A SUBSIDIARY OF ANOTHER BODY

124A Regulator’s consent

(1) The special procedure set out in sections 114 to 121 of Chapter 1 applies in relation to an arrangement to which the Regulator’s consent is required under section 104A as it applies in relation to a disposal to which Chapter 1 applies.

(2) The Regulator must determine that the special procedure is not to apply or is to cease to apply where the Regulator considers that—

(a) the registered social landlord’s viability is in jeopardy for financial reasons,

(b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73, and

(c) the determination under this subsection would substantially reduce the likelihood of a person taking such a step.

(3) Where the Regulator makes a determination under subsection (2), the Regulator may give or refuse consent to the arrangement.

124B Purchaser protection

Failure by the Regulator or by a registered social landlord to comply with any provision of sections 114 to 121 of Chapter 1 in relation to an arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary does not invalidate the Regulator’s consent to the arrangement.”.

(3) In section 164 of the 2010 Act (connected bodies), the definition of “subsidiary” is repealed.

(4) In section 165 of the 2010 Act (interpretation), after the definition of “social landlord” insert—

““subsidiary” has the same meaning as in the Companies Act 2006 (c.46) or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968 (c.55),”.

80 Repeal of defective designation provisions

(1) Part 14 of the 1987 Act (assistance for owners of defective housing) is repealed.

(2) Schedule 20 to the 1987 Act (assistance by way of repurchase) is repealed.

(3) Schedule 21 to the 1987 Act (dwellings included in more than one designation) is repealed.
**PART 8**

**GENERAL**

81 **Interpretation**

In this Act—

- “the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62),
- “the 1987 Act” means the Housing (Scotland) Act 1987 (c.26),
- “the 2001 Act” means the Housing (Scotland) Act 2001 (asp 10),
- “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
- “the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1),
- “the 2010 Act” means the Housing (Scotland) Act 2010 (asp 17),
- “First-tier Tribunal” means the First-tier Tribunal for Scotland.

82 **Subordinate legislation**

1. Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—
   (a) different provision for different purposes or different areas,
   (b) incidental, supplementary, consequential, transitional, transitory or saving provision.

2. Orders or regulations—
   (a) under section 21(1),
   (b) under section 30(4),
   (ba) under section 41(1) which set out the first code of practice or replace the code of practice,
   (c) under section 51(3)(b),
   (d) under section 83(1) containing provisions which add to, replace, or omit any part of the text of an Act,

are subject to the affirmative procedure.

3. All other orders and regulations under this Act are subject to the negative procedure.

4. This section does not apply to an order under section 85(3).

83 **Ancillary provision**

1. The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.

2. An order under subsection (1) may modify any enactment (including this Act).
84 Minor and consequential amendments
Schedule 2 contains minor amendments and amendments consequential on the provisions of this Act.

85 Commencement

(1) This section and sections 81, 82, 83 and 86 come into force on the day of Royal Assent.

(2) Section 77 comes into force at the end of the period of 2 months beginning with the day of Royal Assent.

(3) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(4) The Scottish Ministers may not appoint a day for section 1(1) to come into force which is before the end of the period of 2 years beginning with the day of Royal Assent.

(5) An order under subsection (3) may include transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

86 Short title
The short title of this Act is the Housing (Scotland) Act 2014.
SCHEDULE 1
(introduced by sections 17 to 20)

TRANSFER OF JURISDICTION TO FIRST-TIER TRIBUNAL

PART 1

REGULATED TENANCIES, PART VII CONTRACTS AND ASSURED TENANCIES

Rent (Scotland) Act 1984 (c.58)

1 The Rent (Scotland) Act 1984 is amended as follows.

2 In section 7(2), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

3 In section 11—
   (a) in subsection (1)—
      (i) for “a court” substitute “the First-tier Tribunal”,
      (ii) for “the court”, in each place it occurs, substitute “the Tribunal”,
   (b) in subsection (2), for “court” substitute “First-tier Tribunal”.

4 In section 12—
   (a) in subsection (1), for “a court” substitute “the First-tier Tribunal”,
   (b) in subsection (2), for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
   (c) in subsection (3), for “court” substitute “First-tier Tribunal”,
   (d) in subsection (4), for “court” substitute “First-tier Tribunal”.

5 In section 19(1), for “a court” substitute “the First-tier Tribunal”.

6 In section 21, for “court”, where it first occurs substitute, “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

7 In section 23(1), for “court” substitute “First-tier Tribunal”.

8 In section 24—
   (a) in subsection (3), for “court”, where it first occurs, substitute “First-tier Tribunal” and, in every other place it occurs, substitute “Tribunal”,
   (b) in subsection (4), for “court”, where it first occurs, substitute “First-tier Tribunal” and, in every other place it occurs, substitute “Tribunal”,
   (c) in subsection (5), for “court” substitute “First-tier Tribunal”,
   (d) in subsection (6), for “court” substitute “First-tier Tribunal”,
   (e) in subsection (7), for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
   (f) in subsection (8), for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

9 In section 25(1), the definition of “the court” is repealed.
10 In section 26, for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.
11 Section 27 is repealed.
12 In section 31(2)—
   (a) for “sheriff” substitute “First-tier Tribunal”,
   (b) in paragraph (b), for “sheriff” substitute “First-tier Tribunal”.
13 In section 32—
   (a) in subsection (4), for “sheriff”, in each place it occurs, substitute “First-tier Tribunal”,
   (b) in subsection (5), for “sheriff” substitute “First-tier Tribunal”.
14 In section 35(12), after “court” insert “or tribunal”.
15 In section 39—
   (a) for “a court” substitute “the First-tier Tribunal”,
   (b) for “the court”, in both places it occurs, substitute “the Tribunal”,
   (c) for “direct the clerk of court to correct” substitute “order the correction of”.
16 In section 43B(4)(b), after “court” insert “or tribunal”.
17 In section 45(3), after “court” insert “or tribunal”.
18 In section 60(3)—
   (a) for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
   (b) the words from “and” to the end are repealed.
19 In section 64(6)(b), for “sheriff, on a summary application” substitute “First-tier Tribunal, on an application”.
20 In section 75—
   (a) for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, in each subsequent place it occurs, substitute “Tribunal”,
   (b) the title becomes “Power of First-tier Tribunal, in action for possession, to reduce period of notice to quit”.
21 In section 76—
   (a) in subsection (2), for “sheriff may, if he thinks fit,” substitute “First-tier Tribunal may”,
   (b) in subsection (3), for “sheriff” substitute “Tribunal”.
22 In section 77, for “sheriff court” substitute “First-tier Tribunal”.
23 In section 97—
   (a) in subsection (8), for “sheriff” in both places it occurs substitute “First-tier Tribunal”,
   (b) in subsection (9), for “sheriff” substitute “First-tier tribunal”.
24 In section 102—
Housing (Scotland) Bill
Schedule 1—Transfer of jurisdiction to First-tier Tribunal
Part 1—Regulated tenancies, Part VII contracts and assured tenancies

(a) before subsection (1) insert—

“(A1) The First-tier Tribunal has jurisdiction, either in the course of any proceedings relating to a dwelling-house or on an application made for the purpose by the landlord or the tenant, to determine any question as to the application of this Act (other than Part IX) or as to any matter which is or may become material for determining any such question.”,

(b) in subsection (1), after “this Act” insert “Part IX of”,

(c) subsection (2) is repealed,

(d) in subsection (3), for “sheriff” substitute “First-tier Tribunal”.

25 In section 103, leave out subsections (1) and (2) and insert—

“An application to the sheriff under section 93(1) is to be made by way of summary application.”.

26 In section 104, before “this Act” insert “Part IX of”.

27 In section 115(1), after the definition of “converted tenancy” insert—

“First-tier Tribunal” means the First-tier Tribunal for Scotland;”.

28 In Schedule 1—

(a) in paragraph 3, for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph 7, for “sheriff” substitute “First-tier Tribunal”.

29 In Schedule 1A—

(a) in paragraph 3, for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph 6, for “sheriff” substitute “First-tier Tribunal”.

30 In paragraph 3 of Schedule 1B, for “sheriff” substitute “First-tier Tribunal”.

31 In Schedule 2—

(a) in Cases 3, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20 and 21, for “court”, in each place it occurs, substitute “First-tier Tribunal”,

(b) in paragraph 1 of Part III—

(i) for “a court” substitute “the First-tier Tribunal”,

(ii) for “the court” substitute “the Tribunal”,

(c) in Part IV—

(i) in paragraph 2, for “court”, in the first place it occurs, substitute “First-tier Tribunal” and, in each subsequent place it occurs, substitute “Tribunal”,

(ii) in paragraph 3(1)(a), for “court” substitute “First-tier Tribunal”,

(d) the title to Part I becomes “Cases in which First-tier Tribunal may order possession”,

(e) the title to Part II becomes “Cases in which First-tier Tribunal must order possession where dwelling-house subject to regulated tenancy”.

35
The Housing (Scotland) Act 1988 is amended as follows.

In section 16(2), for “sheriff” substitute “First-tier Tribunal”.

In section 17(8), for “sheriff” substitute “First-tier Tribunal”.

In section 18—
(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,
(b) in subsection (3)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he” substitute “the Tribunal”,
(c) in subsection (3A)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he” substitute “the Tribunal”,
(d) in subsection (4)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he”, in both places it occurs, substitute “the Tribunal”,
(e) in subsection (4A), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
(f) in subsection (6), for “sheriff” substitute “First-tier Tribunal”,
(g) in subsection (6A), for “sheriff” substitute “First-tier Tribunal”,
(h) in subsection (7), for “sheriff” substitute “First-tier Tribunal”.

In section 19—
(a) in subsection (1)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) in paragraph (b), for “he” substitute “the Tribunal”,
(b) in subsection (2), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
(c) in subsection (5), for “sheriff” substitute “First-tier Tribunal”.

In section 20—
(a) in subsection (1)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he” substitute “the Tribunal”,
(b) in subsection (2)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he” substitute “the Tribunal”,
(c) in subsection (3)—
   (i) for “sheriff” substitute “First-tier Tribunal”,

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(ii) for “he”, in both places it occurs, substitute “the Tribunal”,

(d) in subsection (4)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he” substitute “the Tribunal”,

(e) in subsection (6), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,

(f) the title becomes “Extended discretion of First-tier Tribunal in possession claims”.

38 In section 21(3)—
   (a) for “sheriff” substitute “First-tier Tribunal”,
   (b) for “he” substitute “Tribunal”.

39 In section 22—
   (a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,
   (b) in subsection (2), for “sheriff” substitute “First-tier Tribunal”.

40 In section 25(7), for “sheriff” substitute “First-tier Tribunal”.

41 In section 28(1), for “sheriff” substitute “First-tier Tribunal”.

42 In section 29, for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

43 In section 30(2)—
   (a) the word “summary” is repealed,
   (b) in the opening words, for “sheriff” substitute “First-tier Tribunal”,
   (c) in paragraph (a), for “him” substitute “the Tribunal”,
   (d) in paragraph (b), for “he” substitute “the Tribunal”,
   (e) in the closing words—
      (i) for “sheriff” substitute “Tribunal”,
      (ii) for “he” substitute “the Tribunal”.

44 In section 33—
   (a) in subsection (1)—
      (i) for “sheriff” substitute “First-tier Tribunal”,
      (ii) for “he” substitute “the Tribunal”,
   (b) in subsection (4), for “sheriff” substitute “First-tier Tribunal”.

45 In section 36—
   (a) after subsection (4) insert—
“(4A) Any action to enforce liability arising from this section must be raised in the First-tier Tribunal unless the residential occupant’s claim is founded on the premises in question being subject to a Scottish secure tenancy or to a short Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001 (asp 10)).”.

(b) in subsection (6)(b), after “sheriff” insert “or First-tier Tribunal”,

(c) in subsection (6B), after “court”, in both places it occurs, insert “or, as the case may be, the First-tier Tribunal”.

In section 42(1)(c)—

(a) in sub-paragraph (i), for “court”, where it first occurs substitute “First-tier Tribunal”,

(b) in sub-paragraph (ii), for “court”, where it first occurs, substitute “First-tier Tribunal”,

(c) in sub-paragraph (iii), after “possession” insert “the First-tier Tribunal or, as the case may be,”.

In section 55(1), after the definition of “council tax” insert—

“First-tier Tribunal” means the First-tier Tribunal for Scotland;”.

In Schedule 5—

(a) in grounds 1, 2, 5 and 7, for “sheriff”, in each place it occurs, substitute “First-tier Tribunal”,

(b) the title of Part I becomes “Grounds on which First-tier Tribunal must order possession”,

(c) the title of Part II becomes “Grounds on which First-tier Tribunal may order possession”,

(d) in paragraph 2 of Part III—

(i) for “sheriff”, where it first occurs, substitute “First-tier Tribunal”,

(ii) in paragraph (b), for “sheriff” substitute “Tribunal”,

(iii) in the closing words, for “sheriff” substitute “Tribunal”,

(e) in paragraph 3(1)(a) of that Part, for “sheriff” substitute “First-tier Tribunal”.

PART 2

REPAIRING STANDARD

Housing (Scotland) Act 2006 (asp 1)

The 2006 Act is amended as follows.

In section 24(7)—

(a) for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph (a), for “sheriff’s” substitute “Tribunal’s”.

In section 194, after the definition of “disabled person” insert—

“First-tier Tribunal” means the First-tier Tribunal for Scotland,”.
PART 3

RIGHT TO ADAPT RENTED HOUSES

Housing (Scotland) Act 2006 (asp 1)

The 2006 Act is amended as follows.

In section 64—

(a) subsection (6) is repealed,
(b) in subsection (7), for “(5) or, as the case may be, (6)” substitute “or (5)”.

Subsections (3) and (4) of section 65 are repealed.

Section 67 is repealed.

PART 4

LANDLORD REGISTRATION

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

The 2004 Act is amended as follows.

In section 92—

(a) subsection (4) is repealed,
(b) in subsection (5)—
(i) for “sheriff”, where it first occurs, substitute “First-tier Tribunal”,
(ii) the words “shall be made to the sheriff principal and” are repealed,
(c) in subsection (6), for “sheriff principal” substitute “Upper Tribunal”.

In section 92ZA—

(a) in subsection (1)(b)—
(i) in sub-paragraph (i), for “sheriff” substitute “First-tier Tribunal”,
(ii) in sub-paragraph (ii), for “sheriff” substitute “First-tier Tribunal”,
(iii) in sub-paragraph (ii)(A), for “sheriff’s” substitute “First-tier Tribunal’s”,
(iv) in sub-paragraph (ii)(B), for “sheriff principal” substitute “Upper Tribunal”,
(b) in subsection (2)(b)—
(i) in sub-paragraph (i), for “sheriff” substitute “First-tier Tribunal”,
(ii) in sub-paragraph (ii), for “sheriff” substitute “First-tier Tribunal”,
(iii) in sub-paragraph (ii)(A), for “sheriff’s” substitute “First-tier Tribunal’s”,
(iv) in sub-paragraph (ii)(B), for “sheriff principal” substitute “Upper Tribunal”.

In section 97—

(a) in subsection (6), for “court” substitute “tribunal”,
(b) in subsection (7), for “court” substitute “tribunal”.

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60 In section 101(1)—
(a) before the definition of “house”, insert—

“‘First-tier Tribunal’ means the First-tier Tribunal for Scotland,”,
(b) after the definition of “unconnected person”, insert—

“‘Upper Tribunal’ means the Upper Tribunal for Scotland,”.

SCHEDULE 2
(introduced by section 84)
MINOR AND CONSEQUENTIAL AMENDMENTS

Local Government, Planning and Land Act 1980 (c.65)
1 Section 156(4) of the Local Government, Planning and Land Act 1980 is repealed.

Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)
2 Section 13(11) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 is repealed.

Rent (Scotland) Act 1984 (c.58)
3 In Case 7 of Part 1 of Schedule 2 to the Rent (Scotland) Act 1984—
(a) the word “either” is repealed,
(b) paragraph (b) and the word “or” immediately preceding it are repealed.

Housing (Scotland) Act 1987 (c.26)
4 (1) The 1987 Act is amended as follows.
(2) In section 19 of the 1987 Act—
(a) in subsection (1), for “local authority or a registered social landlord” substitute “social landlord”,
(b) in subsection (2)—
(i) for “housing provider” substitute “social landlord”,
(ii) for “housing providers” substitute “social landlords”,
(c) for subsection (3) substitute—
“(3) In this Part, “social landlord” means any local authority or any registered social landlord.”.
(3) In section 20(2)—
(a) for “local authority and a registered social landlord” substitute “social landlord”,
(b) in paragraph (b), after sub-paragraph (ii) insert—

“(iiia) that a dissolution of a civil partnership or a decree of separation of civil partners be obtained, or”.
(4) In section 21(3), paragraph (ia) and the word “and” at the end of that paragraph are repealed.

(4A) In section 24(5)(d), for “or 2” substitute “, 2 or 2A”.

(4B) In section 31(5)(c), for “or 2” substitute “, 2 or 2A”.

(5) In section 82—

(a) the words “this Part and in” are repealed, and

(b) the definitions of “application to purchase”, “heritable proprietor”, “housing co-operative”, “offer to sell”, “police authority” and “secure tenancy” are repealed.

(6) The title to section 82 becomes “Interpretation of sections 14, 19 and 20”.

(7) In section 338(1)—

(a) in the definition of “house”, the words “(except in relation to Part XIV)” are repealed,

(b) the definition of “secure tenancy” is repealed.

Housing (Scotland) Act 1988 (c.43)

(1) The Housing (Scotland) Act 1988 is amended as follows.

(2) In section 42(1)(d), the words “or in pursuance of section 282(3)(b) of that Act (grant of a tenancy upon acquisition by public sector authority of defective dwelling)” are repealed.

(3) Paragraph 7 of Schedule 2 is repealed.

(4) Paragraphs 19 to 26 of Schedule 17 are repealed.

Local Government and Housing Act 1989 (c.42)

Section 166(1) to (5) of the Local Government and Housing Act 1989 is repealed.

Leasehold Reform, Housing and Urban Development Act 1993 (c.28)

Section 156 of the Leasehold Reform, Housing and Urban Development Act 1993 is repealed.

Local Government etc. (Scotland) Act 1994 (c.39)

Paragraph 152(6) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 is repealed.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

Paragraph 48(3) of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is repealed.

Housing (Scotland) Act 2001 (asp 10)

(1) The 2001 Act is amended as follows.

(1A) In section 5(4)(a), for “or 2” substitute “, 2 or 2A”.
(2) Section 23(6)(d) is repealed.
(3) Sections 42 to 51 are repealed.
(4) In schedule 10—
   (a) paragraph 13(3)(c)(ii) is repealed,
   (b) paragraph 13(6) to (20) is repealed,
   (c) paragraph 13(36) to (40) is repealed.

Water Industry (Scotland) Act 2002 (asp 3)
11 Paragraph 18(5) of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.

Scottish Public Services Ombudsman Act 2002 (asp 11)
12 Paragraph 44 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 is repealed.

Freedom of Information (Scotland) Act 2002 (asp 13)
13 (1) The Freedom of Information (Scotland) Act 2002 is amended as follows.
   (2) In schedule 1, after paragraph 18A insert—
       “18B The Scottish Housing Regulator.”.
   (3) Paragraph 85B of schedule 1 is repealed.

Land Reform (Scotland) Act 2003 (asp 2)
14 (1) The Land Reform (Scotland) Act 2003 is amended as follows.
   (2) Section 40(4)(g)(v) is repealed.
   (3) Section 65(2)(d) is repealed.
   (4) Section 84(2)(c) is repealed.

Agricultural Holdings (Scotland) Act 2003 (asp 11)
15 Section 27(1)(g)(vi) of the Agricultural Holdings (Scotland) Act 2003 is repealed.

Fire (Scotland) Act 2005 (asp 5)
16 Paragraph 13 of schedule 3 to the Fire (Scotland) Act 2005 is repealed.

Housing (Scotland) Act 2006 (asp 1)
16A In section 22 of the 2006 Act—
   (a) subsection (4)(c) is repealed, and
   (b) subsection (6) is repealed.
Housing (Scotland) Act 2010 (asp 17)

17 (1) The 2010 Act is amended as follows.

(2) In section 58(1), for “the” where it secondly occurs substitute “a”.

(3) Section 108(1)(f) is repealed.

(4) In section 110(1), after paragraph (a) insert—

“(aa) the proposed disposal is not by way of granting security over the land or any interest in it,”.

(4A) In section 124, for “122” substitute “121”.

(5) Sections 140 to 144 are repealed.

(6) In schedule 2—

(a) paragraph 3(4) is repealed,

(b) paragraph 9 is repealed.

Police and Fire Reform (Scotland) Act 2012 (asp 8)

18 Paragraph 56 of schedule 7 to the Police and Fire Reform (Scotland) Act 2012 is repealed.
Housing (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about housing, including provision about the abolition of the right to buy, social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes.

Introduced by: Nicola Sturgeon
Supported by: Margaret Burgess
On: 21 November 2013
Bill type: Government Bill
This document relates to the Housing (Scotland) Bill as amended at Stage 2 (SP Bill 41A)

HOUSING (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Housing (Scotland) Bill as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

3. In these notes:
   - “the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62)
   - “the 1974 Act” means the Land Tenure Reform (Scotland) Act 1974 (c.38)
   - “the 1983 Act” means the Mobile Homes Act 1983 (c.34)
   - “the 1984 Act” means the Rent (Scotland) Act 1984 (c.58)
   - “the Defects Act” means the Housing Defects Act 1984 (c.50)
   - “the 1987 Act” means the Housing (Scotland) Act 1987 (c.26)
   - “the 1988 Act” means the Housing (Scotland) Act 1988 (c.43)
   - “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46)
   - “the 2001 Act” means the Housing (Scotland) Act 2001 (asp 10)
   - “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)
   - “the Tenements Act” means the Tenements (Scotland) Act 2004 (asp 11)
   - “the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1)
   - “the 2010 Act” means the Housing (Scotland) Act 2010 (asp 17)
   - “the 2011 Act” means the Property Factors (Scotland) Act 2011 (asp 8)
   - “the Tribunals Bill” means the Tribunals (Scotland) Bill, introduced on 9th May 2013.
THE BILL

4. The purpose of the Housing (Scotland) Bill (“the Bill”) is to provide additional protection for tenants in the private rented sector and permanent residents of mobile home sites; to support improvements in housing quality in the private rented and privately-owned sectors; to make better use of the existing stock of social rented homes; and to provide more efficient access to justice for landlords and tenants in the private rented sector.

5. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

THE STRUCTURE AND A SUMMARY OF THE BILL

6. The Bill is in eight Parts.

- Part 1 contains provisions which will abolish the right to buy.
- Part 2 makes provision in relation to social housing allocations; the extension of the term of the short Scottish secure tenancy; the right to assign or sublet a tenancy, to establish a joint tenancy and to succeed to a secure tenancy.
- Part 3 transfers jurisdiction for civil cases relating to the private rented sector from the sheriff court to the First-tier Tribunal; makes provisions which deem a landlord as being registered on the landlord register where an application has not been determined by a local authority within 12 months; amends the repairing standard for private rented housing in Part 1 of the 2006 Act and provides third party reporting rights to the private rented housing panel for enforcement of the landlords’ repairing standard.
- Part 4 makes provision for the registration of letting agents (including a fit and proper person test); creates an offence of operating as a letting agent without being registered; sets out the process for handling disputes between letting agents and landlords or tenants; and allows the Scottish Ministers to provide for a letting agent code of practice by regulations.
- Part 5 makes provision for the licencing of relevant permanent sites in Scotland; (including a fit and proper person test); for offences relating to permanent sites and for local authority enforcement of statutory requirements, including powers of entry and recovery of expenses in relation to enforcement action.
- Part 6 amends local authority powers to enforce repairs and maintenance in private homes.
- Part 7 makes a number of miscellaneous amendments: granting the Scottish Ministers powers to exempt certain schemes, such as shared equity schemes, from the right to redeem a heritable security after 20 years in relation to private dwellings; the disqualification of certain persons from sitting on tribunals that are hearing housing cases; it amends the Scottish Housing Regulator’s powers to transfer assets following inquiries; provides for arrangements under which a registered social landlord (RSL) would become the subsidiary of another body and subject to the consent of the Regulator in the same way as arrangements by which a RSL would transfer its assets to another RSL; and repeals provisions in the Housing (Scotland) Act 1987 that designate pre-cast reinforced concrete houses as defective.
• Part 8 sets out various supplementary and final provisions.

PART ONE – RIGHT TO BUY

7. This Part repeals existing provisions on right to buy in the Housing (Scotland) Act 1987 (the “1987 Act”), so that right to buy is abolished for all tenants who have a Scottish secure tenancy with a relevant social landlord. Consequently, no tenant of social housing in Scotland will have the right to buy from the date of the coming into force of section 1. It also repeals provisions in the 1987 Act, the Housing (Scotland) Act 2001 (“the 2001 Act”) and the Housing (Scotland) Act 2010 (“the 2010 Act”), which are no longer required following the abolition of right to buy. In addition, it makes two amendments to the 1987 Act to ensure that changes to that Act made by the 2010 Act operate as intended until right to buy ends.

8. Section 1(1) repeals sections 61 to 81, 84 and 84A of the 1987 Act (the right to buy and associated provisions). These sections of the 1987 Act concern secure tenants’ right to buy; the procedure to follow when an application to purchase is made; circumstances in which houses provided for special purposes or liable for demolition are exempt from the right to buy; reference to the Lands Tribunal in cases of dispute; recoverability of discount; the rent to loan scheme; the powers of the Scottish Ministers in relation to right to buy; and the preservation of a tenant’s right to buy where a relevant landlord disposes of the home to a private sector landlord.

9. Section 1(2) repeals section 52 of the 2001 Act. Section 52 obliges the Scottish Ministers to report within four years of the provision coming into force on the extent to which tenants had exercised their right to buy and the effect of this on housing stock, the needs of people for, the demand for and availability of housing accommodation.

10. Section 1(3) repeals sections 145 to 147 of the 2010 Act. These sections require the Scottish Ministers to collect and publish information about right to buy sales in relation to each local authority and registered social landlord and about the number of tenants with the right to buy their house in relation to each local authority.

11. Section 2(a) amends section 61ZA(1) of the 1987 Act. Section 61ZA, inserted by section 141 of the 2010 Act, extends the range of circumstances under which the right to buy cannot be exercised to include new tenants to the social housing sector. This was intended to ensure that tenants taking up a Scottish secure tenancy for the first time (following commencement of section 141) and those returning to the social rented sector after a break would not have the right to buy the property they rent from a social landlord. This amendment to section 61ZA(1) is intended to ensure that occupation other than as a tenant before that date does not exempt a person from the new tenant provisions.

12. Section 2(b) amends section 61F of the 1987 Act. Section 61F, inserted by section 143 of the 2010 Act, extends the range of circumstances set out in sections 61A to 61E of the 1987 Act under which the right to buy cannot be exercised, to include new supply social housing (therefore exempting it from the right to buy, with some exceptions where a tenant with a Scottish secure tenancy moves to new supply social housing in circumstances outwith their control). This amendment is intended to ensure that tenants in this position have their right to buy protected, irrespective of when their tenancy was created.
13. Section 85(4) provides that the Scottish Ministers cannot appoint a date on which the right to buy will end which is less than two years from the date the Bill receives Royal Assent (in other words the Scottish Ministers cannot commence section 1(1) before the end of a two-year period from the date of Royal Assent).

PART TWO – SOCIAL HOUSING

14. Part 2 amends the Housing (Scotland) Act 1987 (“the 1987 Act”) and the Housing (Scotland) Act 2001 (“the 2001 Act”). The changes relate to social landlords’ powers to allocate social housing and grant Scottish secure tenancies and short Scottish secure tenancies.

Allocation of social housing

Reasonable preference in allocation of social housing

15. Section 3 amends section 20 of the 1987 Act to replace the existing categories of persons to whom social landlords must give reasonable preference when allocating social housing. It states that reasonable preference in allocations must be given to persons who are homeless or threatened with homelessness and persons who are living under unsatisfactory housing conditions, in each case where that person’s housing needs are not capable of being met by other housing options which are available. Reasonable preference must also be given to the tenants of any social landlord whom a social landlord considers to be under-occupying a property.

Rules on priority of allocation of housing: consultation

16. Section 4 inserts new section 20A into the 1987 Act. New section 20A requires social landlords to consult those mentioned in subsection 20A(2) and prepare and publish a report on the consultation, before determining the priority of allocation of houses held by it for housing purposes. When making or amending the allocation policy, subsection (2) amends section 21 of the 1987 Act to require social landlords to take account of any local housing strategy and any guidance issued by the Scottish Ministers. Before publishing any guidance on the priority of allocation of housing, the Scottish Ministers must consult such persons as they consider appropriate. Subsection (2) also enables the Scottish Ministers to make regulations subject to the affirmative procedure, which prescribe the type or description of persons whom social landlords must include in their rules governing the priority of allocation of houses. This is intended as a safeguard to ensure that categories of persons are not routinely omitted from an individual landlord’s allocation policies.

17. Section 6 amends section 20 of the 1987 Act to ensure that social landlords take no account of the ownership of or value of heritable property owned by the applicant or by a person who lives with or who it is proposed will live with the applicant, in the limited circumstances set out in new subsection (2C). These circumstances include, for example, where a property has not been let and the owner cannot secure entry to that property or where it is probable that occupation of the property will lead to abuse from some other person residing in that property.

18. Section 7 amends section 20 and inserts new section 20B in the 1987 Act to allow social landlords to impose a minimum period before the applicant is eligible for the allocation of housing, if certain circumstances apply. A minimum period requirement cannot be placed on homeless applicants to whom the local authority has a duty to provide settled accommodation (new subsection (2)(b)). A social landlord may determine that an applicant is ineligible for the
allocation of social housing if any of the circumstances in new section 20B(5) apply in relation to the applicant. Some of the circumstances also apply in relation to a person who it is proposed will reside with the applicant. The circumstances include antisocial behaviour, harassment, using a house for immoral or illegal purposes or offences punishable by imprisonment that were committed in the vicinity of the house. Subsection 20B(3) provides the Scottish Ministers with the power to issue guidance on any matter relating to section 20B and requires that the guidance should be consulted on before publication. Subsection 20B(4) provides the Scottish Ministers with the power by regulations to prescribe the maximum period preceding the application that a social landlord may consider any of the circumstances in section 20B(5). Subsection 20B(4) also provides the Scottish Ministers with the power by regulations to prescribe a maximum period for an application to have remained in force before an applicant is eligible for housing to be allocated when a landlord imposes such a period under any of those circumstances. Where a social landlord has imposed a minimum period before the applicant is eligible for the allocation of social housing, subsection 20B(7A) enables the landlord to withdraw or reduce the minimum period. Subsection (8) provides applicants with a right to appeal to the sheriff against a landlord’s decision to make them ineligible for a period for the allocation of housing.

Short Scottish secure tenancy

19. Section 8(1) provides the Scottish Ministers with a power to issue guidance on the creation of a short Scottish secure tenancy for antisocial behaviour and on taking certain steps in relation to such a tenancy. Before publishing this guidance, the Scottish Ministers must consult with such persons as they consider appropriate. Subsection (1) also amends section 34(7) of the 2001 Act to require the landlord to provide, or ensure provision of, the housing support services it considers appropriate to enable the conversion of the tenancy to a Scottish secure tenancy.

20. Section 8(2) substitutes a new subsection (2) in section 35 of the 2001 Act. New section 35(2) extends the circumstances in which a landlord may serve a notice on a tenant under subsection (3) (a notice stating that the Scottish secure tenancy becomes a short Scottish secure tenancy). The circumstances include where a tenant or person associated with the tenant has, within the period of three years preceding the date of service of the notice, acted in an antisocial manner, pursued a course of conduct amounting to harassment or a course of conduct which is otherwise antisocial in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality. It also amends the information that must be included in the notice to the tenant to include the name of the person who has behaved in an antisocial manner, where no anti-social behaviour order applies. New section 35(3) makes a consequential amendment to section 37(1) (conversion to a Scottish secure tenancy) of the 2001 Act.

21. New section 35(4) inserts new paragraph 2A in schedule 6 to the 2001 Act to provide that the conduct referred to in new section 34(2)(b) if carried out by the persons referred to in new paragraph 2A(2), within the period of three years preceding the date of service of the notice, is a new ground for granting applicants a short Scottish secure tenancy. It also amends paragraph 6 of schedule 6 to the 2001 Act so that the ground for granting a short Scottish secure tenancy related to accommodation for a person in receipt of housing support only applies when no other paragraph in that schedule applies and where the person is in receipt of a housing support service. New section 34(5) makes another consequential amendment to section 31(5) of the 1987 Act to include new paragraph 2A as accommodation considered to be permanent accommodation under the duties of local authorities to persons found to be homeless.
22. Section 9 creates a new ground for granting a short Scottish secure tenancy, for homeowners, where the house is to be let expressly on a temporary basis to a person who owns heritable property, or where a person who it is proposed will reside with them owns heritable property. This is to allow them to make arrangements in respect of the heritable property they own, including sale or installation of adaptations, that will allow the person’s housing needs to be met.

23. Section 10(1) amends section 34 of the 2001 Act to give short Scottish secure tenancies granted on the grounds of antisocial behaviour or a previous eviction order a term of 12 months. It also amends section 34 to provide that, at the end of the 12-month term, the tenancy cannot continue as a short Scottish secure tenancy on the same terms and conditions. Subsection (2) amends section 35 of the 2001 Act to provide that a short Scottish secure tenancy created by virtue of that section also has a term of 12 months. It also provides that, at the end of the 12-month term, the tenancy cannot continue as a short Scottish secure tenancy on the same terms and conditions. Subsection (3) inserts new subsection (5) and (6) into section 37 of the 2001 Act (conversion to Scottish secure tenancy) to provide that after this period, the short Scottish secure tenancy will automatically convert to a Scottish secure tenancy (unless the social landlord has taken steps to extend the short Scottish secure tenancy by a further six months or to seek repossession of the tenancy) on the term which applied before the tenancy became a short Scottish secure tenancy.

24. Section 11 inserts new section 35A in the 2001 Act to provide that the term of a short Scottish secure tenancy granted on antisocial behaviour or previous eviction grounds may be extended by a further period of six months from the date which would otherwise be the expiry day of that tenancy. Tenants must have been given two months’ notice of the extension (including the reasons for the extension) and must be being given housing support services. An extension may be required because the tenant requires support for a further period in order for the tenant to be able to sustain a Scottish secure tenancy. Subsection (2) makes consequential amendments to section 37 of the 2001 Act.

25. Section 12 amends section 36 of the 2001 Act. Section 12(a) inserts a new subparagraph (aa) in section 36(2) to provide that proceedings for recovery of possession may not be raised, in the case of short Scottish secure tenancies created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 (those granted on antisocial behaviour or previous eviction grounds), unless the landlord considers that any obligation of the tenancy has been broken. Section 12(b) inserts a new subparagraph (aa) into section 36(3) to require landlords of such tenancies to give tenants reasons why they are seeking recovery of possession of the tenancy (including, if new subsection (2)(aa) applies, the obligations the landlord considers have been broken). This section also gives tenants a right to request that their landlord review the decision to seek recovery of possession before the case goes to court (new subsection (4A)). New subsection (4C) gives the Scottish Ministers the power by regulations to make provisions about the procedure to be followed in such reviews. Section 12(ca) provides that, in cases where section 36(2)(aa) applies, the court must make an order for recovery of possession of the tenancy where the tenancy has reached the end of its 12-month term (or, in a case where an extension applies, the 18-month term applicable to it) and the landlord considers that an obligation of the tenancy has been broken. Section 12(e) inserts a new subsection (8) into section 36 of the 2001 Act to allow the procedure for recovery of possession (with respect to the serving of the notice for recovery of possession) under Scottish secure tenancies to also be used with short Scottish secure tenancies so long as the tenant has
been given four weeks’ notice prior to the landlord raising proceedings for recovery of possession.

Scottish secure tenancy

26. Section 13(1) amends section 11 of the 2001 Act to introduce a 12-month qualifying period, where a person has used the house in question as the person’s only or principal home, before a person can apply to be added to a tenancy as a joint tenant. Subsection (2)(a) amends section 32 of the 2001 Act to replace a six-month qualifying period with a 12-month qualifying period before a tenant can apply to assign the tenancy to another person. The proposed assignee will also have to have lived at the property and used it as their only or principal home for 12 months before they may be assigned the property. It also introduces a 12-month qualifying period before a tenant can apply to sublet the tenancy to another person. In joint tenancy and assignation cases, the individual or the tenant of the house in question must have notified the landlord that the individual is living in the property as their only or principal home before the 12-month period begins. The 12-month qualifying period for applying to sublet a tenancy is satisfied where the tenant was the tenant of the house in question throughout the 12-month period ending with the date of application (new subsection (1B) as inserted into section 32 by 13(2)(b)). Section 13(c) inserts new subparagraphs (f) and (g) into section 32(3) to provide new grounds for reasonable refusal of consent.

27. Section 14 amends schedule 3 to the 2001 Act for the purpose of succession to a Scottish secure tenancy. This schedule makes provision as to who are qualified persons to whom a Scottish secure tenancy passes by operation of law on the death of a tenant. Currently paragraph 2(2) of schedule 3 provides that a person living with a tenant as husband and wife or in a relationship of this character, except that they are of the same sex, is a qualified person if the house has been their only or principal home for a period of 6 months preceding the tenant’s death. Section 14(a) replaces this six month qualifying period with a 12-month qualifying period.

28. Paragraph 3 of schedule 3 is amended to provide that a member of the tenant’s family aged at least 16 years is a qualifying person for the purposes of succession to a Scottish secure tenancy, provided the house was their only or principal home throughout the 12 months ending in the tenant’s death. This is a change to the existing requirement that such a family member is a qualifying person where the house was their only or principal home at the time of the tenant’s death.

29. Paragraph 4(b) of schedule 3 is amended to provide that a carer providing, or who has provided, care for the tenant or a member of the tenant’s family where the house was the carer’s only or principal home throughout the period of 12 months ending with the tenant’s death is a qualifying person. This is a change to the existing requirement that such a carer is a qualifying person where the house was the carer’s only or principal home at the time of the tenant’s death and the carer had given up a previous only or principal home.

30. In all cases where a qualifying period applies in section 14, the individual or the tenant must have notified the landlord that the individual is living in the property as their only or principal home before the 12-month period can begin (new paragraph 4A).
This document relates to the Housing (Scotland) Bill as amended at Stage 2 (SP Bill 41A)

31. Section 15(1) provides the Scottish Ministers with the power to issue guidance on any matter relating to recovering possession of a house where such proceedings are to include a ground for recovery of possession set out in paragraph 2 of schedule 2 to the 2001 Act. The Scottish Ministers are also required to consult such persons as they consider appropriate before publication of the guidance. Subsection (2) inserts paragraph (aa) in section 16(2) of the 2001 Act to remove a requirement that the court considers whether it is reasonable to make an order for eviction, in cases where another court has already convicted a tenant of using the house for immoral or illegal purposes or of an offence punishable by imprisonment, committed in, or in the locality of, the house. The landlord will have to have such grounds for seeking recovery of possession of the property and have, within 12 months of the tenant’s conviction or appeal, served a notice on the tenant that the landlord intends to seek recovery of possession of the property. The tenant retains a right to challenge the court action.

32. Section 16 amends schedule 2 to the 2001 Act to allow landlords to seek recovery of possession of adapted property where it has been allocated to persons who do not need adaptations. Landlords have an existing duty under section 16(2)(b) of the 2001 Act to rehouse any such persons in suitable alternative accommodation.

PART THREE – PRIVATE RENTED HOUSING

33. Part 3 makes provision in relation to the transfer of responsibility for hearing civil cases relating to the private rented sector from the Scottish courts to the Scottish Tribunals.

Transfer of sheriff’s jurisdiction to First-tier Tribunal

34. Sections 17 to 21 and schedule 1 to the Bill make provision to transfer the types of civil private rented sector housing court actions specified in these provisions from the jurisdiction of the sheriff court to the jurisdiction of the First-tier Tribunal (“FTT”). These actions include repossession cases and various non-repossession related cases. The FTT is due to be established under the Tribunals (Scotland) Bill (“the Tribunals Bill”) which was introduced in the Scottish Parliament on 9th May 2013. Provisions and powers provided in the Tribunals Bill will allow for operational detail such as the establishment of tribunal rules and appointment of members to the FTT. The Explanatory Notes in relation to this part of the Bill should, therefore, be read in conjunction with the Tribunals Bill.

35. Section 17 provides for the functions and jurisdiction of the sheriff court in relation to civil actions arising from regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984 (“the 1984 Act”), Part VII contracts within the meaning of section 63 of the 1984 Act and assured tenancies within the meaning of section 12 of the Housing (Scotland) Act 1988 (“the 1988 Act”), to be transferred to the FTT. This includes matters of eviction.

36. Part 1 of schedule 1 makes consequential amendments to this effect.

37. Section 18(2) amends section 18 of the Housing (Scotland) Act 2006 (“the 2006 Act”) to provide that applications from a landlord or tenant for an order to exclude or modify the application of sections 14, 15 and 17 of the 2006 Act to the tenancy (with regards to the landlord’s duty to repair and maintain, and the prohibition on contracting out of the landlord’s
This document relates to the Housing (Scotland) Bill as amended at Stage 2 (SP Bill 41A)

duty to repair and maintain) are transferred from the jurisdiction of the sheriff court to the jurisdiction of the FTT.

38. Section 18(4) amends section 57 of the 2006 Act to provide that where the section applies, the FTT, as opposed to the sheriff, may order a person who prevents or obstructs another person from doing anything which that person is required, authorised or entitled to do under Part 1 of the 2006 Act, to permit that person to do all things which they are required, authorised or entitled to do.

39. Part 2 of schedule 1 makes consequential amendments to this effect.

40. Section 19 inserts new section 66A into the 2006 Act. New section 66A provides the ability for tenants to appeal a landlord’s refusal of, or imposition of conditions on, consent to adapt a rented house for a disabled person or for energy efficiency. The effect of the insertion of this section is to transfer jurisdiction to the FTT.

41. Part 3 of schedule 1 makes consequential amendments.

42. Section 20 provides for the jurisdiction to decide civil matters relating to landlord registration arising from the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) (appeals against local authority decisions regarding landlord registration) to be transferred from the sheriff court to the FTT.

43. Part 4 of schedule 1 makes consequential amendments.

44. Section 21(1)(a) provides a power for the Scottish Ministers, by regulations, to transfer jurisdiction to decide cases under section 153(2) of the 2006 Act (where a person has obstructed another person from completing an action in relation to breaches of houses in multiple occupation (“HMO”) licences or local authority amenity notices) from the sheriff to the FTT.

45. Section 21(1)(b) provides that the Scottish Ministers may also, by regulations, transfer appeals against decisions of local authorities to which section 158 of the 2006 Act applies (against decisions relating to HMOs) and applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act and warrants for ejection under paragraph 2 of schedule 5 to that Act in relation to premises or land, from the sheriff to the FTT.

46. Section 21(2) provides that regulations under subsection (1) may also:

- disapply section 153(2) of the 2006 Act (regarding orders in cases where a person has obstructed another person under sections 145(2), 146(2), 151 or schedule 5 of that Act) which would become appropriate if all powers to make orders in these cases have been transferred to the FTT,

- disapply section 159(1) and paragraph 9(2) of schedule 4 to the 2006 Act (which allow any decision of a local authority in relation to HMOs to be appealed by summary application to the sheriff and the sheriff to extend the period in which a local authority must decide whether to grant or refuse an HMO licence application),
• disapply paragraph 3(1) of schedule 5 to the 2006 Act (which relates to warrants for ejection where a person has not complied with a requirement to evacuate to allow work to be carried out), and
• make other consequential amendments to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

Landlord registration

47. Part 3 of the Bill also amends the 2004 Act by including provisions for the introduction of a time limit of 12 months for the determination of landlord registration applications.

48. Section 22 inserts a new section 85B into the 2004 Act and requires that local authorities determine applications for registration (as required by section 84 of the 2004 Act) made by relevant persons under section 83 of the 2004 Act, within 12 months of receipt of the application.

49. New section 85B(3) allows a local authority to apply to the FTT for an extension to this 12 month period. The period may be extended by such a period as the FTT thinks is appropriate, but may not be extended unless the application is made before the 12 month period expires (subsection (4)). The person making the application for registration is entitled to be party to any application for an extension to the 12 month period (subsection (5)). The decision of the FTT on the application will be final (subsection (6)).

50. New section 85B(7) provides that in the event of a local authority failure to determine the landlord application within the 12 month period, authorisation is deemed to have been granted automatically by the local authority. The authority is to be treated as having entered the relevant person in the register maintained by it under section 82(1) of the 2004 Act on the day by which the authority was required to determine the application. Unless the relevant person is otherwise removed from the register in accordance with Part 8 of the 2004 Act, that person is to be treated as being removed from the register on the expiry of the period of 12 months from that date (subsection (7)(b)).

51. Where new section 85B(7) applies (where the local authority has not determined an application within 12 months of its receipt), details of the relevant person’s name and registration number must be entered in the register maintained by the authority under section 82(1) of the 2004 Act (subsection 8). Subsection (9) provides that (subject to the modifications specified in subsection (10)) the relevant person is treated for all purposes as having been registered by virtue of section 84(2)(a) of the 2004 Act (in other words, as if the authority has made a positive determination of the application). The requirement for an authority to remove the entry from the register three years from the day on which the entry is made in the register in terms of section 84(6) of the 2004 Act does not apply to deemed granted applications (in other words to those applications entered by virtue of a local authority having not determined it within 12 months of the date of receipt of the application) (subsection (10)(c)).

52. The modifications specified in subsection (10) are that in the case where an applicant does not specify the name of a person who acts for the landlord in respect of a property specified in the application under section 83(1)(c), the applicant is to be treated as being registered by virtue of section 84(3). Where an applicant specifies at least one house, and the name and
address of someone acting in respect of a property specified in the application under section 83(1)(c), the applicant is to be treated as being registered by virtue of section 84(4).

53. Section 22(2) amends section 86(1)(a) of the 2004 Act so that a person entered into the register by virtue of a deemed granted application is notified of that fact as soon as practicable after the entry has been made.

**Repairing standard**

54. Part 3 of the Bill also makes provision to amend the repairing standard for private rented housing in Part 1 of the 2006 Act.

55. Section 22A amends section 13 of the 2006 Act by inserted a subsection (1)(g) which requires that, in order to meet the repairing standard, a privately rented house must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. A new section 13(6) of the 2006 Act provides that, in determining whether a house has satisfactory provision for giving warning of carbon monoxide, regard is to be had to both building regulations and guidance issued by the Scottish Ministers.

56. Section 22B inserts a section 13(4A) into the 2006 Act which requires that, in determining whether a house meets the parts of the repairing standard which require that the installations in a privately rented house for the supply of electricity and any electrical appliances provided by the landlord are in a reasonable state of repair and in proper working order, regard is to be had to any guidance on electrical safety standards issued by the Scottish Ministers.

57. Section 22B also inserts section 19A into the 2006 Act. New section 19A requires landlords to arrange electrical safety inspections every five years to identify any work needed to meet the repairing standard in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances. An inspection must be carried out before a new tenancy starts, unless there has been an inspection within the previous five years. Where a tenancy has commenced before the date that section 22B(2) comes into force, the landlord must carry out an inspection within 12 months from the date section 22B(2) comes into force, unless the tenancy comes to an end in the 12-month period (and the property is not relet). Section 19A requires landlords to provide copies of inspection reports to tenants. The duty to carry out an inspection is treated as part of the repairing standard for the purposes of applications to the private rented housing panel and for enforcement of the repairing standard by the private rented housing panel.

58. Section 22B also inserts new section 19B into the 2006 Act. Section 19B provides that an inspection carried out for the purposes of section 19A must be carried out by a competent person and specifies information which must be included in the record of the inspection, which must be retained by the landlord for six years. Section 19B also provides that the Scottish Ministers must publish guidance and that, in determining whether someone is a competent person as required by section 19B(1), landlords must have regard to this guidance.

59. Section 22C inserts section 20A into the 2006 Act. Section 20A provides that the Scottish Ministers may amend the provisions of the 2006 Act which set out the repairing standard and the duty of landlords to ensure that privately rented homes meet the repairing standard. Section 22C(2) requires that any such regulations are made by the affirmative procedure.
Enforcement of repairing standard

60. Part 3 of the Bill also makes provision to expand access to the private rented housing panel by enabling third party applications by local authorities to enforce the repairing standard.

61. Section 23(1)(a) amends section 22 of the 2006 Act by inserting subsections (1A) and (1B), to enable 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 which is provided for in section 13 of the 2006 Act (section 14(1)(b) of the 2006 Act provides that the landlord in a tenancy must ensure that the house meets the repairing standard at all times during the tenancy). New section 22(1B) defines such a third party applicant as a local authority, or a person specified by order by the Scottish Ministers.

62. Section 23(1)(b) amends section 22(2) of the 2006 Act to require that an application made by a third party must set out the third party applicant’s reasons for considering that the repairing standard is not met.

63. Section 23(1)(c) amends section 22(3) of the 2006 Act to provide that an application in respect of the repairing standard cannot be made unless the person making the application has informed the landlord that work needs to be carried out for the purpose of complying with the repairing standard. Section 23(1)(d) amends section 22(4) to provide that applications made under this amended section (both by tenants and by third party applicants) cannot be made if the landlord is a local authority landlord, a registered social landlord, Scottish Water or Scottish Homes.

64. New section 22(4A) as inserted by section 23(1)(e) of the Bill makes provision that the tenant of the house concerned is entitled to be a party to the determination of any application by a third party to the private rented housing panel.

65. Section 23(3) amends section 22A(1) of the 2006 Act to provide that on receipt of an application by a tenant or third party applicant (other than a local authority third party applicant), the private rented housing panel must provide the information specified in section 22A(2) to the local authority for the area in which the house is situated for the purpose of the local authority maintaining the register under section 82(1) of the 2004 Act (landlord register).

66. Section 23(4) of the Bill amends section 23 of the 2006 Act so that the processes whereby the president of the private rented housing panel decides whether to refer an application to a private rented housing committee or to reject it will also apply to applications made by a third party. Notification of rejected third party applications must be given to the third party applicant and the tenant, setting out the reasons for rejection and the procedures for appealing against it (new subsection (4A) as inserted into section 23 of the 2006 Act).

67. Section 23(5) amends section 24 of the 2006 Act so that the private rented housing committee must make a determination of applications made by a tenant or a third party as to whether the landlord has failed to comply with the repairing standard (in other words the landlord’s duty under section 14(1)(b)).
68. Section 23(6A) amends section 181 of the 2006 Act to provide a new power of entry for third parties in relation to the repairing standard. This provides for the right of entry by a person authorised by a third party applicant, for the purposes of deciding whether an application is to be made to the PRHP under section 22(1A) of the 2006 Act.

69. Section 23(6B)(a) amends section 182 of the 2006 Act, which outlines circumstances where a sheriff or justice of the peace may issue a warrant to enter a house, by force if necessary, to include that a warrant may be issued for the purposes of deciding whether an application is to be made to the PRHP under section 22(1A) of the 2006 Act. Section 23(6B)(b) provides that the reference to the ‘occupier’ in section 182(3) for the purposes of an application for a warrant under section 181(1A) includes the tenant, the landlord and any known agent of the landlord. Section 23(6C) inserts a new subsection (4A) into section 184 of the 2006 Act so that the requirement under section 184(4) for at least 24 hours’ notice to be given to the occupants of the land or premises concerned before exercising the right of entry under section 181(1A), is read as requiring notice to be given to the tenant, landlord and any known agent of the landlord.

70. Section 23(6D) amends section 187 of the 2006 Act which sets out the means by which a formal communication under the Act is served, submitted, given, made or issued to a person, by substituting for the reference to “the recorded delivery service” a reference to “a service which provides for the delivery of the communication to be recorded”.

71. Section 23(7) amends section 194(1) of the 2006 Act (interpretation) to include ‘third party applicant’, which is to be interpreted as a local authority or a person specified by order made by the Scottish Ministers.

72. Section 23(8) repeals section 35(3) of the 2011 Act, which was to include the word tenant to the title of section 22 of the 2011 Act entitled ‘representations’.

**Procedure for third party applications**

73. Section 24 amends schedule 2 to the 2006 Act so that the procedures to be adopted by a private rented housing committee in determining an application to the private rented housing panel in relation to a landlord’s failure to comply with the repairing standard (in terms of section 14(1)(b) of the 2006 Act), take account of applications made by a third party. In the case of a third party application, the third party must be notified and given the opportunity to make written or oral representations. Any changes made at the request of a third party applicant to the date by which evidence must be provided must be notified to the third party, the tenant and landlords.

74. The procedures followed by a committee in making other inquiries must include consideration of any written or oral representations, and any report about the state of the property concerned, by third party applicants (in terms of section 24(2) which amends paragraph 2 of schedule 2 to the 2006 Act).

75. The committee may cite any person to give evidence or information, including a third party applicant (in terms of section 24(3) which amends paragraph 3 of schedule 2 to the 2006 Act). No allowances or expenses are payable to the landlords, tenant, tenant or landlord representatives of third party applicants (in terms of section 24(4) which amends paragraph 5 of schedule 2 to the 2006 Act).
76. Section 24(5) also amends the procedures for recording and notification of decisions in paragraph 6 of schedule 2 to the 2006 Act, to include third party applications. Once a private rented housing committee reaches its decision it must send notification to the landlord, tenant, and any person acting for the tenant in relation to the application and the local authority, unless that authority is the third party applicant.

77. Section 24(6) amends paragraph 7(1) of schedule 2 to the 2006 Act to provide that a third party applicant may withdraw the application under new section 22A(1A) of the 2006 Act. Paragraph 7(2), however, provides that, despite the withdrawal the committee may continue to consider the case and make a repairing standard enforcement order if appropriate.

**Appeals in relation to third party applications**

78. Section 25(1) amends section 64 of the 2006 Act to give a third party applicant aggrieved by a decision by a private rented housing committee mentioned in subsection (4) (a) to (f) of section 64, the right to appeal such a decision to the sheriff within 21 days of notification of the decision (new subsection (4A)).

79. Section 65(2) of the 2006 Act is amended by section 25(2) to provide that the sheriff may determine appeals by third party applicants by confirming the decision, remitting the decision to the president or the private rented housing committee as the case may be for reconsideration or quashing the decision made.

80. New section 66(3A) (as inserted by section 25(3)) makes provision for the third party applicant to be a party to proceedings, and for the tenant to be entitled to be party to the proceedings, where a landlord appeals a decision relating to a third party application to the sheriff under section 64(4) of the 2006 Act.

81. Under new section 66(3B) (also as inserted by section 25(3)), where a tenant appeals a decision of a committee in respect of a third party application to the sheriff under section 64(4) of the 2006 Act, the landlord and third party applicant are to be parties to the proceedings.

82. Under new section 66(3C) (also as inserted by section 25(3)), where a third party applicant appeals to the sheriff under new section 64(4A) against a decision of the committee in relation to that application, the landlord is to be party to the proceedings and the tenant is entitled to be a party.

**PART FOUR – LETTING AGENTS**

83. Part 4 of the Bill makes provision to further regulate the letting agent industry in Scotland. The purpose of this part of the Bill is to help improve letting agent levels of service and professionalism, by strengthening the regulation of the industry.

84. This involves the creation of a mandatory register of letting agents in Scotland, with an associated ‘fit and proper person test’; and the creation of a statutory code of practice to which all letting agents must adhere. The Bill also enables the First-tier Tribunal (“FTT”) (which is to be established under the Tribunals (Scotland) Bill) to make a range of enforcement orders to
provide redress for tenants and landlords in cases where a letting agent fails to comply with that code of practice.

**Inclusion in the register**

85. Section 26 requires the Scottish Ministers to create and maintain a national register, containing an entry for each letting agent. This will include the name and address of each person entered in the register, and any other information relating to that person the Scottish Ministers may specify in regulations. The register will be available to the public.

86. Section 27 provides that a letting agent may apply to be entered on the register, sets out the information that must be supplied as part of such an application, and makes provision for an application fee to be charged and gives the Scottish Ministers a power to determine this fee. The section should be read alongside section 39 which makes it an offence to operate as a letting agent without being entered on the register.

87. Subsection (2)(a) to (f) of section 27 sets out the information that an application must contain. These provide for what information is required depending on whether an applicant is a sole trader, a partnership, a company or a body with some other legal status. Where the applicant is not a natural person, subsection (2)(d) and (e) require certain details also to be supplied in relation to individual persons within the organisation who hold a senior or controlling position. When determining (under section 29) whether the applicant is a fit and proper person to be a registered letting agent, the Scottish Ministers may take into account information relating to these named individuals. Subsection (2)(a) to (f) should be read alongside section 28, which makes it an offence to knowingly supply false information or fail to supply the required information.

88. Section 28 makes it an offence to knowingly supply false information or to fail to provide the required information in an application under section 27.

89. Section 29 provides that the Scottish Ministers must determine an application which is made under section 27 and sets out aspects of the process they must follow. If they determine that the applicant, and any other person required to be identified in an application by virtue of section 27, is a fit and proper person to carry out letting agency work, and that the applicant meets any training requirements prescribed by the Scottish Ministers in regulations subject to the negative procedure, subsection (2) provides that they must enter the applicant on the register. Subsection (2A) provides that the regulations about training may prescribe further details of the training requirement - such as who should obtain it and when. If the Scottish Ministers determine that the applicant is not a fit and proper person then subsection (4) provides that they must refuse to enter the applicant in the register. These provisions should be read alongside section 30 which sets out the matters that must be considered in determining if a person is a fit and proper person to carry out letting agency work. Subsection (5) provides that where the Scottish Ministers are considering refusal of an application, they must give notice of this to the applicant, including providing reasons, and allow the applicant to make representations. Subsection (7)(d) requires the Scottish Ministers to provide reasons for a decision to refuse an application or a renewal of an existing provision.
90. Section 29A provides a time limit by which the Scottish Ministers must make a decision on applications of 12 months from receipt of the application for registration or renewal. The Scottish Ministers will have the power to apply to the First-tier Tribunal (FTT), before the expiry of the 12 months, for a decision to extend this period. The length of the extension period will be at the discretion of the FTT. There will be tacit approval to the letting agent register if the Scottish Ministers have not made a decision within 12 months of an application being made (or longer period if the Tribunal has extended the period). The effect of tacit approval is that an applicant is treated for all purposes as a registered letting agent (subject to the modifications in subsection (10)). Letting agents registered in these circumstances will have a registration period of 12 months before being required to reapply.

91. Section 30 sets out the material that the Scottish Ministers must take into account when deciding if a person is fit and proper to be entered on the register, which includes the Scottish Ministers having regard to all of the circumstances of the case. Subsection (2) relates to particular criminal convictions and contraventions of the law that must be considered. Subsection (3) lists matters to be considered that are related to compliance with the letting agent code of practice and any associated enforcement orders. Subsection (4) provides a power for the Scottish Ministers to modify the list of convictions and contraventions at subsections (2) and (3) by order subject to the affirmative procedure.

92. Section 31A provides that the Scottish Ministers may have regard to information on “relevant matters” as defined in section 113A of the Police Act 1997 to include convictions within the meaning of the Rehabilitation of Offenders Act 1974, including a spent conviction, and any notification requirement under Part 2 of the Sexual Offences Act 2003 where they have reasonable grounds to suspect that the information already provided to them under section 30(2) of the Bill is false or has become inaccurate.

Duties of registered letting agents

93. Section 32 requires the Scottish Ministers to allocate a number to each registered letting agent. Registered letting agents must take all reasonable steps to ensure that the number is included in documents sent to landlords or tenants (prospective or current), advertisements and communications, and any other material that the Scottish Ministers may specify by order. Subsection (3) defines “advertisement” and “communication”.

94. Section 33 places a duty on the registered letting agent to notify the Scottish Ministers in writing, as soon as practicable, if any of the information supplied in the application has become inaccurate due to a change in circumstances. Subsection (3) requires that any notification must be accompanied by such fee as the Scottish Ministers may determine by regulations, and subsection (3) provides a power for the Scottish Ministers to set that fee. Subsection (4) makes it an offence to fail to comply with this duty to inform.

Removal from the register

95. Section 34 provides that, unless a new application is made under section 27, the Scottish Ministers must remove a registered letting agent from the register after three years from the date of registration.
96. Section 35 provides that the Scottish Ministers may remove a registered letting agent from the register without waiting for the expiry of the three-year registration period if they no longer consider the agent, or any other person who is required to be identified in an application by virtue of section 27, to be a fit and proper person to carry out letting agency work or if the agent does not meet the training requirements prescribed under section 29(2)(c). Subsections (2) to (4) set out aspects of the process that the Scottish Ministers must follow before removing the person, including giving notice to the agent informing the agent of the right to make representations to the Scottish Ministers. There is also a requirement under subsection (4)(a) for the Scottish Ministers to provide their reasons for deciding to remove an agent from the register.

Appeals

97. Section 36 provides for appeals to the FTT against decisions of the Scottish Ministers in relation to refusal of a registration application or removal from the register. Subsection (2) sets out the time period (21 days) for an appeal to be made following notification of the decision.

Consequences of refusal or removal

98. Section 37 provides that where a person has been refused registration, or had the registration revoked, the Scottish Ministers must publicise this fact by noting it in the register. The note must remain on the register for a period of 12 months, unless the person is subsequently entered on the register within that time, in which case the note must be removed (subsections (4) and (5)).

99. Section 38 relates to situations where a person has been removed from the register or has been refused entry to the register. It provides that such a person cannot recover any costs relating to carrying out letting agency work after having been refused entry to the register or removed from the register, and after the relevant appeal period has expired. However, subsection (2A) provides that costs incurred before the relevant date may be recovered where the agent has been removed from the register by reason of the current registration expiring and no further application having been received. Subsection (3) also requires the Scottish Ministers to publish as soon as practicable after the relevant date, in such manner as they think fit, a notice of the agent’s refusal or removal and of the fact that no costs are recoverable from the date of refusal or removal.

Offences where no registration

100. Section 39 makes it an offence to carry out letting agency work unless registered. Subsection (2) provides that a person is not committing an offence during the period of 21 days following the date of notification of refusal or removal from the register and during the period of the appeal process up until the appeal is decided or abandoned. Subsection (4) sets out the relevant sanctions and provides on summary conviction for a prison term not exceeding six months or a fine not exceeding £50,000, or both.

101. Section 40 makes it an offence to use a number purporting to be a letting agent registration number without being a registered letting agent. Subsection (2) again provides that the offence will only be committed following 21 days of notification of refusal or removal from the register or following any appeal having been decided or abandoned.
Code of practice

102. Section 41 provides for the establishment of a letting agent code of practice. It gives a power to the Scottish Ministers, by regulations to create a code which sets out the standards of practice; the handling of tenants’ and landlords’ money and the professional indemnity arrangements which are required of persons who carry out letting agency work (which is defined at section 51). Before finalising the code, the Scottish Ministers must carry out consultation on a draft of it. The regulations will be subject to the affirmative procedure for the first version of the Code; and any future complete replacement of the Code. Revisions to the Code would be subject to the negative procedure.

103. Section 42 provides that where the terms of an agreement between the letting agent and either a landlord or tenant purport to exclude or limit any duty of the letting agent under the code or impose any penalty, disability or obligation in the event of a person enforcing compliance by the agent, the terms will have no effect.

Letting agent enforcement orders

104. Section 43 provides that the route of redress where alleged breaches of the code of practice will be determined will be the FTT. Subsection (1) provides that a tenant or landlord or the Scottish Ministers may apply to the FTT for such a determination regarding a relevant letting agent. A “relevant” letting agent is defined at subsection (2). The purpose of this section is to make it clear the circumstances in which a tenant or landlord or the Scottish Ministers can raise a case with the FTT.

105. Subsection (3) provides that a landlord, tenant or the Scottish Ministers applying to have a case heard at the FTT under subsection (1) must specify why they believe the code has been breached by the letting agent. Subsection (4) provides that, before applying to the FTT, a tenant or landlord or the Scottish Ministers must tell the letting agent about the alleged breach of the code and subsection (5) provides that the FTT may reject the application if the letting agent has not been allowed a reasonable opportunity to rectify the matter.

106. Subsection (6) provides that the FTT must decide regarding an application made under subsection (1) whether a letting agent has complied with the code of practice. Subsections (7) and (8) relate to a letting agent enforcement order which must be issued if the letting agent has failed to comply with the code, and set out what the order may consist of.

107. Section 44 provides that the FTT may vary or revoke an enforcement order made under section 43.

108. Section 45 provides steps that may be taken by the FTT to establish if a letting agent enforcement order has been complied with. Subsection (2) provides that the FTT must notify the Scottish Ministers if it determines there has been a failure to comply. This allows the Scottish Ministers to take the matter into account for registration considerations under section 30.

109. Section 46 makes it an offence to fail to comply with a letting agent enforcement order.
Monitoring of compliance

110. Section 46A gives the Scottish Ministers the power to require such documents and information as they may reasonably require from any person carrying out letting agency work (which will include from staff) where the letting agency is a company. For example, information could be requested from company directors, the company owner and its staff. The information is to be obtainable for the purposes of enabling the Scottish Ministers to exercise any of their functions under Part 4 of the Bill. This power covers Ministerial requests for information about compliance with the code of practice or the registration requirements. It does not enable the disclosure of information if such disclosure would be contrary to any enactment or rule of law.

111. Section 46B provides powers for the Scottish Ministers to authorise persons to carry out an inspection of premises which appear to be being used for the purpose of carrying out letting agency work. An authorised person has various powers which can be carried out at an inspection.

112. Section 46C outlines the circumstances where a sheriff, justice of the peace or stipendiary magistrate may issue a warrant to enable an authorised person to enter premises, by force if necessary, for the purpose of carrying out an inspection. In granting a warrant, the sheriff, justice of the peace or stipendiary magistrate will have to be satisfied that there are reasonable grounds for entering the premises and that one of the grounds for obtaining a warrant set out in subsection (2)(b) are met.

113. Section 46D provides a right for the person entering any premises to take such other persons and such equipment as the person considers necessary. The power of entry can only be exercised at a reasonable time and the occupier of the premises must be given at least 24 hours’ notice, unless giving such notice would defeat the object of the proposed inspection. A person carrying out an inspection must, if required to do so, produce written evidence of the person’s authorisation to exercise that right. If the premises are unoccupied or the occupier is temporarily absent, the person authorised to enter must leave the premises as effectively secured against trespassers as the person found them. A statement must be left on the premises giving particulars of what has been taken, and stating that the person has taken possession of it.

114. Section 46E creates offences relating to the powers to obtain information and carry out inspections at sections 46A and 46B. Subsection (1) makes it an offence to fail or refuse to provide information to the Scottish Ministers or an inspector without reasonable excuse or to make a false or misleading statement in a material particular. Subsection (2) provides that it is to be an offence for someone to intentionally obstruct a person in the exercise of a power of entry. It is also an offence to fail to provide information to an inspector or to fail to give an inspector such facilities and assistance as the inspector thinks necessary. Subsection (3) provides that a person committing an offence under subsection (1) or (2) is to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

General

115. Section 47 provides a power for the Scottish Ministers to transfer, by regulations subject to the negative procedure, other, existing types of cases relating to letting agents which are currently within the jurisdiction of the sheriff court to the FTT.
116. Section 48 sets out, where offences are committed by bodies corporate, who within that body is considered to have committed the offence and be liable to be proceeded against.

117. Section 49 allows the Scottish Ministers to delegate their functions under Part 4 to another person or body (other than the powers to make orders or regulations).

118. Section 50 makes some consequential modifications to the 2004 Act relating to landlord registration.

119. Sections 51 and 52 provide definitions of various terms used within this Part. In particular, section 51, subsections (3) and (4), allows the Scottish Ministers by order to exempt specified bodies or certain types of schemes from the regulatory regime for letting agents, as well as allowing a modification of the general definition of “letting agency work”. An order exempting bodies or schemes would be subject to the negative procedure, whereas an order modifying the meaning of “letting agency work” would be subject to the affirmative procedure.

PART FIVE – MOBILE HOME SITES WITH PERMANENT RESIDENTS

120. Part 5 makes provision for the licensing system for mobile home sites with permanent residents.

General application

121. The provisions in this part of the Bill amend the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”). The 1960 Act requires occupiers of land (referred to in these Notes as “site owners”) to hold a licence before they allow their land to be used as a caravan site. Currently the same licensing regime applies to sites used for holiday caravans, and sites with permanent residents. The Bill changes the licensing regime for most sites with permanent residents. These sites are defined as “relevant permanent sites” in new section 32Z5, which is inserted into the 1960 Act by section 70 of the Bill. New section 32Z5 is an interpretation section for new Part 1A.

122. New Part 1A deals with the licensing of relevant permanent sites in Scotland. Sites that have a licence that only allows mobile homes on them to be used for holidays are not affected by new Part 1A of the 1960 Act. Part 1 of the 1960 Act will continue to apply to such holiday sites. The definition of “excepted permission” (also in new section 32Z5) means that holiday sites that have an employee of the site owner living on them year round (for example to manage the site), are not covered by new Part 1A of the 1960 Act.

123. Section 53 of the Bill amends section 32 of the 1960 Act by inserting a new paragraph (m) into section 32(1). Section 32 changes the operation and wording of Part 1 of the 1960 Act as it applies to Scotland. For example it replaces references to English courts and legal terms with references to the relevant equivalents under Scots law. All the provisions in Part 1 of the 1960 Act need to be read alongside section 32 when considering how the Act applies to Scotland. The effect of the new paragraph (m) is that, when applying the 1960 Act to a relevant permanent site in Scotland, it is also necessary to read the provisions of Part 1A.
Part 1A site licence

124. Section 54 of the Bill inserts new sections 32B and 32C into the 1960 Act. New section 32B has the effect of replacing the existing system for licensing mobile home sites with permanent residents in Scotland (in terms of Part 1 of the 1960 Act) with the new system set out in new Part 1A (in terms of new section 32A(1)). New section 32B(1) provides that a relevant permanent site application may be made by the site owner of the relevant permanent site to the local authority in whose area the site is situated, and new section 32B(2) sets out what such a site licence application must include. For example, it must be in such format as is determined by the local authority, and specify the land in respect of which the application is made. Section 32B(3) requires an applicant to provide such information to the local authority as it reasonably requires.

125. New section 32C provides that the relevant local authority may charge a fee for a site licence application. A local authority may also fix different fees for different applications (subsection (2)). Such a fee cannot exceed the amount a local authority considers represents the reasonable costs of deciding on an application (subsection (3)). Subsection (4) provides that the Scottish Ministers may by regulations make provision about the charging of fees for site licence applications. This could include setting out the factors a local authority could take into account when fixing the fee for a site licence, and providing for the fee not to exceed a maximum fee level prescribed by the Scottish Ministers in the regulations.

126. Section 55 inserts new section 32D into the 1960 Act which provides for the issue and renewal of a site licence for a relevant permanent site. New section 32D(1) provides that a local authority may issue a site licence:

- where the applicant has the relevant planning permission (for the use of the land as a caravan site otherwise than by a development order), and
- if the authority is satisfied that the applicant is a fit and proper person or where the applicant is not a natural person, that both the applicant and the individual holding the most senior position within the management structure of the relevant partnership, company or body are fit and proper persons, and
- if the authority is satisfied that any person appointed by the applicant to manage the site is a fit and proper person, and in the case where a person to be appointed by the applicant to manage the site is not a natural person, that both the person to be appointed and any individual who is to be directly concerned with the management of the site are fit and proper persons.

127. Section 32D(2) provides that a local authority must renew a licence if:

- the applicant has the relevant planning permission (for the use of the land as a caravan site otherwise than by a development order), and
- if the authority is satisfied that the applicant is a fit and proper person or where the applicant is not a natural person, the both the applicant (subsection (2)(b)(i)) and the individual holding the most senior position within the management structure of the relevant partnership, company or body (subsection (2)(b)(ii)) are fit and proper persons, and
• if the authority if satisfied that any person appointed by the applicant to manage the site is a fit and proper person, and in the case where a person to be appointed by the applicant to manage the site is not a natural person, that both the person to be appointed (subsection 2(b)(iii)) and any individual who is to be directly concerned with the management of the site (subsection 2(b)(iv) are fit and proper persons.

128. New section 32D(3) provides that the local authority must not at any time issue a site licence to a person whom the local authority knows had held a site licence which has been revoked under the 1960 Act less than three years before that time.

129. New section 32D(4) provides that before refusing to issue a site licence, the authority must give the applicant a notice stating that it is considering refusal and its reasoning for this, and informing the applicant of the right to make written representations to the authority before the date specified in the notice. New section 32D(5) requires the local authority to consider the application and any representations made in making its decision.

130. Section 55 also inserts new section 32E into the 1960 Act. Section 32E sets out procedures for the transfer of a site licence (other than on the death of a site licence holder) to a person who is to become the site owner of the relevant permanent site. This would occur, for example, where a site was sold to a new owner. Procedures similar to those that apply for a new site licence application apply in this situation, such as the need for the new site licence holder (and any person appointed to manage the site) to be a fit and proper person to hold a site licence (subsection (2)). Subsection (3) also provides that the applicant and transferee must provide the local authority with such information as the authority reasonably requires in order to establish whether the person is a fit and proper person. Subsection (4) requires a local authority, before refusing consent to the transfer of a licence, to give the applicant a notice that states that it is considering refusing its consent, and the reasons why. The applicant then has an opportunity to make written representations to the local authority before the date specified on the notice (which must be at least 28 days after the notice is given). A local authority must consider these representations.

131. Section 55 also inserts new section 32F into the 1960 Act. New section 32F makes provision for the setting of time limits in relation to an application for a site licence and consent to transfer a licence mentioned in section 32E. Under the provision, the Scottish Ministers must set in regulations a time limit within which a local authority must decide on applications to issue a site licence for the first time, an application to renew a site licence, and an application to transfer a site licence. Ministers can set different time limits for different types of application. If a local authority does not meet the time limits set in the regulations then the applicant is to be treated as having been granted a site licence by the authority under new section 32F (subsection (7)). The period may be extended by the sheriff by such period as the sheriff thinks fit (subsection (3)), the sheriff may not extend the period unless the authority applies for the extension before the period expires (subsection (4)), the applicant is entitled to be party to any proceedings to extend the period of determination (subsection (5)), and the sheriff’s decision on such summary application is final (subsection (6)). If a local authority does not determine an application for consent to transfer a licence within the period, then the applicant is to be treated as having been granted consent on the day the application was made (subsection (8)).
Section 55 also inserts new section 32G into the 1960 Act. This provision gives the local authority the power to transfer a site licence to the person it considers to be the site owner of the relevant permanent site (subsection (2)), where a holder of a site licence does not seek consent of the authority for the transfer under section 10(1) of the 1960 Act and where it appears to the authority that the holder of the licence is no longer the site owner. The section introduces an offence of knowingly or recklessly providing false or misleading information to a local authority in relation to a local authority decision to transfer a licence. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (subsection (7)). In 2013 this was a maximum of £1,000.

New section 32H as inserted into the 1960 Act by section 55, provides that where a relevant permanent site licence is transferred to a person in accordance with section 10(4) of the 1960 Act, that person must give the authority such information as the authority may reasonably require in order to make a determination under new section 32L, in relation to a decision to revoke a site licence on the basis that someone is not a fit and proper person.

New section 32I is inserted into the 1960 Act by section 55. It requires a local authority after:

- determinations of relevant permanent site applications,
- determinations of an application for consent to transfer a licence mentioned in new section 32E,
- a decision to transfer a licence mentioned in new section 32G,

to notify respectively the applicant, the applicant and the transferee, and the previous holder of the site licence and transferee, of the decision, the reasons for it, and the right to appeal under new section 32M. It must do so as soon as practicable after making the decision (subsection (1)).

Section 56 inserts new section 32J into the 1960 Act and provides that a site licence issued or renewed for a “relevant permanent site” will be for a duration of five years (unless terminated by its revocation, or unless the holder is no longer entitled to planning permission for use of the land as a caravan site, or any planning permission for the use of the site as a caravan site expires). New section 32J(2) gives the Scottish Ministers the power to alter the duration of site licences, by order subject to the affirmative procedure.

Section 57 inserts new section 32K into the 1960 Act. This requires a site licence holder to tell a local authority when the holder has appointed someone new to manage the site. New section 32K also requires a site licence holder to notify a local authority of a change of circumstances that means that information provided by the licence holder has become inaccurate. They must do so within 28 days of the day the information previously provided becomes inaccurate.

Section 58 inserts new section 32L into the 1960 Act. This gives a local authority the power to revoke a site licence if the local authority is satisfied that the licence holder is no longer a fit and proper person, or that the person appointed to manage a site is no longer a fit and proper person. Where the licence holder is a non-natural person, the licence can be revoked where the local authority is satisfied that either the licence holder (subsection (1)(a)) or the individual who...
holds the most senior position in the body (subsection (1)(b)) is no longer a fit and proper person.

138. Section 32L(2) sets out the procedures a local authority must follow when revoking a licence (such as the requirement to notify the site owner of the proposed revocation and of the right of the site owner to make written representations). Subsection (4) requires a local authority to serve notice of the revocation on the owner of the relevant permanent site, identifying the site licence to which it relates and explaining the right of appeal. The local authority must also provide its reason(s) for revoking the licence.

139. Section 59 inserts new section 32M into the 1960 Act. Under this section the person involved (the applicant, the applicant and transferee, the previous holder of the licence and the transferee, depending on the determination) can appeal to the sheriff against a local authority’s decision on a site licence application, on the transfer of a licence (whether on death of a site licence holder or not) or a decision to revoke a site licence.

140. Section 60 inserts new section 32N into the 1960 Act. This section gives the Scottish Ministers the power to make regulations in relation to the procedure to be followed in relation to:

- the issue, renewal, transfer, transmission and revocation of a permanent site licence,
- appeals relating to a site licence under new section 32M.

The Scottish Ministers can also make provision for the determination and consequences of an appeal under section 32M.

Fit and proper persons

141. Section 61 inserts new section 32O into the 1960 Act. The section sets out the factors a local authority must consider when applying the fit and proper person test, for example to potential site licence holders, or existing site licence holders seeking to renew a licence. This section provides that the relevant material that can be taken into account includes:

- whether the person has been convicted of offences involving fraud or other dishonesty, violence, drugs, firearms, and sexual offences within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995,
- evidence an applicant has practised unlawful discrimination,
- whether the person has contravened the law relating to caravans, housing, and landlords and tenants
- whether the person has committed a breach of an agreement to which the Mobile Homes Act 1983 applies,
- whether the person has engaged in antisocial behaviour,
- whether the person has breached the conditions of the site licence,
- other relevant material a local authority is aware of from its licensing duties.

142. Subsection (6) gives the Scottish Ministers the power to adjust the list of relevant material, by order subject to the affirmative procedure.
143. Section 62 inserts new section 32P into the 1960 Act. This gives a local authority the power, if it is carrying out the fit and proper person test, to require the relevant person to provide a criminal conviction certificate. A local authority can only do so if it has reasonable grounds to suspect that the information an applicant has provided in relation to the fit and proper person test is, or has become, inaccurate.

144. Section 62A inserts new section 32PA into the 1960 Act. This enables local authorities to share information relevant to the application of the fit and proper person test.

**Offences relating to relevant permanent sites**

145. Section 63 inserts new sections 32Q, 32R and 32S into the 1960 Act. New section 32Q makes it an offence for someone to knowingly or recklessly provide information that is materially false or misleading to a local authority, in respect of an application for, or transfer of, a site licence or where information is provided following a change of circumstances. It also makes it an offence for a person, without reasonable excuse, to fail to notify a local authority of a change of circumstances under section 32K (for example, the appointment of a new person to manage a site). Lastly, section 32Q makes it an offence to fail to provide to a local authority such information as it might reasonably require under section 32K(3) and (4). If a person commits these offences, the penalty is a fine not exceeding level 3 on the standard scale (in 2013 this was a maximum of £1,000).

146. Section 32R makes it an offence for someone to cause or permit land to be used as a relevant permanent site without a licence. The maximum fine, if convicted for doing so, is £50,000. New section 32S makes it an offence for the site owner of a relevant permanent site to fail to comply with any licence conditions. The maximum fine, if convicted of breaching a licence condition, is £10,000.

**Local authority enforcement at relevant permanent sites**

147. Section 64 inserts new sections 32U, 32V and 32W into the 1960 Act. These sections all relate to improvement notices. New section 32U sets out:

- the situation in which a local authority may issue an improvement notice,
- what must be part of such a notice (such as what needs to be improved, and the period within which action needs to be carried out done),
- that there is a right of appeal to the sheriff by way of summary application,
- when the period specified in the notice begins, and
- the powers a local authority has to suspend, revoke, or vary an improvement notice.

148. New section 32V makes it an offence for a site owner who has been served with an improvement notice to fail to comply with the terms of the notice. If someone is convicted of doing so the maximum fine is £10,000.

149. New section 32W gives a local authority the power, if the site owner fails to take the steps specified in the improvement notice within the period specified, to take the action required on a site to meet the conditions set out in the improvement notice. Subsection (2) requires the
local authority to give the site owner notice, and specific details, of the work the local authority will be carrying out (or the authority will be requiring someone else to do on its behalf and to give that person’s name), and the dates and times on which this intended action will be taken.

150. Section 65 inserts new section 32X into the 1960 Act. This gives a local authority the power to issue a penalty notice on the site owner, and provides for the situations in which the authority can do so (where there is no licence or a breach of licence conditions). A penalty notice has the effect of suspending, for a specific period of time, payments residents may be making for:

- the right to station a mobile home on a site,
- rent for the occupation of a mobile home caravan on the site, and
- the use of the common areas on the site, and their maintenance.

It also suspends the commission a mobile home resident can be required to pay the site owner on sale of a mobile home (under paragraph 1 of Part 1 of Schedule 1 to the 1983 Act). The section sets out what must be included in such a notice (subsection (2)), when the penalty period begins (subsection 3A), and the relevant appeal procedures (subsection (6)).

151. Section 66 inserts new section 32Y into the 1960 Act. This provision relates to the appointment of an interim manager to manage a mobile home site. Section 32Y(1) gives a local authority the power to apply to a sheriff to appoint an interim manager for a site. Subsection (5) gives the Scottish Ministers the power to make regulations relating to the appointment of an interim manager. These regulations may, in particular, cover the powers of an interim manager, the qualifications the manager must hold, and the actions the interim manager must carry out.

152. Section 67 inserts section 32Z into the 1960 Act. This gives a local authority the power to take emergency action where it appears to a local authority that:

- the site licence holder is failing, or has failed, to comply with a site licence condition; and as a result of that there is an imminent risk to the health and safety of anyone who is, or may be, on the land, or
- a person is causing or permitting land to be used as a relevant permanent site without a site licence, and there is an imminent risk to the health and safety of anyone who is, or may be, on the land.

153. In the circumstances above the local authority would be able to carry out work to remove the imminent risk of serious harm. The section requires an authority to provide notice to the site owner in an emergency action notice before carrying out emergency action (subsection (4)), and to provide the site owner with an emergency action report after it has begun undertaking emergency action (subsection (7)). It also provides for appeals against an authority taking emergency action.

154. Under section 26 of the 1960 Act any authorised officer of a local authority has a right of entry to a mobile home site, subject to provisions about the purpose of such entry and the hours in which it takes place. Section 68 inserts new section 32Z1 into the 1960 Act. This extends the applicability of the provisions in section 26, so that they cover situations relating to the use of the
new enforcement powers a local authority has under this Bill in relation to relevant permanent sites. In relation to an emergency action notice it also has the effect that a site owner is not required to have 24 hours’ notice that someone will be carrying out such works, and that entry to the site does not have to be at a reasonable hour. This is to cover situations where such entry must be carried out urgently, for example to address something that is immediately dangerous on a site.

155. Section 69 inserts new sections 32Z2, 32Z3 and 32Z4 into the 1960 Act. Section 32Z2 gives a local authority the power to recover expenses from a site owner where the local authority has served an improvement notice, penalty notice, or emergency action notice on, or provided at emergency action report to, a site owner. Section 32Z3 allows a local authority to recover from the site owner the expenses of taking action under an improvement notice or emergency action notice.

156. Section 32Z4 gives a local authority the power to recover costs for inspections and other work to investigate or assess compliance with the provisions of this Act.

Miscellaneous

157. Section 70 inserts sections 32Z5 and 32Z5A into the 1960 Act. Section 32Z5 sets out the definitions of terms that are introduced into the 1960 Act through the Bill. Section 32Z5A gives the Scottish Ministers the power to issue guidance about the operation of the mobile home site licensing system set out in Part 5 of the Bill. The Scottish Ministers can issue such guidance after consulting such persons as they consider appropriate, and a local authority must have regard to any guidance issued under section 32Z5A.

158. Section 71 sets out transitional provisions for existing site licences. Under this section an existing site licence would continue in force for two years from the day the relevant section of the Bill comes into force, unless it is revoked or replaced by a new licence issued by the local authority.

159. Section 71A inserts new paragraphs into Schedule 1 to the Mobile Homes Act 1983. Under the paragraphs inserted by section 71A(a), the expiry, non-renewal, or revocation of a site licence has no effect on a person’s right to station a mobile home on a site, if a mobile home resident has an agreement to which the 1983 Act applies. This means that the rights of residents to remain on the site under the 1983 Act will not be affected by a decision to revoke, or to refuse to issue or renew, a site licence, or if a site licence expires.

160. The sub-paragraphs inserted into the 1983 Act by section 71A(b) prevent pitch fees paid to a site owner from being increased to take account of any costs paid, or to be paid, by the site owner as a result of a local authority recovering the costs of enforcement action.

PART SIX – PRIVATE HOUSING CONDITIONS

161. Part 6 amends local authority powers to enforce repairs and maintenance in private homes.
Tenement management scheme

162. Section 72(1)(b) inserts a new section 4A in the Tenements (Scotland) Act 2004 (“the Tenements Act”). This allows local authorities to pay a missing share when the majority of owners in a tenement block have agreed to carry out work to repair or maintain their property, and one or more of the owners has not paid their share of the cost of the work (where the owner is unable or unwilling to do so, or where the owners cannot be identified or found). New section 4A(5) allows the local authority to recover the costs of the missing share and any associated administrative expenses from the owner on whose behalf it was paid. Before exercising this power, the local authority must notify the owner who has not paid a share that it intends to make the payment itself (new section 4A(4)).

163. Section 72(1)(d) amends rule 5 of the Tenement Management Scheme in schedule 1 to the Tenements Act, so that the other owners are not liable for the costs of another owner which are met by a share paid by a local authority.

164. Section 72(2) amends section 172 of the Housing (Scotland) Act 2006 (“the 2006 Act”) so that local authorities can use repayment charges to recover the costs of paying missing shares from the owner on whose behalf the missing share was paid.

Notice of potential liability for costs: notice of discharge

165. Section 72A makes amendments to the Title Conditions (Scotland) Act 2003 (“the 2003 Act”) and the Tenements (Scotland) Act 2004 (“the 2004 Act”). These amendments provide for a discharge procedure in respect of notices of potential liability for costs registered under section 10(2) of the 2003 Act and section 12(3) of the 2004 Act. Currently, section 10A(3) of the 2003 Act and section 13(3) of the 2004 Act provide that a notice of potential liability for costs will expire at the end of three years unless it is renewed. This will continue, but the amendment will allow the notice of potential liability to be discharged during the three-year period or any renewal period.

166. Subsection (1) inserts new subsections 10A(3A) and (3B) into the 2003 Act. Subsection (2)(a) inserts new subsections 13(3A) and (3B) into the 2004 Act.

167. Under the new sections 10A(3A) of the 2003 Act and 13(3A) of the 2004 Act, an owner of a burdened property can apply to register a notice of discharge if the notice of potential liability for costs has not expired, the liability for costs in relation to that property has been fully discharged and consent from the person who registered the notice has been obtained. Evidence of such consent would need to be included with the application to register the discharge notice.

168. The new sections 10A(3B)(a) of the 2003 Act and 13(3B)(a) of the 2004 Act provide that the notice of discharge must be submitted in a form prescribed by the Scottish Ministers by order.

169. It is possible to register a notice of potential liability for costs against more than one flat or property. The new sections 10A(3B)(b) of the 2003 Act and 13(3B)(b) of the 2004 Act provide that registration of a notice of discharge in relation to a property discharges the notice of potential liability for costs only to the extent that it applies to that property.
170. Paragraph (2)(b) amends the definition of “register” in section 29 of the 2004 Act to include a notice of discharge.

Work notices

171. Section 73 amends section 30(1) of the 2006 Act, which provides powers for local authorities to issue work notices to require owners to carry out work on substandard houses. The amendment inserts an additional ground on which the local authority may issue a work notice, which is where the work is needed to improve the safety or security of any house (whether or not situated in a housing renewal area).

Maintenance orders and plans

172. Section 74 amends section 42(2) of the 2006 Act, which provides powers for local authorities to issue maintenance orders to require owners to prepare a maintenance plan for securing the maintenance of the house to a reasonable standard. The amendment inserts an additional ground on which the local authority may issue a maintenance order, which is where a work notice has been served and no certificate has been issued to confirm that the work required to be carried out by the work notice has been completed.

173. Section 75(3) repeals the provisions in section 61 of 2006 Act which require local authorities to register in the appropriate land register maintenance plans approved or devised under section 46 of the 2006 Act, or varied under section 47, and notices of revocation of a maintenance plan under section 47. Section 75(1) amends section 24(1) of the Building (Scotland) Act 2003 to require local authorities to include a record of decisions to approve, devise, vary or revoke maintenance plans in the building standards register.

174. Section 75(2) amends section 47 of the 2006 Act, which allows local authorities to vary or revoke maintenance plans. The amendment allows local authorities to revoke a maintenance plan where the local authority is satisfied that a property factor has been appointed to manage or maintain the premises to which the plan relates. “Property factor” is defined in section 2 of the Property Factors (Scotland) Act 2011.

Non-residential premises: repayment charges

175. Section 76 amends sections 172 and 173 of the 2006 which allow local authorities to recover costs in connection with enforcement of repairs and maintenance to living accommodation by creating a repayment charge which is recoverable in thirty equal annual instalments. A repayment charge is a charge against property and has priority over all future burdens and most existing burdens on the property. The amendment widens the scope of sections 172 and 173 to include any non-residential parts of buildings that contain living accommodation.

Charging orders

176. Section 76A amends paragraphs 4 and 6 of Schedule 9 to the Housing (Scotland) Act 1987 by removing references to feu duties.
177. Schedule 9 to the 1987 Act relates to recovery of expenses by charging orders in favour of local authorities after the authority has carried out certain work on a building.

178. The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (“the 2000 Act”) abolished feu duties and related payments. Paragraph 4(b)(i) of Schedule 9 to the 1987 Act made provision on the priority between, on the one hand, a charging order under Schedule 9 and, on the other hand, feu duties and related payments. Given that feu duties and related payments have been abolished, there is no longer any need for this provision. Therefore, it is repealed by section 76A(1)(a).

179. Section 76A(2) and (3) makes consequential amendments to section 108(2) of the Civic Government (Scotland) Act 1982 and section 19(3) of the Crofters (Scotland) Act 1993 to remove references to paragraph 4(b)(i) of Schedule 9 to the 1987 Act.

180. Section 76A(1)(b) amends paragraph 6 of Schedule 9 to the 1987 Act to remove a reference to feu duties and provide that charging order annuities are recoverable as debts under overarching debt recovery legislation.

PART SEVEN – MISCELLANEOUS

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

181. Part 7 of the Bill contains a provision, section 77(1) which amends the “20-year security rule” – section 11 of the Land Tenure Reform (Scotland) Act 1974 (“the 1974 Act”).

182. Section 11 of the 1974 Act permits debtors to redeem a standard security over property used as, or as part of, a private dwelling house once 20 years from the date of creation of the security has elapsed, regardless of the fact that the security is for a longer contractual term. Social landlords, their connected bodies and rural housing bodies are able to renounce their right to redeem a standard security after 20 years.

183. The amendment in section 77(1) which inserts subsection (3D) into section 11 of the 1974 Act provides that the right to redeem a standard security, as permitted by section 11, will not be allowed in certain circumstances to be prescribed by the Scottish Ministers by order subject to the negative procedure.

184. Section 77(1) also inserts subsection (3E) into section 11, which provides that an order under subsection (3D) may disapply the right to redeem a standard security subject to certain conditions or restrictions. Such an order may restrict the disapplication of the right to redeem to specified descriptions of debt, to specified creditors or creditors of specified descriptions, to specified heritable securities or heritable securities of specified descriptions. It may prescribe circumstances in which the disapplication of the right to redeem is to apply or cease to apply. For example, an order under new section 11(3D) could exclude debtors who grant a standard security in favour of the Scottish Ministers as part of a Scottish Government shared equity scheme or equity release scheme from being able to exercise the right to redeem their security after 20 years.
First-tier Tribunal: disqualification of members from exercise of certain functions

185. Section 77A(1) provides that the holders of certain offices are disqualified from exercising functions of the First-tier Tribunal (FTT) in relation to the jurisdiction over private rented sector housing matters transferred from the jurisdiction of the sheriff by Part 3 and disputes involving letting agents conferred by Part 4 of the Bill. This has the effect of disqualifying the holders of the offices listed at subsection (2) from being appointed to exercise those functions. It also has the effect of disqualifying any existing members of the FTT who hold the listed offices from exercising those functions.

186. Section 77A(3) provides that the Scottish Ministers may amend the list of disqualified offices by order. This power could be used to add or remove offices.

Private rented housing panel: disqualification from membership

187. Section 77B inserts new paragraph 1A into Schedule 4 to the Rent (Scotland) Act 1984. Paragraph 1A(1) inserted into Schedule 4 to the 1984 Act provides that the holders of certain offices are disqualified from being a member of the private rented housing panel (PRHP) and lists the offices. The PRHP also has functions conferred by the Property Factors (Scotland) Act 2011 and when carrying out these functions is known as the homeowner housing panel (HOHP). Members of the PRHP are also members of the HOHP. Therefore these disqualifications also affect the composition of the HOHP...

188. Paragraph 1A(2) inserted into Schedule 4 to the 1984 Act provides that the Scottish Ministers may amend the list of disqualified offices by order. This power could be used to add or remove offices.

Delegation of certain functions

189. Section 78(1) amends section 21 of the 2006 Act by introducing a new power for the president of the private rented housing panel to delegate functions under section 23 of the 2006 Act (to refer applications to the private rented housing panel or reject applications), to the vice-president of the panel or to another member of the panel as the president sees fit (new section 21(8A) of the 2006 Act). This is in addition to the existing powers enabling the transfer of the president’s functions during times of absence or incapacity as provided for in section 21(8) of the 2006 Act. The provision is intended to increase flexibility to manage the multiple work strands undertaken by the panel. New section 21(8B) provides that such a delegation does not affect the president’s responsibility for the carrying out of delegated functions or ability to carry out the delegated functions.

190. Section 78(2) inserts new subsections (8) and (9) into section 16 of the Property Factors (Scotland) Act 2011 to provide that the functions of the president of the homeowner housing panel under section 18 (to refer applications to the homeowner housing panel for a determination as to whether a property factor has failed to carry out the factor’s duties or to comply with the property factor code of conduct or to reject applications) may be delegated to the vice-president of the panel or to such other member of the panel as the president sees fit. New subsection (9) provides that such a delegation does not affect the president’s responsibility for the carrying out of delegated functions, or ability to carry out delegated functions.
Scottish Housing Regulator: transfer of assets following inquiries

191. Section 79 makes amendments to section 67 of the Housing (Scotland) Act 2010 (“the 2010 Act”).

192. Paragraph (a) introduces new subsections (4A), (4B) and (4C) to section 67 of the 2010 Act.

193. Subsection (4A) has the effect of creating a narrow exception to the duty on the Scottish Housing Regulator (the Regulator), at section 67(4), always to consult and have regard to the views of tenants and secured creditors that hold securities over houses of a registered social landlord (RSL) before it directs a transfer of the RSL’s assets. The exception would apply in circumstances where the Regulator considered that all of the conditions specified at (a) to (d) of the new subsection were satisfied. These relate to the RSL being in financial jeopardy and vulnerable to steps being taken towards its insolvency, winding up etc. Where the direction to transfer assets would reduce the risk of such steps being taken, if made without the delay that consultation with either the RSL’s tenants or its secured creditors would cause, the Regulator could direct the transfer of a RSL’s assets without such consultations. When the Regulator is considering whether to direct a transfer without such consultations, it must consider separately whether there is time for it to consult the tenants and time for it to consult the secured creditors. If it concludes that there would be time to consult one group but not the other, it must consult that group. In all other circumstances, the duty to consult tenants and secured creditors that section 67(4) imposes on the Regulator would remain.

194. Subsection (4B) requires the Regulator to consult and issue guidance on the circumstances in which it would expect subsection (4A) to apply, the actions it would expect to take in circumstances where subsection (4A) applied, and how it would communicate with any tenants and their representatives, RSLs and their representatives, and secured creditors and their representatives affected by subsection (4A) being applied.

195. Subsection (4C) inserts a replacement provision for section 67(6)(a) of the 2010 Act, which paragraph (b) of section 79 of the Bill repeals. Section 67(b)(a) requires the Regulator, when it is directing the transfer of some of the assets of a RSL, always to obtain an independent valuation of the assets to be transferred and to direct the transfer at a price that it considers the assets would fetch on the open market. Subsection (4C) reinstates the duty on the Regulator to obtain an independent valuation, but instead of requiring the Regulator to direct any transfer at an open market price, requires it to have regard to the valuation in directing the transfer.

Registered social landlord becoming a subsidiary of another body

196. Section 79A adds new sections after sections 104 and 124 of the 2010 Act.

197. Subsection (1) introduces new section 104A. The new section provides that arrangements under which a RSL would become the subsidiary of another body are subject to the consent of the Regulator in the same way as arrangements by which a RSL would transfer its assets to another RSL.

198. Subsection (2) introduces new sections 124A and 124B.
199. Subsection (1) of new section 124A provides that arrangements by which a RSL would become a subsidiary of another body are subject to the special procedures set out in sections 114 to 121 of the 2010 Act. This has the effect of making the Regulator’s consent conditional on the tenants of the RSL having been consulted beforehand. Subsection (2) of the new section describes exceptional circumstances in which the special procedures at sections 114 to 121 of the 2010 Act are not to apply. They are the same circumstances in relation to financial jeopardy that section 79 introduces through new sections 67(4A)(a)-(c) of the 2010 Act. Subsection (3) provides that in these circumstances the Regulator can give or refuse its consent to a RSL becoming a subsidiary of another RSL without the tenants of the RSL having been consulted.

200. New section 124B makes purchaser protection provision (identical to that made by sections 122 and 124 for disposal and restructuring consents) in relation to the provision made by section 124A.

201. Subsections (3) and (4) make the definition of “subsidiary” currently provided for the purposes of section 164 of the 2010 Act apply more generally, to interpret its use in the new provisions. No change is made to the meaning; “subsidiary” continues to have the same meaning as in the Companies Act 2006 or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968.

Repeal of defective designation provisions

202. Section 80 of the Bill provides for the repeal of Part 14 of the Housing (Scotland) Act 1987 (“the 1987 Act”) together with Schedules 20 and 21 of that Act. This removes the provisions of the 1987 Act which deal with the designation as defective of prescribed types of dwelling, the power to provide assistance to owners of such dwellings and the giving of notice to persons seeking to acquire a dwelling that is defective. These provisions are dependent on the Scottish Ministers or local authorities designating classes of buildings as defective, which was last done by the Scottish Ministers in 1984 and appears never to have been done by any local authority. The power to designate is, therefore, being repealed.

203. These provisions were originally set out in the Housing Defects Act 1984 and the provisions affecting Scotland were replaced by Part 14 of the 1987 Act. The designation of dwelling types was made by the Housing Defects (Prefabricated Reinforced Concrete Dwellings) (Scotland) Designations 1984. The period during which applications for assistance could be submitted in respect of these dwelling types has expired, making Part 14 obsolete.

PART EIGHT – SUPPLEMENTARY AND FINAL PROVISIONS

Interpretation

204. Section 81 provides the definition of various terms used in the Bill.

Subordinate legislation

205. Section 82 provides that any power of the Scottish Ministers to make an order or regulations includes a power to make different provision for different purposes or different areas, and incidental, supplemental, consequential, transitional, transitory or saving provision.
Subsection (2) lists orders where the affirmative procedure is required. Subsection (3) provides that all other orders and regulations are subject to the negative procedure. Subsection (4) provides that any commencement order is not subject to either procedure.

**Ancillary provision**

206. Section 83 gives the Scottish Ministers a free-standing power by order to make such supplementary, incidental, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes or in connection with any provision made by or under the Bill.

**Minor and consequential amendments**

207. Section 84 introduces schedule 2, which amends and repeals enactments as required in consequence of this Bill.

**Commencement**

208. Section 85 allows the Scottish Ministers by order to set different dates to commence different provisions of the Bill (such an order may include transitional, transitory or saving provision as they consider necessary or expedient). It also specifies that section 1(1) (abolition of right to buy) may not come into force until a period of at least two years has passed, starting from the day of Royal Assent and that section 77 comes into force at the end of the period of two months beginning with the day of Royal Assent.

**Short title**

209. Section 86 gives the short title of the Bill.

**SCHEDULE 1 – TRANSFER OF JURISDICTION TO FIRST-TIER TRIBUNAL**

**Part 1 – Regulated tenancies, Part VII contracts and assured tenancies**

210. Part 1 of schedule 1 makes consequential amendments to the Rent (Scotland) Act 1984 (“the 1984 Act”) and the Housing (Scotland) Act 1988 (“the 1988 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

**Rent (Scotland) Act 1984**

211. Paragraph 2 amends section 7(2) of the 1984 Act. Section 7(1) of the 1984 Act makes provision for how the rateable value of dwelling houses should be ascertained and section 7(2) provides the sheriff with powers to determine the proper apportionment of value of a dwelling house, where any question in relation to this arises.

212. Paragraphs 3 and 31 amend section 11 and Schedule 2 of the 1984 Act. Section 11 provides for the grounds for possession of certain dwelling houses repossesssion cases and
schedule 2 specifies the circumstances in which orders for possession can be made. These include non-payment of rent or antisocial behaviour.

213. Paragraph 4 amends section 12 of the 1984 Act. Section 12 provides extended discretion to sist or suspend proceedings to allow the sherriff to manage proceedings for repossession. For example, this could be to allow a party to fulfil or complete an action or to pay arrears.

214. Consequential to the transfer of repossession cases to the FTT in paragraph 3, paragraph 5 amends section 19 of the 1984 Act. Section 19 regards the rights of subtenants in circumstances where an order for possession of a dwelling house has been made.

215. Paragraph 6 amends section 21 of the 1984 Act. Section 21 regards circumstances where it appears to a sheriff court, after having given a landlord an order for possession of a dwelling house let on a protected tenancy or subject to a statutory tenancy, that the order was maintained by misrepresentation or concealment of material facts, and provides that the court has the power to order compensation be paid to the former tenants for loss or damage sustained.

216. Paragraph 7 amends section 23(1) of the 1984 Act. Section 23 regards tenancies which are not regulated tenancies or Part VII contracts and provides that the enforcement of repossession eviction for these tenancies is unlawful other than through proceedings before the sheriff.

217. Paragraph 8 amends section 24 of the 1984 Act. Section 24 makes special provision with regard to proceedings for repossession where the tenant is a person employed in agriculture (as defined in section 17 of the Agricultural Wages (Scotland) Act 1949).

218. Paragraph 9 repeals the definition of court from section 25 of the 1984 Act as this is no longer required as relevant proceedings are transferred to the FTT.

219. Consequentially to the transfer of jurisdiction for repossession in paragraphs 7 and 8, paragraph 10 amends section 26 of the 1984 Act. Section 26 provides that proceedings for repossession under Part III of that Act are binding on the Crown.

220. Paragraph 11 repeals section 27 of the 1984 Act which set out the procedure for applications to the sheriff under Part III.

221. Paragraph 12 amends section 31(2) of the 1984 Act. Section 31(2) regards rents under regulated tenancies and provides powers to adjust recoverable rent to cover services and furniture.

222. Paragraph 13 amends section 32(4) and (5) of the 1984 Act. Section 32(4) and (5) regard notices of increase to rent under regulated tenancies and provides powers to amend errors.

223. Paragraph 14 amends section 35(12) of the 1984 Act. Section 35(12) provides for the sufficiency of evidence in relation to rent agreements. The effect of the amendment is to ensure that this applies to proceedings before the Scottish Tribunals.
224. Paragraph 15 amends section 39 of the 1984 Act. Section 39 provides powers to order rectification of rent books after determination of recoverable rent. The effect of the amendment is to provide that the FTT can order the rectification of rent books in applicable cases.

225. Paragraph 16 amends section 43B(4) of the 1984 Act. Section 43B(4) regards changes of rent registration service providers and provides for the continuation of proceedings. The effect of the amendment is to provide that tribunal proceedings can continue following changes of responsibility.

226. Paragraph 17 amends section 45(3) of the 1984 Act. Section 45(3) provides for the sufficiency of evidence in relation to rent registers similar to section 35(12) of the 1984 Act. The effect of the amendment is to ensure that this applies to proceedings before the Scottish Tribunals.

227. Paragraph 18 amends section 60(3) of the 1984 Act. Section 60(3) provides powers to determine questions about rent limits for housing association and housing corporation tenancies.

228. Paragraph 19 amends section 64(6)(b) of the 1984 Act. Section 64(6)(b) regards the rateable value of dwelling houses for the purpose of determining whether Part VII of the 1984 Act applies. It provides powers to determine apportionment of rateable value where parties fail to agree.

229. Paragraphs 20 and 21 amend sections 75 and 76 of the 1984 Act. Sections 75 and 76 provide power to reduce the period of notice to quit or postpone the date of possession in relation to contracts described in Part VII of the 1984 Act.


231. Paragraph 23 amends section 97(8) and (9) of the 1984 Act. Section 97(8) and (9) provides powers to terminate or modify rights for tenants who share accommodation.

232. Paragraph 24 inserts new subsection (A1) into section 102 of the 1984 Act, and repeals subsection (2) and amends subsection (3) of that section. Section 102 provides power to determine any question with regard to the application of the 1984 Act. The effect of the amendment is to make clear that the FTT shall have jurisdiction over civil matters arising from this act with the exception of matters arising under Part IX which will remain within the jurisdiction of the sheriff.

233. Paragraph 25 amends section 103 of the 1984 Act. Section 103 regards the procedure by which certain actions are to be raised in the sheriff court.

234. Paragraph 26 amends section 104 of the 1984 Act. Section 104 regards the Court of Session’s power to make certain rules of procedure. The effect of the amendment is to retain this power for criminal proceedings under Part IX of the 1984 Act and not to apply it for tribunal procedures.
235. Paragraph 27 amends section 115(1) of the 1984 Act to include a definition of the FTT.

236. Paragraph 28 amends paragraphs 3 and 7 of Schedule 1 to the 1984 Act. Schedule 1 regards succession rights of protected tenants following the death of protected tenants and provides powers to determine matters where parties fail to agree.

237. Paragraphs 29 and 30 amend paragraphs 3 and 6 of Schedule 1A and paragraph 3 of Schedule 1B to the 1984 Act. Schedules 1A and 1B regard succession rights for tenants and should be read in conjunction with Section 3A of the 1984 Act.

**Housing (Scotland) Act 1988**

238. Paragraph 33 amends section 16(2) of the 1988 Act. Section 16(2) regards the power to end assured tenancies.

239. Paragraph 34 amends section 17(8) of the 1988 Act. Section 17(8) regards proceedings to fix terms for statutory assured tenancies.

240. Paragraphs 35 and 48 amend section 18 and Schedule 5 of the 1988 Act. Section 18 and Schedule 5 regard repossession cases for assured and short assured tenancies and specifies the circumstances in which orders for possession can be made.

241. Paragraph 36 amends section 19 of the 1988 Act. Section 19 requires that proceedings must not be entertained unless a notice of proceedings has been served in the prescribed format.

242. Paragraph 37 amends section 20 of the 1988 Act. Section 20 regards discretion to sist or adjourn proceedings for possession to allow the sheriff to manage proceedings for repossession. This could be to allow parties to complete a specific action or to repay arrears.

243. Paragraph 38 amends section 21(3) of the 1988 Act. Section 21(3) regards special powers in relation to shared accommodation.

244. Paragraph 39 amends section 22(1) and (2) of the 1988 Act. Section 22(1) and (2) regards powers to order payment of removal expenses.


246. Paragraph 41 amends section 28(1) of the 1988 Act. Section 28(1) regards the effect of the termination of assured tenancies on sub-tenancies.

247. Paragraph 42 amends section 29 of the 1988 Act. Section 29 regards the power to permit diligence in respect of houses let on assured tenancies.
248. Paragraph 43 amends section 30(2) of the 1988 Act. Section 30(2) regards failure to provide a tenancy agreement for an assured tenancy and provides power to draw up an agreement if one does not already exist.

249. Paragraph 44 amends section 33(1) and (4) of the 1988 Act. Section 33(1) and (4) regards the recovery of possession of short assured tenancies under certain circumstances.

250. Paragraph 45 inserts new subsection (4A) into section 36 of the 1988 Act, and amends section 36(6)(b) and (6B). Section 36(6)(b) and (6B) provides power to award damages for unlawful eviction.

251. Paragraph 46 amends section 42(1)(c) of the 1988 Act. Section 42 regards restrictions on assured tenancies.

252. Paragraph 47 amends section 55(1) of the 1988 Act to include a definition of the FTT.

SCHEDULE 1 - PART 2 - REPAIRING STANDARD

253. Part 2 of schedule 1 makes consequential amendments to the Housing (Scotland) Act 2006 ("the 2006 Act") to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

Housing (Scotland) Act 2006

254. Paragraph 50 amends section 24(7) of the 2006 Act. Section 24(7) regards repairing standard orders when an order has been made regarding contracting out of the repairing standard.

255. Paragraph 51 amends section 194 of the 2006 Act to include a definition of the FTT.

SCHEDULE 1 – PART 3 – RIGHT TO ADAPT RENTED HOUSES

256. Part 3 of schedule 1 makes consequential amendments to the Housing (Scotland) Act 2006 ("the 2006 Act") to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

257. Paragraph 53 amends section 64 of the 2006 Act. Section 64 relates to appeals from decisions by local authorities and the private rented housing panel in relation to the repairing standard.

258. Paragraph 54 repeals section 65(3) and (4) of the 2006 Act. Section 65 relates to the determination of an appeal under section 64.
This document relates to the Housing (Scotland) Bill as amended at Stage 2 (SP Bill 41A)

259. Paragraph 55 repeals section 67 of the 2006 Act. Section 67 provides the Scottish Ministers with the power to transfer jurisdiction for appeals under section 52 of that Act (regarding the right to adapt rented houses) from the sheriff to the private rented housing panel.

SCHEDULE 1 - PART 4 – LANDLORD REGISTRATION

260. Part 4 of schedule 1 makes consequential amendments to the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

Antisocial Behaviour etc. (Scotland) Act 2004

261. Paragraph 57 repeals section 92(4) and amends section 92(5) and (6) of the 2004 Act which regard the procedure for making appeals to the sheriff against decisions of local authorities about landlord registration.

262. Paragraph 58 amends section 92ZA of the 2004 Act. Section 92ZA regards the duty on local authorities to note refusals and removals for the register of landlords.

263. Paragraph 59 amends section 97(6) and (7) of the 2004 Act. Section 97(6) and (7) regards appeals against local authority decisions regarding landlord registration.

264. Paragraph 60 amends section 101(1) of the 2004 Act to include a definition of the FTT.

SCHEDULE 2 – MINOR AND CONSEQUENTIAL AMENDMENTS

265. Schedule 2 provides for minor and consequential amendments and is introduced by section 84.

266. The amendments in paragraphs 4 and 10 include the new short Scottish secure tenancy at paragraph 2A of schedule 6 to the Housing (Scotland) Act 2001 in the list of accommodation considered to be permanent accommodation for the purposes of a discharge of a social landlord’s homelessness duties.

267. The amendments in paragraphs 12 and 13 reflect a change in the status of the Scottish Housing Regulator, which is now a non-ministerial office holder in the Scottish Administration. These changes do not alter the position of the Regulator being subject to the Scottish Public Services Ombudsman Act 2002 and the Freedom of Information (Scotland) Act 2002.

268. The amendment in paragraph 17(4) removes the requirement for a registered social landlord to consult its tenants before it grants a standard security over existing houses in order to raise finance. The effect of the amendment is to recreate the position that had previously applied under section 68 of the Housing (Scotland) Act 2001 by requiring registered social landlords to consult their tenants only where they are proposing a disposal of land that requires the consent of the Scottish Housing Regulator (other than disposals to which the special procedure in Part 10 of
the 2010 Act applies - disposals and restructuring which result in a change of landlord, or disposals by way of security of loan).
This document relates to the Housing (Scotland) Bill as amended at Stage 2 (SP Bill 41A)

HOUSING (SCOTLAND) BILL

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Supplementary Financial Memorandum is published to accompany the Housing (Scotland) Bill (“the Bill”) (introduced in the Scottish Parliament on 21 November 2013) as amended at Stage 2.

2. This Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament.

3. This Memorandum supplements the original Financial Memorandum to explain any substantial additional cost implications resulting from Stage 2 amendments to the Bill and where the costs are expected to fall. Amendments agreed at Stage 2 which are not covered in this supplementary Financial Memorandum are considered to not give rise to any substantial additional costs.

PART 3 – PRIVATE RENTED HOUSING

Repairing standard

4. The Scottish Government estimates that there are approximately 300,000 households in the private rented sector (PRS) in Scotland. Part 3 of the Bill makes provision to amend the repairing standard for private rented housing in Part 1 of the Housing (Scotland) Act 2006 (“the 2006 Act”).

5. Section 22A amends section 13 of the 2006 Act by inserting a new subsection (1)(g) which requires that, in order to meet the repairing standard, a privately rented house must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

6. Section 22B inserts a new subsection 13(4A) in the 2006 Act which requires that, in order to meet the parts of the repairing standard which require that the installations in a privately rented house for the supply of electricity and any electrical appliances provided by the landlord are in a reasonable state of repair and in proper working order, regard is to be had to guidance on electrical safety standards issued by the Scottish Ministers.

1 http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41as4-stage2-amend.pdf
2 http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41s4-introd-en.pdf
3 Housing Statistics for Scotland - Key Information and Summary Tables’ published 26 August 2013 http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/KeyInfoTables
7. Section 22B also inserts new section 19A in the 2006 Act. New section 19A requires landlords to arrange electrical safety inspections every five years to identify any work needed to meet the repairing standard in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances. An inspection must be carried out before a new tenancy starts, unless there has been an inspection within the previous five-year period. Where a tenancy has commenced before the date that section 19A comes into force, the landlord must carry out an inspection within 12 months from the date the section comes into force, unless the tenancy comes to an end in that period. Section 19A requires landlords to provide copies of inspection reports to tenants. The duty to carry out an inspection is treated as part of the repairing standard for the purposes of applications to the private rented housing panel and for enforcement of the repairing standard by the private rented housing panel.

8. Section 22B also inserts new section 19B in the 2006 Act. New section 19B provides that an inspection carried out for the purposes of new section 19A must be carried out by a competent person and specifies information which must be included in the record of the inspection, which must be retained by the landlord for six years. New section 19B also provides that the Scottish Ministers must publish guidance and that, in determining whether someone is a competent person as required by subsection 19B(1), landlords must have regard to this guidance.

9. The requirement for landlords to arrange electrical safety inspections was supported by 12 trade associations, businesses and charities, including key housing stakeholder organisations such as the Scottish Association of Landlords, Shelter Scotland, the Royal Institution of Chartered Surveyors Scotland and the Chartered Institute of Housing Scotland. It was also recommended in the Infrastructure and Capital Investment Committee’s Stage 1 report on the Bill. It was brought forward by amendment at Stage 2 and was supported by the Scottish Government and agreed by the Committee.

10. Section 22C inserts section 20A into the 2006 Act. Section 20A provides that the Scottish Ministers may amend the provisions of the 2006 Act which set out the repairing standard and the duty of landlords to ensure that privately rented homes meet the repairing standard. Section 22C requires that any such regulations are made by the affirmative procedure.

**Costs on the Scottish Administration**

11. There will be no substantial additional administration costs on the Scottish Administration as a result of the introduction of these requirements. Any costs associated with stakeholder engagement and making of regulations under section 22C will be covered by the existing budget already allocated to the Sustainable Housing Strategy.

**Costs on local authorities**

12. There will be no substantial additional administration costs on local authorities as a result of the introduction of these requirements

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5 [http://www.scottish.parliament.uk/S4_InfrastructureandCapitalInvestmentCommittee/Reports/trr14-04.pdf](http://www.scottish.parliament.uk/S4_InfrastructureandCapitalInvestmentCommittee/Reports/trr14-04.pdf) (Page 34)
Costs on other bodies, individuals and businesses

Private landlords

13. It is estimated that the cost of a carbon monoxide detector necessary to comply with this duty is around £15.6 This is a relatively low cost for individual landlords, even where the landlord has a number of properties in their portfolio. It is not known how many landlords have already provided carbon monoxide detectors, but it is currently recommended as good practice by the Scottish Association of Landlords7 and in Scottish Government guidance8.

14. In summary, Table 1 shows the assumptions of potential costs which could be incurred as a result of mandatory requirements for privately rented houses to have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. These assumptions are caveated on the basis that the Scottish Government has no information on current compliance and that not all properties will need a detector because not all properties have a form of heating that is carbon emitting. The assumptions based on low, medium, high scenarios set out below at Table 1 are intended to assist the Committee to understand what the potential level of costs might be.

Table 1: Assumptions of substantial additional costs – Carbon Monoxide Detection

<table>
<thead>
<tr>
<th>Scenario - % of properties affected9</th>
<th>Low (25%)</th>
<th>Mid (50%)</th>
<th>High (75%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No of Properties</td>
<td>75,000</td>
<td>150,000</td>
<td>225,000</td>
</tr>
<tr>
<td>Cost per property</td>
<td>£15</td>
<td>£15</td>
<td>£15</td>
</tr>
<tr>
<td>Assumption of Overall Cost</td>
<td>£1,125,000</td>
<td>£2,250,000</td>
<td>£3,375,000</td>
</tr>
</tbody>
</table>

15. The primary responsibility for the additional cost of work to comply with the duty to complete electrical safety testing rests with private landlords. The cost of complying with the duty requires the completion of an electrical safety test which will vary with individual properties and the Scottish Government estimates that the average cost will be between £100 and £150.10 All landlords will require to undertake an inspection for their existing properties in the first year after the provision commences, unless a tenancy ends during that year and the property is not re-let. On commencement, it will become a duty to undertake the inspection before any tenancy commences.

16. Assuming there are about 300,000 PRS properties, then the initial year cost (based on £100-£150 a test per property) is estimated to be between £30,000,000 and £45,000,000 across all private landlords. The on-going cost may actually be higher if it is assumed that there is some turnover in the sector so the number of properties over any five-year period could be greater than the 300,000 quoted. In instances where a safety test identifies the need for remedial work to electrical installations, then an unquantifiable additional cost will occur. Initial costs could be

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6 http://www.gassaferegister.co.uk/advice/gas_safety_in_the_home/fit_a_carbon_monoxide_alarm.aspx
9 Based on 300,000 properties.
10 https://www.whatprice.co.uk/prices/electrician/periodic-electrical-inspection-incl-certificate.html
lower if a landlord already has had a test completed and is able to get the test completed at a lower cost as a result.

17. Compliance with the requirement for electrical safety testing is expected to improve home safety for tenants in the private rented sector. There will be an unquantifiable benefit from the assumption that fewer tenants will be killed or injured as the result of unsafe electrical installations and an assumed unquantifiable saving for emergency and health care services. It is also anticipated to reduce the incidence of property damage resulting from fires where the cause is unsafe electrical installations and may act positively toward decisions on relative risk and adverse selection concerns from home insurance providers.

Home owners
18. The duty refers only to private landlords so there will be no new costs for home owners.

Local businesses
19. The duty refers only to private landlords so there will be no new costs for local businesses.

Summary
20. In summary, Table 2 shows the costs expected from the inclusion of the above provisions in Part 3 of the Bill.

Table 2: Summary of additional costs – Electrical Safety Checks

<table>
<thead>
<tr>
<th>Provision</th>
<th>Paragraph reference</th>
<th>Cost per property</th>
<th>Total Additional costs</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs on other bodies, individuals and businesses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carbon Monoxide Detectors</td>
<td>13</td>
<td>£15</td>
<td>Current compliance is unknown. Assumptions are provided at Table 1</td>
<td>2015 onwards</td>
</tr>
<tr>
<td>Electrical Safety Inspections</td>
<td>15-16</td>
<td>£100 and £150.00£11</td>
<td>Between £30,000,000 and £45,000,000£12</td>
<td>2015 and then every five years.</td>
</tr>
<tr>
<td>Safety test identifies the need for remedial work to electrical installations?</td>
<td>16</td>
<td>Unquantifiable additional cost will occur</td>
<td>Unquantifiable additional cost will occur</td>
<td>2015 and then every five years.</td>
</tr>
</tbody>
</table>

11 Based on 300,000 properties - All landlords will require to undertake an inspection for their existing properties in the first year after the provision commences, unless a tenancy ends during that year and the property isn’t re-let. Requirement for test to be undertaken every five years.
12 See Footnote 11
PART 4 – LETTING AGENTS

Letting agent registration and code of practice

21. The Scottish Government estimates that there are 719 letting agents in Scotland. Part 4 of the Bill as introduced provides for a registration scheme and a code of practice for letting agents, and redress for tenants and landlords. The Scottish Government has brought forward a number of Stage 2 amendments to Part 4 which have substantial additional cost implications. These are as follows:

- Letting Agent Code of Practice - professional indemnity insurance and client money protection
- Training requirement
- Monitoring of compliance - power to carry out inspections.

Professional indemnity insurance and client money protection

22. The Letting Agent Code of Practice is to include provision about the handling of client money and professional indemnity arrangements. This will enable the Scottish Ministers to regulate how letting agents handle money from landlords and tenants and to require professional indemnity arrangements, such as professional indemnity insurance, to be put in place.

Costs on the Scottish Administration

23. There will be no substantial additional administration costs on the Scottish Administration as a result of the introduction of these requirements around the handling of client money and professional indemnity arrangements.

Costs on local authorities

24. There will be no substantial additional administration costs on local authorities as a result of the introduction of these requirements around the handling of client money and professional indemnity arrangements.

Costs on other bodies, individuals and businesses

Letting agents

25. Information from the Association of Residential Letting Agents (ARLA) estimates that the annual cost to a letting agent for professional indemnity cover will be in the region of £715 on average\(^\text{13}\). This is an average cost as premiums will vary according to previous claims history and on the size of the business. Based on this average, the estimated total cost to the industry would be £514,085\(^\text{14}\). This would not be a new cost to the whole industry as some letting agents will already have this cover in place. However, the new cost cannot be quantified as data is not available on the number of agents who already have this in place.

\(^{13}\) Data source – Association of Residential Letting Agents – average cost per letting agent per annum including insurance premium tax

\(^{14}\) £715 per annum x 719 letting agents
26. Information from ARLA estimates that the annual cost to a letting agent for client money protection is between £297 and £350. This represents an average figure of £324. Based on this average, the estimated total annual cost to the industry would be £232,956\(^{15}\). This would not be a new cost to the whole industry as some letting agents will already have this cover in place. However, the new cost cannot be quantified as data is not available on the number of agents who already have this in place.

**Training requirement**

27. Section 29 of the Bill makes provision about the Scottish Ministers determining applications for registration as a letting agent and renewal of registration. This amendment introduced at Stage 2 provides a power for the Scottish Ministers to prescribe training requirements which letting agents must demonstrate before they can be entered on the register or have their entry renewed. The aim of this amendment is to raise standards of service by ensuring that only competent persons can legitimately carry out letting agent services. The amendment provides for the specification of the training; who should obtain it; when that training must be completed and when it must be refreshed. The Scottish Ministers may specify those requirements through secondary legislation. This may be as a qualification or as other training requirements as specified.

**Costs on the Scottish Administration**

28. There will be no substantial additional administration costs on the Scottish Administration as a result of the introduction of these requirements.

**Costs on local authorities**

29. There will be no substantial additional administration costs on local authorities as a result of the introduction of these requirements

**Costs on other bodies, individuals and businesses**

**Letting agents**

30. In order to estimate the potential costs to letting agents, this has been based on the cost of known qualifications (although the specified requirements may include other options to meet the Scottish Ministers’ training requirements, other than a qualification)

31. The Level 3 Award in Residential Letting and Property Management from the National Federation of Property Professionals (NFoPP) is seen as an appropriate level of training for more senior staff. ARLA uses these qualifications as a basis of membership to their organisation. The cost to a letting agent would be £240 for course materials (for non-ARLA members) plus an additional £110 for an examination giving a total per organisation of £350 per award. There will also be a cost in terms of staff time as the four units take a total of 120 hours study time, though it is not possible to quantify this for the purposes of this document as staff costs will vary across businesses; and this training may simply replace other training which staff would have undertaken anyway.

\(^{15}\) £324 per annum x 719 letting agents
32. It is likely that a number of letting agents will already have completed this training as a requirement – for example, roughly 200 members of ARLA. In addition, this qualification has already been taken up by some letting agents who are not members of ARLA. However, it is not possible to quantify the current level of training participation as the data is not available. Therefore, of the estimated 719 letting agents in Scotland, there are potentially 500 letting agents that would either require this training or a similar level (to be specified).

33. Based on the costs of the NFoPP training the estimated cost to the industry would be £175,000\(^1\). This cost would only recur as and when the Scottish Ministers were of the view that a refresh was necessary.

**Monitoring of compliance - power to carry out inspections**

34. The Scottish Ministers should monitor compliance with the requirements of the letting agent statutory regime, including the Code of Practice. In order to facilitate the Scottish Ministers’ compliance and enforcement functions, an amendment was introduced at Stage 2 to provide associated powers to authorise persons to carry out an inspection of premises which appear to be being used for the purpose of carrying out letting agency work. If on discovering non-compliance with the regulatory regime for letting agents through exercise of this power, the Scottish Ministers could take administrative steps to address the matter or could proceed straight to enforcement action.

**Costs on the Scottish Administration**

35. Information obtained from ARLA\(^1\) suggests that a wide-ranging check conducted by its own compliance staff might cost in the region of £500 to £1,000 per visit. If an external contractor, such as an accountant, were used the cost would double. Visits are made to roughly 2% of member firms on the basis of risk i.e. the level of complaints and any comments from the letting agent firm’s annual independent audit of their client account. The visits envisaged under the power set out in the Bill, however, would be mainly random checks. Therefore, a higher percentage of 10% of firms is proposed. Taking the mid-point cost of an ARLA check (i.e. £750 to £1,500) and applying it to 10% of the estimated 719 letting agents in Scotland, this would generate an estimated annual cost to the Scottish Administration of between £54,000 and £108,000.

36. Where a warrant is required to gain entry, the cost of obtaining a warrant is £90, which is a first paper fee, and also the fee for a summary application in the sheriff court. On the basis of an estimated seven visits each year requiring a warrant (10% of the total number of expected visits), the total annual cost for obtaining a warrant would be £630.

37. The additional cost to engage staff, such as sheriff officers, would be £18.35 plus VAT to effect the warrant and a further £29.40 plus VAT per half hour to gain entry to the premises, by force if required, including presence during the inspection until the premises have been secured at the end of the inspection. Assuming an inspection lasts three hours in total, the estimated cost would be £233.70 per visit. On the basis of an estimated seven visits each year requiring a

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\(^{16}\) £350 x 500 letting agents
\(^{17}\) Data source – Association of Residential Letting Agents – compliance checks 2014/2015
warrant (10% of the total number of expected visits), the total annual cost for this element would be £1,636.

38. Based on these assumptions, this could generate an estimated annual cost to the Scottish Administration of between £56,266 and £110,266.

**Costs on local authorities**

39. There will be no substantial additional administration costs on local authorities as a result of the introduction of these requirements.

**Costs on other bodies, individuals and businesses**

**Letting agents**

40. There will be no substantial additional administration costs on letting agents as a result of the introduction of this requirement.

**Summary**

41. In summary, Table 3 shows the costs expected from the inclusion of the above provisions in Part 4 of the Bill.

**Table 3: Summary of additional costs – letting agent registration and code of practice**

<table>
<thead>
<tr>
<th>Provision</th>
<th>Paragraph reference</th>
<th>Additional costs</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Costs on Scottish Administration</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monitoring of compliance - Power to carry out inspections</td>
<td>34-38</td>
<td>£56,266 to £110,266 p.a.</td>
<td>2016 onwards</td>
</tr>
<tr>
<td><strong>Costs on other bodies, individuals and businesses</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professional Indemnity Insurance</td>
<td>25</td>
<td>£715 p.a.</td>
<td>£514,085(^{18})</td>
</tr>
<tr>
<td>Client Money Protection</td>
<td>26</td>
<td>£324 p.a.</td>
<td>£232,956(^{19})</td>
</tr>
<tr>
<td>Training requirement</td>
<td>30-33</td>
<td>£350</td>
<td>£175,000(^{20})</td>
</tr>
</tbody>
</table>

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\(^{18}\) Scottish Government estimated number of Scottish letting agents is 719 – annual cost

\(^{19}\) Scottish Government estimated number of Scottish letting agents is 719 – annual cost

\(^{20}\) Scottish Government estimated number of Scottish letting agents is 719 – See footnote 13.

\(^{21}\) The training cost would recur periodically, as and when changes in practice or law required it.
HOUSING (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

PURPOSE

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Housing (Scotland) Bill (the Bill). It describes provisions in the Bill conferring power to make subordinate legislation which were introduced, removed or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED, REMOVED OR AMENDED AT STAGE 2

PART 2 – SOCIAL HOUSING

Section 4: Rules on priority of allocation of housing: consultation
Section 7: Determination of minimum period for application to remain in force
Section 8: Creation of short Scottish secure tenancy: antisocial behaviour
Section 15: Grounds for eviction: antisocial behaviour

3. Although not related to subordinate legislation powers, the Committee may wish to be aware that amendments have been made to these provisions of the Bill relating to the publication of guidance on social housing. Amendments have been made to require all the guidance issued on social housing under powers in Part 2 to be consulted on and published, in line with the Committee’s recommendations in its Stage 1 report on the Bill.

4. The powers to issue guidance under Part 2 of the Bill have also been extended to address issues raised at Stage 1. A requirement to consult such persons as Ministers consider appropriate has been added to guidance enabled by section 4, relating to a social landlord’s rules governing the priority of allocation of social housing. Guidance issued under section 7 can now cover any matter relating to the provisions in that section. Guidance issued under section 8 can now cover steps relating to extending the term of a short Scottish secure tenancy for 6 months and raising proceedings for recovery of possession of a short Scottish

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1. http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41as4-stage2-amend.pdf
secure tenancy. A power to issue guidance has also been included in section 15, relating to eviction on the grounds of antisocial behaviour.

PART 3 – PRIVATE RENTED HOUSING

Section 22C – (inserts new section 20A after section 20 of the Housing (Scotland) Act 2006.

Power conferred on: The Scottish Ministers.
Power exercisable by: Regulations made by statutory instrument.
Parliamentary procedure: Affirmative procedure.
Amended or new power: New

Provision

5. New section 20A provides that Ministers may by regulations vary or extend the repairing standard and a landlord’s duty to ensure a house meets that standard. This includes the power to modify Chapter 4 of Part 1 of the 2006 Act, which sets out standards that private rented housing must meet both before and during any tenancy.

Reason for taking this power

6. A new requirement that let property must have carbon monoxide detectors was added at Stage 2, and the standard relating to electrical safety was in effect extended by a requirement for regular electrical safety inspections (in both cases, by non-Government amendment). The Scottish Government wishes to ensure that any future changes required to quality standards within the private rented sector can, where necessary, be addressed as quickly as possible, while remaining subject to parliamentary scrutiny. The power to modify legislation is necessary to ensure that any changes can be made to fit effectively within existing provision.

Reason for choice of procedure

7. It is considered appropriate that this power is subject to affirmative procedure, as the Stage 2 amendment has provided for, to allow Parliament a higher level of scrutiny. This is appropriate because of the potential effect of the use of the power on private landlords and the private rental market, and the power to modify primary legislation. As the new provisions in relation to electrical safety inspections demonstrate, to craft an effective requirement may need a significant amount of related detail to be included within the legislation, and the Parliament will wish to consider whether to approve such detail.

PART 4 – LETTING AGENTS

Section 29(2A) – Training requirement

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure
Amended or new power: New
Provision

8. Section 29 of the Bill makes provision for the Scottish Ministers to determine applications for registration as a letting agent and renewal of registration. Section 29(2)(c) was inserted at Stage 2 and creates a power for the Scottish Ministers to prescribe training requirements which letting agents must meet before they can be entered on the register or have their entry renewed. Section 29(2A) (also added at Stage 2) further sets out what these regulations may prescribe including: the matters on which training must be undertaken; the persons who must have undertaken it; qualifications which must be held by the applicant or other persons; the period within which training must have taken place.

Reason for taking this power

9. The power is being taken to allow for further consultation with the industry on the detail of the training requirements required for registration. Furthermore, a delegated power allows flexibility for the Scottish Ministers to modify training requirements to reflect the future development of the sector.

Reason for choice of procedure

10. The power will be used to set out the technical detail of training requirements, related timings and the persons upon whom the requirements are placed. The power is also likely to be used to reflect any future changes in practice and law for the letting agent sector. It is considered that the negative procedure provides appropriate flexibility for changes to be made expeditiously and that a more detailed level of Parliamentary scrutiny is not required for provisions of this nature.

Section 41(1) and Section 82(2)(ba) – Code of Practice

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative procedure for the first Code and any replacement Code and negative procedure for revisions to the Code
Amended or new power: Amended

Provision

11. Section 41(1) of the Bill currently provides that the Scottish Ministers may, by regulations, set out a Code of Practice for letting agents. As drafted at introduction, the negative procedure would apply to the regulations setting out the Code. At Stage 2, an amendment inserted a new section 82(2)(ba) so that the affirmative procedure will now apply to the first Code of Practice or any subsequent replacement code. Any revisions to the Code will be by regulations subject to the negative procedure.

12. An amendment to Section 41 at Stage 2 added in sections 41(1)(b) and (c) which provide that in addition to the Code of Practice setting out standards of practice (section 41(1)(a)), the Code will also now include the handling of tenants’ and landlords’ money; and professional indemnity arrangements. The amendment responds to concerns expressed at
Stage 1 by stakeholders and the Infrastructure and Capital Investment Committee concerning a lack of detail about the Code on the face of the Bill.

Reason for taking this power

13. The Code of Practice will contain standards to which all persons carrying out letting agency work must adhere. As stated in the Delegated Powers Memorandum provided at introduction, the Scottish Government considers it to be appropriate for the detailed set of requirements needed in the Code to be developed in regulations subject to consultation. Furthermore, a delegated power allows the Scottish Ministers the flexibility to amend the Code at a later date to reflect changes in practice and the law as it relates to the letting agent sector.

Reason for choice of procedure

14. At introduction, the intention was that the Code would be subject to the negative procedure. The Delegated Powers and Law Reform Committee indicated in its stage 1 Report that it considered the affirmative procedure to be a more suitable level of Parliamentary procedure for the power in section 41(1). This was in light of the serious consequences for letting agents should they breach the Code such as possible de-registration and or potential for prosecution. The Scottish Government accepts this and, to reflect the severity of these legal consequences whilst ensuring an appropriate level of Parliamentary scrutiny, is applying the affirmative procedure to the first Code and any replacement Code. This will enable a high level of Parliamentary scrutiny to be applied to the full details of the Code and any future replacement Code. To ensure a proportionate process and an appropriate use of Parliamentary time, the negative procedure is being applied to revisions of the Code.

Section 46A(2) – Monitoring Compliance – Power to obtain information

Power conferred on: The Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Negative procedure  
Amended or new power: New

Provision

15. New Section 46A was introduced at Stage 2 to give the Scottish Ministers the power to serve notice on a person who appears to be a letting agent, requiring the information specified in the notice to be provided to them. This process for obtaining information is for the purpose of enabling the Scottish Ministers to monitor compliance with the provisions in Part 4 of the Bill. The power is qualified at subsection (3) to make it clear that it only extends to requiring information which can be legally disclosed.

16. Subsection (2) allows the Scottish Ministers to make further provision in regulations about the requiring of information, in particular about:

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4 http://www.scottish.parliament.uk/S4_Bills/Housing_DPM_final.pdf  
5 http://www.scottish.parliament.uk/S4_InfrastructureandCapitalInvestmentCommittee/DPLR_Com_report.pdf
a) the form of the notice and manner of service

b) the time within which information must be provided.

**Reason for taking this power**

17. This power has been taken to provide the Scottish Ministers with some flexibility on the form of the notice and manner of service, and the time within which information must be provided, to allow these to be developed further to take account of any modifications to the process that may become apparent or be required in the future once implementation of the provisions has been completed and the national register and associated processes established.

**Reason for choice of procedure**

18. The power relates to the administration and procedure associated with the giving of notices requiring information to be provided to the Scottish Ministers. The Scottish Ministers are being given the power to obtain information for the purposes of monitoring compliance with the regulations. Section 46A(3) sets out that the Scottish Ministers are not authorised to require this information if this would make the person holding it liable for prosecution for doing so. It is common for details about administration and procedure to be prescribed by secondary legislation. It is considered that the level of Parliamentary scrutiny afforded by the negative procedure provides an appropriate balance between expedition and the need for scrutiny of provisions of this nature.

**Section 51(3)(a) – Meaning of letting agency work**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** Negative procedure  
**Amended or new power:** Addition of new element to existing power

**Provision**

19. Section 51(1) and (2) of the Bill set out the meaning of “letting agency work” for the purposes of Part 4 of the Bill. Subsection (3) confers delegated powers on the Scottish Ministers to modify the meaning of “letting agency work” by order.

20. Subsection (3) has been amended at Stage 2 to confer the new delegated powers contained in paragraph (a) on the Scottish Ministers. They are an addition to what was in the Bill at introduction, which now form paragraph (b) of the subsection. The new powers enable the Scottish Ministers to provide by order that specified bodies or schemes of a specified description are excluded from the definition of “letting agency work” applying to Part 4 of the Bill. The power to specify a description of a scheme is qualified in subsection (4) so that only a description of a scheme which is operated by a body which does not carry out the scheme for profit and which is for the purpose of assisting persons to enter into leases or occupancy agreements can be specified.

21. Subsection (3)(b) restates the delegated power to modify the meaning of “letting agency work” by order which was section 51(3) in the Bill at introduction. This power has
Reason for taking this power

22. The Scottish Government considers it appropriate to enable the Scottish Ministers to exempt bodies and descriptions of schemes from the scope of the regulatory regime set out in Part 4 of the Bill. This will allow specified bodies and schemes carrying out work which falls within the description of “letting agency work” but which the Scottish Ministers consider should not be subject to the regulatory regime because, for example, they carry out not for profit work to assist vulnerable tenants to access tenancies in the private rented sector, to be exempted from the requirements of the letting agent regulatory regime.

Reason for choice of procedure

23. This power will be used to specify bodies and descriptions of schemes which are not to be covered by the provisions in Part 4 of the Bill. Its future use may include adding newly created bodies or descriptions of schemes from time to time. In contrast to the power at section 51(3)(b) which is subject to affirmative procedure, this power cannot be used to modify primary legislation. The Scottish Government therefore considers the level of Parliamentary scrutiny involved with the negative procedure to strike an appropriate balance between the need for Parliamentary scrutiny and appropriate use of Parliamentary time.

PART 5 – MOBILE HOME SITES WITH PERMANENT RESIDENTS

Section 55 (inserts section 32F into the Caravan Sites and Control of Development Act 1960) – Power to specify time limits for the determination of applications

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure
Amended or new power: New

Provision

24. Section 32F(2A) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act), inserted through amendment 91 at Stage 2, places a duty on the Scottish Ministers that they must, by regulations, specify a time limit for a local authority to determine a site licence application. Under section 32F(3) of the 1960 Act if a local authority does not determine an application in that timescale it is deemed to be approved.

Reason for taking this power

25. The Bill as introduced would have required a local authority to determine an application for a site licence, or to decide on the transfer a site licence, within 12 months of receiving an application. If the application was not decided in this timeframe, then it would be deemed to be approved. This provision was included in the Bill to prevent an application being left undetermined.

http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41s4-introd.pdf
26. However in light of views expressed during the Stage 1 consideration of the Bill, an amendment was introduced that required Scottish Ministers to set the timescales in Regulations. This would allow the Scottish Government to discuss realistic timescales with local authorities and the industry, and set them out in Regulations in due course. The amendment also allows Ministers to specify different limits for different types of application. This could be used if (for example) after discussion with local authorities and others, it was clear that it was appropriate for a licence renewal to have a shorter time limit for a decision than the handling of an initial site licence application.

Reason for choice of procedure

27. This power will be used to set out the administrative time limits for local authorities to make decisions on applications and it is therefore considered that the level of Parliamentary scrutiny afforded by the negative procedure is sufficient.

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

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure
Amended or new power: Amended

Provision

28. As it stands following Stage 2 consideration, new section 32N of the 1960 Act gives the Scottish Ministers the power to make provision in relation to the procedure to be followed in relation to the issue, renewal, transfer, transmission and revocation of a Part 1A site licence, the procedure to be followed in relation to appeals under section 32M of the 1960 Act (inserted by section 59 of the Bill) and also to make provision in relation to the determination and consequences of an appeal under section 32M.

Reason for taking this power

29. During its examination of the Bill at Stage 1 the Delegated Powers and Law Reform Committee recommended that the power included in the Bill at introduction should be more tightly focussed. The Scottish Government responded to that recommendation by tabling amendments to this provision at Stage 2, which were agreed by the Infrastructure and Capital Investment Committee. Section 32N, as amended, now gives the Scottish Ministers the power to make regulations in relation to the procedure to be followed in relation to:

- the issue, renewal, transfer, transmission and revocation of a permanent site licence,
- appeals relating to a site licence under new section 32M.

30. The Scottish Ministers can also make provision for the determination and consequences of an appeal under section 32M. The amended section reflects the policy
intention that Regulations under this section should be able to cover only the procedure to be followed for, and determination and consequences of, appeals.

Reason for choice of procedure

31. It is considered appropriate that this power is subject to negative procedure because it will be used to set details of procedure and timescales. These will supplement the overarching framework for handling site licences set out in the Bill. The Bill was accordingly amended at Stage 2.

Section 63 (former insertion of section 32T into the Caravan Sites and Control of Development Act 1960) – Power to make regulations concerning maximum fines for having a site without a licence, and breaching licence conditions.

Power removed

32. At introduction, the Bill included a power which would have given the Scottish Ministers the power to amend, by order subject to the affirmative procedure, the maximum fines which can be imposed for operating a mobile home site without a licence, for breaching a licence condition, and for failure to comply with an improvement notice.

33. The Delegated Powers and Law Reform Committee expressed some concerns about that power, and these were endorsed by the Infrastructure and Capital Investment Committee in its stage 1 report on the Bill.

34. The Scottish Government considered the Committee’s suggestion that it should amend section 32T as inserted by section 63 to include a provision that specifies the circumstances in which Ministers would be able to vary the maximum fine levels. However it was not clear how such a provision could be made to work as the Committee intended. In view of that the Scottish Government sought to remove the power to vary maximum fine levels from section 63, by an amendment that was agreed by the Infrastructure and Capital Investment Committee at Stage 2.

PART 6 – PRIVATE HOUSING CONDITIONS

Section 72A(1) (inserts new subsections (3A) and (3B) into section 10A of the Title Conditions (Scotland) Act 2003 – Notice of potential liability for costs: notice of discharge.

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure
Provision

35. The power provides that a notice of discharge must be in a form prescribed by order made by the Scottish Ministers. The form of notice of potential liability for costs is laid down in schedule 1A to the Title Conditions (Scotland) Act 2003. It is considered that taking a power to prescribe the notice of discharge form is preferable to including it in the Bill itself as there may be a need for flexibility to respond to changing circumstances.

Reason for taking this power

36. The amendment provides a statutory discharge procedure for homeowners where the sums under a notice of potential liability for costs registered against a property have been paid.

37. This statutory discharge procedure replaces a non-statutory procedure currently operated by Registers of Scotland.

38. The amendment includes a power for Ministers to prescribe the form for the statutory discharge notice. It is common practice for forms to be prescribed through secondary legislation.

Reason for choice of procedure

39. It is considered appropriate that this power is subject to the negative procedure. The existing form for notice of potential liability for costs is at schedule 1A to the 2003 Act and may be amended by an order subject to the negative procedure. The negative procedure provides an appropriate balance between expedition and convenience on the one hand and the need for scrutiny of a provision of this nature on the other hand. It is common for secondary legislation prescribing forms to be subject to the negative procedure. While the 2003 Act has a form for notice of potential liability for costs, that approach may be considered in the context of the Bill which introduced the form and established a new procedure, as opposed to an amendment modifying the operation of an existing scheme.

Section 72A(2) (inserts new subsections (3A) and (3B) into section 13 of the Tenements (Scotland) Act 2004 – Notice of potential liability for costs: notice of discharge.

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

40. The power provides that a notice of discharge must be in a form prescribed by order made by the Scottish Ministers. The form of notice of potential liability for costs is laid down in schedule 2 to the Tenements (Scotland) Act 2004. It is considered that taking a power to prescribe the notice of discharge form is preferable to including it in the Bill itself as there may be a need for flexibility to respond to changing circumstances.

Reason for taking this power
41. The amendment provides a statutory discharge procedure for flat owners where the sums under a notice of potential liability for costs registered against a flat have been paid. Analogous provision in respect of burdened properties other than flats is made in the power considered at paragraphs 33 to 37 above.

42. This statutory discharge procedure replaces a non-statutory procedure currently operated by Registers of Scotland.

43. The amendment includes a power for Ministers to prescribe the form for the statutory discharge notice. It is common practice for forms to be prescribed through secondary legislation.

**Reason for choice of procedure**

44. It is considered appropriate that this power is subject to the negative procedure. The existing form for notice of potential liability for costs is at schedule 2 to the 2004 Act and may be amended by an order subject to the negative procedure. The negative procedure provides an appropriate balance between expedition and convenience on the one hand and the need for scrutiny of a provision of this nature on the other hand. It is common for secondary legislation prescribing forms to be subject to the negative procedure. While the 2004 Act has a form for notice of potential liability for costs, that approach may be considered in the context of the Bill which introduced the form and established a new procedure, as opposed to an amendment modifying the operation of an existing scheme.

**PART 7 – MISCELLANEOUS**

Section 77A First-tier Tribunal: disqualification of members from exercise of certain functions

Power conferred on: The Scottish Ministers  
Power exercisable by: Order made by statutory instrument  
Parliamentary procedure: Negative procedure  
Amended or new power: New

**Provision**

45. Section 77A provides that elected and certain other politicians are disqualified from hearing cases transferred to the First-tier Tribunal (FTT). Section 77A provides that the Scottish Ministers may by order amend the list of disqualified offices.

**Reason for taking this power**

46. The Bill confers responsibility for certain cases directly on the FTT which will be set up following the Tribunals (Scotland) Act 2014, which creates the broad framework for the operation of FTT. On introduction, the Tribunals (Scotland) Bill contained a provision which set out that the holders of certain offices would have been disqualified from also being a member of the FTT. However, these were removed during the passage of that Bill to allow
the policy for disqualifications to be a matter for the founding legislation for each individual tribunal jurisdiction.

47. In relation to cases transferred from the jurisdiction of the sheriff and letting agents redress cases, the Scottish Government is of the view that the disqualification of certain offices will safeguard the independence of those jurisdictions and will reduce the potential for conflicts of interest.

48. The list includes elected and certain other politicians but it may also be considered appropriate to, for example, include other office holders in continuing to safeguard the independence of the tribunal. Jurisdictions within the FTT for cases transferred from the sheriff and letting agents redress cases could also be placed into a chamber alongside other jurisdictions within the FTT. The Scottish Ministers consider that an order making power will allow the flexibility to consider both how disqualifications work in practice when more detail about the structure of the FTT is available and to take account of any future changes.

Reason for choice of procedure

49. The principle of enabling certain specified offices to be disqualified has been set out and considered as part of the Bill process. The Scottish Government considers negative procedure is appropriate to amend the listed offices. Negative procedure is used in other tribunal jurisdictions, such as the Mental Health Tribunal Scotland, the Additional Support Needs Tribunals for Scotland and the Scottish Charity Appeals Panel to vary the list of disqualified offices and so is considered to be appropriate for these jurisdictions.

Section 77B - Private rented housing panel: disqualification from membership

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative procedure
Amended or new power: New

Provision

50. Section 77B provides that elected and certain other politicians are disqualified from being appointed as, or remaining, a member of the Private Rented Housing Panel/Homeowner Housing Panel (PRHP/HOHP). Section 77B also provides that the Scottish Ministers may by order amend the list of disqualified offices.

Reason for taking this power

51. On introduction, the Tribunals (Scotland) Bill (now passed) contained a provision which set out that the holders of certain offices would have been disqualified from also being a member of the First-tier Tribunal (FTT). These disqualifications would have applied to members of the PRHP/HOHP when those jurisdictions are transferred into the FTT under provisions in the Tribunals (Scotland) Bill. However, they were removed during the passage of that Bill to allow the policy for disqualifications to be a matter for the founding legislation for each individual tribunal jurisdiction.
52. In relation to the PRHP/HOHP, the Scottish Government is of the view that the disqualification of certain offices will safeguard the independence of those jurisdictions and will reduce the potential for conflicts of interest.

53. The list includes elected and certain other politicians but it may also be considered appropriate to, for example, include other office holders in continuing to safeguard the independence of the tribunal. The PRHP/HOHP could also be placed in a chamber alongside other jurisdictions within the FTT. The Scottish Government considers that an order making power will allow the flexibility to consider both how disqualifications work in practice when more detail about the structure of the FTT is available and to take account of any potential future changes.

Reason for choice of procedure

54. The principle of enabling certain specified offices to be disqualified has been set out and considered as part of the Bill process. The Scottish Government considers negative procedure is appropriate to amend the listed offices. Negative procedure is used in other tribunal jurisdictions, such as the Mental Health Tribunal Scotland, the Additional Support Needs Tribunals for Scotland and the Scottish Charity Appeals Panel, to vary the list of disqualified offices and so is considered to be appropriate for the PRHP/HOHP tribunals.
Delegated Powers and Law Reform Committee

41st Report, 2014 (Session 4)

Housing (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 17 June 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee
41st Report, 2014 (Session 4)
Housing (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 17 June 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Housing (Scotland) Bill as amended at Stage 2 (“the Bill”)\(^1\). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. Very broadly, the Bill makes provision about abolition of the right to buy, the allocation of social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes. It also provides for the transfer of jurisdiction from the sheriff courts to the First-tier Tribunal for Scotland (to be established in the Tribunals (Scotland) Bill) in cases involving private rented sector housing disputes.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM\(^2\)).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 18\(^{th}\) report of 2014.

DELEGATED POWERS PROVISIONS

5. The Committee considered each of the new, removed or substantially amended delegated powers provisions in the Bill after Stage 2.

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\(^1\) Housing (Scotland) Bill [as amended at Stage 2 available] at: [http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/b41as4-stage2-amend.pdf)

\(^2\) Housing (Scotland) Bill Supplementary Delegated Powers Memorandum available at: [http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/Housing_SDPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Housing%20(Scotland)%20Bill/Housing_SDPM.pdf)
6. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new, removed or substantially amended delegated powers provisions listed below and that it is content with the Parliamentary procedure to which they are subject:

- 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 imposition of a minimum period before an applicant is eligible for the allocation of housing (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)

- Section 15(1) – Power to publish guidance on recovery of possession where the grounds for eviction include antisocial behaviour

- Section 22A – Power to issue guidance on provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (inserts provision in section 13 of the Housing (Scotland) Act 2006)

- Section 22B – Power to issue guidance on electrical safety standards (inserts provision in section 13 of the Housing (Scotland) Act 2006)

- Section 22C – Power to modify repairing standard etc. (inserts new section 20A in the Housing (Scotland) Act 2006) (new power)

- Section 29(2)(c) – Power to prescribe training requirements for registered letting agents (new power)

- 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 (amended power)

- Section 46A(2) – Power to make provision about information required for the purpose of monitoring compliance (new power)

- Section 51(3)(a) – Power to exclude specified bodies or schemes from the definition of letting agency work (addition of new element to existing power)

- Section 55 – Power to specify time limits for the determination of a site licence application (inserts section 32F(2A) in the Caravan Sites and Control of Development Act 1960) (new power)

- 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) (amended power)

- Section 63 - Power to vary maximum fine (formerly inserted section 32T in the Caravan Sites and Control of Development Act 1960) (removed power)

- Section 70 – Power to publish guidance on the operation of Part 1A of the Caravan Sites and Control of Development Act 1960 (inserts new section 32Z5A in the 1960 Act)

- Section 72A(1) – Power to prescribe form of notice of discharge of potential liability for costs (inserts new subsections (3A) and (3B) in section 10A of the Title Conditions (Scotland) Act 2003) (new power)

- Section 72A(2) – Power to prescribe form of notice of discharge of potential liability for costs (inserts new subsections (3A) and (3B) in section 13 of the Tenements (Scotland) Act 2004) (new power)

7. The Committee’s comments and, where appropriate, recommendations on the remaining new, removed or substantially altered delegated power in the Bill as amended are detailed below.

Section 77A(3) – Power to modify description of members of the First-tier Tribunal disqualified from the exercise of certain functions

Section 77B – Power to modify description of members of the Private Rented Housing Panel disqualified from membership (inserts new paragraph 1A(2) in Schedule 4 to the Rent (Scotland) Act 1984)

Powers conferred on: the Scottish Ministers
Powers exercisable by: order
Parliamentary procedure: negative procedure

8. Section 77A provides that elected and certain other politicians are disqualified from hearing housing cases transferred under the Bill to the First-Tier Tribunal (FTT). Section 77B amends the Rent (Scotland) Act 1984 to provide that the same elected and other politicians are also disqualified from being appointed as or remaining a member of the Private Rented Housing Panel (PRHP). Both provisions confer power on the Scottish Ministers by order to modify the list of disqualified offices.

9. The SDPM explains that on introduction, the Tribunals (Scotland) Bill (now passed) contained a provision which set out that the holders of certain offices would have been disqualified from also being a member of the First-tier Tribunal (FTT). These disqualifications would also have applied to members of the PRHP once its jurisdiction was transferred into the FTT under provisions in the Tribunals Bill. However, the provisions were removed during the passage of that Bill to allow the policy on disqualifications to be a matter for the founding legislation for each individual tribunal jurisdiction. Accordingly the Housing Bill, as amended at stage 2, now makes provision about disqualification.
10. The SDPM explains why flexibility to adjust that list of disqualified office holders is required. The jurisdiction of the FTT which deals with housing cases could be placed in a chamber with other jurisdictions of the FTT, set up under a different parent Act. Equally, the PRHP could also be placed in a chamber alongside other jurisdictions within the FTT. It may be desirable for members of the same chamber to be subject to the same disqualification rules. The Scottish Government considers that an order-making power will allow the flexibility to consider how disqualifications work in practice when more detail about the structure of the FTT is available and to take account of any potential future changes.

11. The Committee considers it acceptable for power to be delegated to the Scottish Ministers in those circumstances, to alter the disqualification provisions in line with other jurisdictions (if appropriate), once it is known what these will be.

12. The provisions confer power on the Scottish Ministers to modify primary legislation by adding to, varying or removing an office from the list of disqualified offices set out on the face of the Bill. There is a presumption that powers such as these which enable the amendment of primary legislation will be subject to the affirmative procedure.

13. In explaining the choice of negative procedure in this case, the SDPM mentions powers which exist in connection with other tribunal jurisdictions and which are subject to the negative procedure. The Committee notes, however, that these powers (which relate to the Mental Health Tribunal Scotland, the Additional Support Needs Tribunal for Scotland and the Scottish Charity Appeals Panel) do not enable the modification of primary legislation. Rather they are expressed as powers to specify additional descriptions of offices which would disqualify a person from membership of the relevant tribunal. They are not powers to modify or remove the description of offices set out in those Acts. As such they are on one view quite different to the powers conferred by sections 77A and 77B of the Bill, which do enable modification of the primary legislation. The Committee is concerned that the powers could be exercised, for example, to remove an office from the list of disqualified offices which has been approved by the Parliament on the face of the Bill.

14. The Committee is content in principle with the new powers in section 77A(3) of the Bill and paragraph 1A(2) of Schedule 4 to the Rent (Scotland) Act 1984 (inserted by section 77B of the Bill). However, the Committee recommends that the Scottish Ministers lodge amendments at stage 3 to make the powers subject to the affirmative procedure.
Housing (Scotland) Bill: The Committee considered the delegated powers provisions in this Bill after Stage 2.
Housing (Scotland) Bill: After Stage 2

11:36

The Convener: We come to agenda item 6. Members will have noted that the Scottish Government has provided a supplementary delegated powers memorandum and will have seen the briefing paper.

Stage 3 is due to take place on Wednesday 25 June. The deadline for lodging amendments is 4.30 this Thursday—19 June. The committee may therefore wish to agree on its conclusions today.

Newly inserted section 77A provides that elected and certain other politicians are disqualified from hearing housing cases that are transferred under the bill to the first-tier tribunal. Newly inserted section 77B amends the Rent (Scotland) Act 1984 to provide that the same elected and other politicians are also disqualified from being appointed as, or remaining, a member of the Private Rented Housing Panel. Both provisions confer power on the Scottish ministers, by order, to modify the list of disqualified offices. Does the committee agree to recommend that the Scottish Government lodge amendments at stage 3 to make the new powers in section 77A(3) and proposed new paragraph 1A(2) of schedule 4 to the 1984 act, which is inserted by section 77B of the bill, subject to the affirmative procedure?

Members indicated agreement.

Stewart Stevenson: I certainly agree with that recommendation, but I make the more general point—I have made it elsewhere—that it would be good practice, if and when the Government amends the list, for it to republish the entire list in the amending order rather than to publish just the amendments. That would avoid the subsequent need to restate the list after large amounts of amendments. It is useful to have that on the record.

The Convener: That is a familiar plea, with which I suspect we all agree.

Does the committee agree to report that it is otherwise content with the newly inserted powers in sections 77A and 77B of the bill?

Members indicated agreement.

The Convener: It is suggested that the committee may be content with all the other provisions in the bill that were amended at stage 2 to insert or substantially alter provisions that confer powers to make subordinate legislation and other delegated powers. Are we content to report accordingly?
DELEGATED POWERS AND LAW REFORM COMMITTEE

EXTRACT FROM THE MINUTES

22nd Meeting, 2014 (Session 4)

Tuesday 24 June 2014

Present:
Richard Baker
Mike MacKenzie
Stuart McMillan (Deputy Convener)
Stewart Stevenson

Nigel Don (Convener)
Margaret McCulloch
John Scott

Housing (Scotland) Bill: The Committee considered further the delegated powers provisions in this Bill after Stage 2.
10:35

The Convener: We come to agenda item 4. The committee agreed its report on the bill, as amended at stage 2, at last week’s meeting. Since then, a non-Government amendment—amendment 61—has been lodged that would confer a new power on the Scottish ministers to make subordinate legislation.

Members will recall that Scottish Government officials wrote to the clerk on 11 June to advise the committee that the amendment would be lodged and that the Government intends to support it. To allow the committee to scrutinise the amendment, the letter explained the provision’s purpose and the reasons why it is proposed that the power be taken. Members have seen that letter and a briefing paper from our legal advisers. Does the committee agree to note the Scottish Government’s letter?

Members indicated agreement.

The Convener: Is the committee content with amendment 61, in so far as it relates to the committee’s remit?

John Scott (Ayr) (Con): This is a further example of late lodging of amendments, which perhaps Mr Stevenson’s committee needs to look into. We have talked about the need for explanations for amendments; it turns out that we are content with amendment 61, but if we had not been, difficulties might have arisen. The convener might wish to investigate that with Mr Stevenson’s committee—I am afraid that I do not remember its name; is it the standards committee?

The Convener: Yes.

John Scott: I would like the matter to be pursued.

The Convener: With that, is the committee content with amendment 61, in so far as it relates to the committee’s remit?

Members indicated agreement.
Housing (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 86  Schedules 1 and 2
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Alex Johnstone

38 Leave out section 1

Section 2

Alex Johnstone

39 Leave out section 2

Section 3

John Lamont

1 In section 3, page 2, line 15, at end insert <, and

(d) persons who—

(i) appear to the social landlord to have a particular connection with a locality or community within its area, and

(ii) have unmet housing needs.

(1ZAA) It is for the social landlord to determine what constitutes a “locality” or “community” for the purposes of subsection (1ZA)(d).

(1ZAB) Reference in subsection (1ZA)(d) to a person having a particular connection with a locality or community is a reference to the person having a connection with that locality or community—

(a) because the person is, or in the past was, normally resident in it of the person’s own choice,

(b) because the person is employed in it,

(c) because of family associations, or

(d) because of any other special circumstances.>

Jackie Baillie

40 In section 3, page 2, line 17, leave out from first <the> to end of line 18 and insert <circumstances prescribed in guidance published by the Scottish Ministers apply.”>
John Lamont

2 In section 3, page 2, line 18, at end insert—

<( ) In section 20 of the 1987 Act, sub-paragraph (i) of subsection (2)(a) and the word “or” immediately following it are repealed.>

After section 4

Alex Johnstone

41 After section 4, insert—

<Factors which may be considered in allocation: age

In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing)—

(a) subsection (2)(a)(vi) is repealed, and
(b) for subsection (2B) substitute—

“(2B) Where a social landlord takes into account the age of an applicant aged 16 years or over in the allocation of housing falling within subsection (1), the social landlord must nevertheless treat the applicant as protected from unlawful discrimination on the grounds of the protected characteristic of age (within the meaning of Part 2 of the Equality Act 2010 (c.15)).”.

Mary Fee

42 After section 4, insert—

<Factors which must be considered in allocation: sustainable communities

In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), after subsection (2B) insert—

“(2C) In the allocation of housing falling within subsection (1), a social landlord may take into consideration the likely effects of that allocation on the sustainability of particular localities or communities.”.

Section 8

Margaret Burgess

4 In section 8, page 7, line 7, leave out from <(3)(b)> to end of line 8 and insert <(3)—

(i) the word “and” immediately preceding paragraph (b) is repealed,
(ii) in paragraph (b), after “order” insert “or, as the case may be, has behaved as described in subsection (2)(b)”, and
(iii) after paragraph (b), insert—

“(c) if the notice is served under subsection (2)(b), specify—

(i) the actions of the tenant or other person which the landlord has taken into account, and
(ii) the landlord’s reasons for serving the notice, and
(d) explain the right of appeal conferred by subsection (5).”, and>
Section 17

Jim Hume

3 In section 17, page 13, line 27, at end insert—

<( ) Tribunal Rules made under the Tribunals (Scotland) Act 2014 (asp 10) must make provision for the legal representation of tenants and occupiers in relation to actions arising from the tenancies and occupancy agreements listed in subsection (1).>

After section 21

Patrick Harvie

5 After section 21, insert—

<Landlord registration: Letting Code

Landlord registration: the Letting Code

The Scottish Ministers must, no later than the end of the period of 6 months beginning with the day that regulations under section 41(1) setting out the first code of practice come into force, prepare and issue a Letting Code under section 92A of the 2004 Act.>

Drew Smith

45 After section 21, insert—

<Landlord registration: houses used for holiday purposes

Landlord registration: houses used for holiday purposes

In section 83(6) (application for registration: use of a house as a dwelling) of the 2004 Act—

(a) after (b) insert “or”,

(b) paragraph (d) and the word “or” immediately preceding that are repealed.>

Section 22B

Margaret Burgess

6 In section 22B, page 17, leave out lines 24 to 29

After section 22B

Claudia Beamish

7 After section 22B, insert—

<Duty to make provision on energy efficiency standards

(1) After section 13 of the 2006 Act insert—

“13A Duty to make provision on energy efficiency standards

(1) The Scottish Ministers must by regulations extend or vary the repairing standard to include provision—

(a) setting minimum standards for energy efficiency,

(b) the application of those standards where a house forms part only of any premises,
(c) establishing a system of inspection to determine whether premises comply with those standards, and
(d) for penalties to be imposed on a landlord for failure to comply with those standards.

(2) A draft of regulations under subsection (1) must be laid before the Scottish Parliament by 1 April 2015.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as appear to them to be appropriate.”.

(2) In section 191(5) of the 2006 Act, after “section” insert “13A,”.

Before section 23

Malcolm Chisholm

Before section 23, insert—

<Enforcement of landlord contributions to maintenance

(1) In section 15 of the 2006 Act (application of duty in relation to flats etc.), after subsection (2) insert—

“(3) A landlord is to be treated as having failed to comply with the repairing standard if the landlord fails to pay the landlord’s share of the cost of repairs to any part of the premises which the landlord is responsible for maintaining in common with others.”.

(2) In section 28(1) of the 2006 Act (the repairing standard: offences)—

(a) the words from “comply” to “order” become paragraph (a),

(b) after paragraph (a) insert “, or

(b) fails to pay the landlord’s share of the cost of repairs to any part of the premises which the landlord is responsible for maintaining in common with others,“.

Section 23

Malcolm Chisholm

In section 23, page 18, line 31, at end insert—

<(  ) the owner of an adjoining property,

(  ) an organisation providing advice services relating to housing,>

After section 25

Drew Smith

After section 25, insert—

<Houses let for holiday purposes

Houses let for holiday purposes

(1) The Scottish Ministers may by regulations provide that a local authority may serve a closure notice prohibiting access to premises by any person other than—

(a) a person who habitually resides in the premises, or

Drew Smith

After section 25, insert—

<Houses let for holiday purposes

Houses let for holiday purposes

(1) The Scottish Ministers may by regulations provide that a local authority may serve a closure notice prohibiting access to premises by any person other than—

(a) a person who habitually resides in the premises, or
(b) the owner of the premises
in the circumstances set out in subsection (2).

(2) The circumstances are that the premises—
(a) is situated in the local authority’s area,
(b) has been privately let for holiday purposes—
   (i) on at least two occasions during which a person occupying or visiting the
       premises has engaged in antisocial behaviour, and
   (ii) the authority anticipates further use of those premises that will result in
        antisocial behaviour.

(3) Regulations under subsection (1) must include provision for—
(a) the form of a closure notice and the means by which it is to be served,
(b) the period for which a closure notice can apply,
(c) the means by which a closure notice is to be enforced,
(d) an appeals mechanism, and
(e) such other matters as the Scottish Ministers consider necessary or expedient.

(4) For the purposes of this section, “antisocial behaviour” has the meaning given by section
81(4) of the 2004 Act.>

James Kelly
49 After section 25, insert—

<Rent reviews and rent increases

Rent reviews and rent increases

(1) The Scottish Ministers must by regulations make provision that, in relation to a tenancy
of a dwelling-house other than a tenancy granted by a social landlord—
   (a) prohibits a landlord from reviewing the rent payable under such a tenancy before
       the expiry of the period of one year since the previous such review,
   (b) specifies the maximum amount by which the total of the rent payable under such a
       tenancy may be increased at each review, and
   (c) makes such further provision in connection with the matters described in
       paragraphs (a) and (b) as the Scottish Ministers consider necessary or expedient
       for the purposes of those matters.

(2) The Scottish Ministers must lay before the Scottish Parliament a draft Scottish statutory
instrument containing regulations under subsection (1) by 1 April 2015.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult
such persons as appear to them to be appropriate.

(4) Regulations under subsection (1) may modify, or disapply any provision of, any
enactment (including this Act).>
After section 25, insert—

Security of tenure

(1) The Scottish Ministers must by regulations make provision that, in relation to a tenancy of a dwelling-house other than a tenancy granted by a social landlord—

(a) establishes that the period of such a tenancy will be at least 3 years,

(b) permits the tenant to terminate the tenancy on giving the landlord notice of one month,

(c) permits the landlord to terminate the tenancy on giving the tenant notice of two months if—

(i) the tenant has such arrears of rent as may be prescribed,

(ii) the tenant has acted in such antisocial manner as may be prescribed,

(iii) the tenant otherwise breaches the terms of the tenancy agreement,

(iv) the landlord wishes to sell the dwelling-house,

(v) the dwelling-house is required as the principal residence of the landlord or a member of the landlord’s family, or

(vi) the landlord intends to refurbish or change the use of the dwelling-house, and

(d) makes such further provision in connection with the matters described in paragraphs (a) to (c) as the Scottish Ministers consider necessary or expedient for the purposes of those matters.

(2) The Scottish Ministers must lay before the Scottish Parliament a draft Scottish statutory instrument containing regulations under subsection (1) by 1 April 2015.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as appear to them to be appropriate.

(4) Regulations under subsection (1) may modify, or disapply any provision of, any enactment (including this Act).

Private rented housing: Enhanced Enforcement Areas

(1) The Scottish Ministers must by regulations provide a scheme whereby a local authority may apply to the Scottish Ministers for additional discretionary powers to enable it to target enforcement action at an area characterised by poor conditions in houses subject to tenancies and occupancy agreements of the type mentioned in section 17(1) (“private rented housing”).

(2) The scheme under subsection (1) must provide—

(a) that a local authority may apply to the Scottish Ministers for an area to be designated as an Enhanced Enforcement Area where it considers that the area is characterised by—
(i) an overprovision or a concentration of private rented housing that appears to the local authority to be—

(A) of a poor environmental standard,
(B) overcrowded, and

(ii) a prevalence of antisocial behaviour, as defined by section 81(4) of the 2004 Act,

(b) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that the local authority will acquire such additional discretionary powers as the Scottish Ministers consider necessary or expedient, to be exercised for prescribed purposes, including in relation to—

(i) the checks it may carry out before entering a relevant person on the register of landlords that it maintains under Part 8 of the 2004 Act,
(ii) authority to inspect dwellings let by a landlord who is entered on that register,

(c) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that—

(i) the local authority must take steps to advertise the fact that the designation has been granted,
(ii) the designation will apply for a period of five years commencing from the date on which the Scottish Ministers notify a local authority of its decision,
(iii) the local authority may make a further application for the area to be designated as an Enhanced Enforcement Area before the expiry of its first designation.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) local authorities,
(b) persons or bodies who appear to them to represent the interests of—

(i) landlords,
(ii) tenants,
(c) such other persons or bodies as they consider appropriate.

(4) The Scottish Ministers must lay before the Scottish Parliament a draft Scottish statutory instrument containing regulations under subsection (1) by 1 April 2015.

(5) Regulations under subsection (1) may modify, or disapply any provision of, any enactment (including this Act) for the purposes of this section.

Section 30

Margaret Burgess

52 In section 30, page 25, line 29, at end insert—

<( ) Material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 (c.53) does not fall within subsection (2).>
Section 31A

Margaret Burgess

53 In section 31A, page 26, leave out lines 13 to 17 and insert <the information which would be included in a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)) in relation to that person.>

Section 34

Mary Fee

54 In section 34, page 27, line 14, leave out <3 years> and insert <1 year>

Mary Fee

55 In section 34, page 27, line 15, leave out <3 years> and insert <1 year>

Section 35

Margaret Burgess

8 In section 35, page 27, line 20, after <agent> insert <is not, or>

Margaret Burgess

9 In section 35, page 27, line 22, after <27> insert <or in accordance with the duty in section 33, is not, or>

After section 35

Margaret Burgess

10 After section 35, insert—

<Removal from register on application>

(1) A registered letting agent may apply to the Scottish Ministers to be removed from the register.

(2) The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

(3) The Scottish Ministers must remove a registered letting agent from the register if, having considered an application under this section, they are satisfied that—

(a) the registered letting agent is no longer carrying out letting agency work, and

(b) it is otherwise appropriate to remove that agent from the register.

(4) The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the agent who made the application of—

(a) their decision,

(b) in the case of a decision to remove the agent from the register, the date of removal from the register, and

(c) in the case of a decision not to remove the agent from the register, their reasons for that decision.>
After section 35, insert—

<Cancellation of registration on request>

(1) Where subsection (2) applies, the Scottish Ministers must, on receipt of an application by a registered letting agent, remove the registered letting agent from the register.

(2) This subsection applies where the Scottish Ministers are satisfied that—

(a) the registered letting agent has made adequate arrangements with respect to the agent’s letting agency work, and

(b) it is otherwise appropriate to remove the registered letting agent from the register.>

Section 38

In section 38, page 28, line 37, at end insert—

<(d) remove a person from the register under section (Removal from register on application).>

In section 38, page 29, line 4, after <34> insert <or (Removal from register on application)>

In section 38, page 29, line 17, after <(1)(b)> insert <or (d)>

In section 38, page 29, line 18, leave out <under section 34>

Section 41

In section 41, page 30, line 14, at end insert—

<( ) The code of practice set out in regulations under subsection (1) must, in particular, include provision about the level of advance rent that a letting agent may charge a tenant.>

In section 41, page 30, line 14, at end insert—

<( ) The code of practice set out in regulations under subsection (1) must, in particular, include provision about the level of deposit that a letting agent may charge a tenant.>

In section 41, page 30, line 14, at end insert—

<( ) The code of practice set out in regulations under subsection (1) must, in particular, include provision requiring a letting agent to provide a tenant with standard tenancy documents as defined by section 30B of the Housing (Scotland) Act 1988 (c.43).>
Patrick Harvie

20 In section 41, page 30, line 14, at end insert—

<( ) The code of practice set out in regulations under subsection (1) must, in particular, include provision prohibiting a letting agent from discriminating against a prospective tenant on socio-economic grounds.>

Patrick Harvie

21 In section 41, page 30, line 14, at end insert—

<( ) The code of practice set out in regulations under subsection (1) must, in particular, include provision prohibiting a letting agent from discriminating against a prospective tenant on the grounds that the prospective tenant (or an individual whom the prospective tenant intends will reside or lodge with the prospective tenant) is in receipt of a payment under the Social Security Contributions and Benefits Act 1992 (c.4), the Jobseekers Act 1995 (c.18) or the Welfare Reform Act 2012 (c.5).>

Patrick Harvie

22 In section 41, page 30, line 14, at end insert—

<( ) The code of practice set out in regulations under subsection (1) must, in particular, include provision prohibiting a letting agent from discriminating against a prospective tenant on the grounds of the immigration status of the prospective tenant (or an individual whom the prospective tenant intends will reside or lodge with the prospective tenant).>

Mary Fee

56 In section 41, page 30, line 14, at end insert—

<( ) A person who carries out letting agency work must comply with the Letting Agent Code of Practice.

( ) Regulations under subsection (1) must, in particular, include provision—

(a) requiring that all deposits received by a letting agent must be paid to a tenancy deposit scheme approved under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (SSI 2011/176),

(b) prohibiting a letting agent from charging a prospective tenant, tenant or former tenant any fee, charge or premium before, during or after the end of a tenancy, apart from rent and a tenancy deposit within the meaning of section 120 of the 2006 Act,

(c) setting out any measures that the Scottish Minister consider necessary to ensure that letting agents comply with duties under the Equality Act 2010 (c.15),

(d) prohibiting a letting agent from discriminating against a prospective tenant on the basis that the prospective tenant (or a person whom the prospective tenant intends will reside or lodge with the prospective tenant)—

(i) is in receipt of a payment under the Social Security Contributions and Benefits Act 1992 (c.4), the Jobseekers Act 1995 (c.18) or the Welfare Reform Act 2012 (c.5), or

(ii) is responsible for the care of a child.>
Section 43

Patrick Harvie
23 In section 43, page 30, line 30, after <tenant,> insert <a third party acting on behalf of a group of tenants,>

Patrick Harvie
24 In section 43, page 30, line 36, at end insert—

<(  ) in relation to an application by a third party on behalf of a group of tenants, each letting agent appointed by the landlords of those tenants to carry out letting agency work in relation to the houses occupied (or to be occupied) by the tenants,>

Patrick Harvie
25 In section 43, page 31, line 14, at end insert—

<(  ) must provide that the letting agent must pay to the tenant compensation amounting to not less than the amount of rent that the tenant has paid during the period beginning with the day on which the landlord has been determined to have first failed to comply with the code and ending with the day on which the landlord complies with the enforcement order,>

Patrick Harvie
26 In section 43, page 31, line 15, after <such> insert <further>

Section 51

Alex Johnstone
27 In section 51, page 36, line 25, leave out from <or> to end of line 28

Margaret Burgess
28 In section 51, page 36, line 26, leave out from <repairing> to <house> in line 27 and insert <managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house)>

Section 61

Margaret Burgess
29 In section 61, page 46, line 37, at end insert—

<(  ) contravened a direction made under section 37 of the Gas Act 1986 (c.44) (maximum prices for reselling gas),

(  ) contravened a direction made under section 44 of the Electricity Act 1989 (c.29) (maximum prices for reselling electricity),

(  ) contravened a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002 (asp 3) (charges schemes) as it applied to the person by virtue of section 30(1) of that Act (maximum charges for services provided with help of Scottish Water),>
Margaret Burgess

58 In section 61, page 47, line 2, at end insert—

<(  ) Material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 (c.53) does not fall within subsection (2).>
Section 72

Sarah Boyack

59 In section 72, page 59, line 23, leave out <notify> and insert <give notice to>

Sarah Boyack

60 In section 72, page 59, line 31, at end insert—

<4B Guidance on operation of sections 4 and 4A

(1) The Scottish Ministers must publish guidance about the operation of sections 4 and 4A.

(2) Before publishing guidance under this section, the Scottish Ministers must consult such persons as they consider appropriate.

(3) Local authorities must have regard to any guidance published under this section.

(4) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.”>

Sarah Boyack

61 In section 72, page 60, line 10, at end insert—

<(3) After section 174 of the 2006 Act, insert—

“174A Repayment charges: registered social landlords

(1) The Scottish Ministers may by regulations make provision allowing a registered social landlord to make in favour of itself a charge to recover a sum which—

(a) the registered social landlord is entitled to recover from an owner of a flat in a tenement, and

(b) represents the owner’s share of scheme costs as determined in accordance with section 4A(3) of the 2004 Act.

(2) Regulations under subsection (1) may, in particular—

(a) apply (with or without modifications), or make provision similar to, any provision of or made under this Part,

(b) prescribe conditions which must apply before a charge can be made in relation to a sum mentioned in subsection (1), including conditions relating to—

(i) the registered social landlord which may make a charge,

(ii) the circumstances leading to the sum becoming recoverable by the registered social landlord,

(c) modify the Tenement Management Scheme or its operation,

(d) make provision about rights of appeal which apply in relation to—

(i) the decision to impose a charge,

(ii) the terms of the charge.
(3) Before making regulations under subsection (1), the Scottish Ministers must consult—
(a) such bodies representing local authorities,
(b) such bodies representing registered social landlords,
(c) such other persons,
as they think fit.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) In this section—
“owner of a flat in a tenement” is to be construed in accordance with the definition of “owner” in section 28 of the 2004 Act,
“registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),
“Tenement Management Scheme” has the same meaning as in the 2004 Act, and
“the 2004 Act” means the Tenements (Scotland) Act 2004 (asp 11).”.

(4) In section 191(5) of the 2006 Act (affirmative procedure for regulations), for “or 121(1)” substitute “, 121(1) or 174A(1)”.> After section 74

Sarah Boyack

62 After section 74, insert—

<Maintenance orders: report on exercise of powers under section 42

After section 42 of the 2006 Act (maintenance orders) insert—

“42A Report on exercise of powers under section 42

(1) As soon as reasonably practicable after the end of the relevant period, the Scottish Ministers must prepare a report setting out how, in relation to the relevant period, local authorities have exercised the power in section 42.

(2) A report under this section must, in particular, include—
(a) the number of maintenance orders issued by each local authority,
(b) the number of such orders that relate to premises that consist of two or more houses,
(c) the number of maintenance plans approved by each local authority under section 46(1)(a),
(d) the number of such plans that relate to premises that consist of two or more houses,
(e) the number of maintenance plans rejected by a local authority where the authority substitutes a plan of its own devising under section 46(1)(b)(ii),
(f) the number of maintenance plans devised by each local authority under section 46(1)(c),
(g) the number of maintenance plans relating to three or more houses not approved by each local authority by virtue of section 46(3),

(h) the number of maintenance plans varied by each local authority under section 47(3)—

(i) on the application of an owner,

(ii) of its own accord,

in the relevant period.

(3) A report under this section must also include such other matters as the Scottish Ministers consider necessary or expedient for the purposes of monitoring the use and operation of maintenance orders.

(4) A report prepared under this section must be laid before the Scottish Parliament.

(5) In this section, “relevant period” means—

(a) in relation to the first report under this section, the period beginning with the day of commencement of section 42 of this Act and ending on the day before the day of commencement of section (Maintenance orders: report on exercise of powers under section 42) of the Housing (Scotland) Act 2014, and

(b) in relation to further reports under this section, each subsequent period of 3 years beginning with the day of commencement of section (Maintenance orders: report on exercise of powers under section 42) of the Housing (Scotland) Act 2014.>

After section 76

Margaret Burgess

32 After section 76, insert—

<Repayment charges: recovery of repayable amount

(1) In section 172 of the 2006 Act (repayment charges)—

(a) in subsection (1)—

(i) the word “and” immediately preceding paragraph (b) is repealed, and

(ii) after paragraph (b), insert—

“(c) providing that the repayable amount is payable in the number of equal annual instalments and on the date in each year determined under subsection (3)(a),

(d) providing that in default of such payment each instalment, together with any amount recoverable in respect of that instalment under subsection (6A), is to be separately recoverable as a debt, and

(e) providing that if immediately after the final instalment falls due any balance of the repayable amount remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.”,

(b) for subsection (3), substitute—

“(3) The local authority must—
(a) determine—

(i) the number of equal annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid, and

(ii) the date in each year on which the instalment becomes due, and

(b) notify the owner of its determination under paragraph (a).” , and

(c) after subsection (4), insert—

“(4A) The owner of a property who is liable for the repayable amount does not, by virtue only of ceasing to be such an owner, cease to be liable for the repayable amount.”.

(2) After section 172 of the 2006 Act, insert—

“172A Repayment charge: appeals to the sheriff

(1) A person aggrieved by a determination under section 172(3)(a)(i) may appeal to the sheriff.

(2) On an appeal under this section the sheriff may make such order relating to the number of annual instalments as the sheriff thinks fit.

(3) The decision of the sheriff on appeal under this section is final.”.

Section 76A

Margaret Burgess

33 In section 76A, page 62, line 21, at end insert—

<( ) in paragraph 2, the words “, and shall commence from the date of the order and be payable for a term of 30 years to the local authority” are repealed,

( ) after paragraph 2, insert—

“2A The local authority must—

(a) determine—

(i) the term of the charging order, being no fewer than 5 years and no more than 30 years, and

(ii) the date in each year on which the annuity is payable, and

(b) notify the owner of its determination under paragraph (a).

2B Section 187 of the Housing (Scotland) Act 2006 (asp 1) applies to a notification under paragraph 2A(b) as if the notification were a formal communication referred to in section 187(1) of that Act.” , and

( ) after paragraph 3, insert—

“3A A charging order must provide—

(a) that the annuity is payable for the term and on the date in each year determined under paragraph 2A(a),

(b) that in default of payment of an annuity, the annuity is to be separately recoverable as a debt, and

(c) that if immediately after the final annuity falls due any balance of the expenses charged by the order remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.
3B(1) A person aggrieved by a determination under paragraph 2A(a)(i), may appeal to the sheriff.

(2) On an appeal under this paragraph the sheriff may make such order relating to the term of the charging order as the sheriff thinks fit.

(3) The decision of the sheriff on appeal under this paragraph is final.

Margaret Burgess
34 In section 76A, page 62, leave out lines 23 to 25 and insert—

( ) after paragraph 5, insert—

“5A The owner of the premises on which an annuity has been charged by a charging order does not, by virtue only of ceasing to be such an owner, cease to be liable for each annuity charged.”, and

( ) paragraph 6 is repealed.

Section 77B

Margaret Burgess
35 In section 77B, page 64, line 16, leave out <negative> and insert <affirmative>

Section 82

Drew Smith
67 In section 82, page 67, line 20, at end insert—

( ) under section (Houses let for holiday purposes)(1),>

James Kelly
68 In section 82, page 67, line 20, at end insert—

( ) under section (Rent reviews and rent increases)(1),>

James Kelly
69 In section 82, page 67, line 20, at end insert—

( ) under section (Security of tenure)(1),>

Drew Smith
70 In section 82, page 67, line 20, at end insert—

( ) under section (Private rented housing: Enhanced Enforcement Areas)(1),>

Margaret Burgess
36 In section 82, page 67, line 24, at end insert—

( ) under section 77A(3),>
Patrick Harvie

37 In section 82, page 67, line 28, at end insert—

<( ) The Scottish Ministers must, before the end of the period of 18 months beginning with the day of Royal Assent, lay before the Scottish Parliament a draft Scottish statutory instrument containing regulations under section 41(1) setting out the first code of practice.>}

Section 85

Alex Johnstone

71 In section 85, page 68, line 10, leave out subsection (4)

Mary Fee

72 In section 85, page 68, line 11, leave out <2 years> and insert <1 year>

Long Title

Alex Johnstone

73 In the long title, page 1, line 1, leave out <the abolition of the right to buy,>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Abolition of right to buy**
38, 39, 71, 72, 73

*Notes on amendments in this group*
Amendment 71 pre-empts amendment 72

**Group 2: Allocation of social housing and creation of short Scottish secure tenancies**
1, 40, 2, 41, 42, 4

**Group 3: Right to representation at the First-tier Tribunal**
3

Debate to end no later than 45 minutes after proceedings begin

**Group 4: Landlord registration: Letting Code**
5

**Group 5: Houses let for holiday purposes**
45, 48, 67
Group 6: Private rented housing: the repairing standard
6, 7, 46, 47

Debate to end no later than 1 hour 20 minutes after proceedings begin

Group 7: Private rented housing: rent reviews, rent increases and security of tenure
49, 50, 68, 69

Group 8: Private rented housing: Enhanced Enforcement Areas
51, 70

Group 9: Letting agent registration: fit and proper test
52, 53, 8, 9

Debate to end no later than 1 hour 55 minutes after proceedings begin

Group 10: Letting agent registration: duration of registration
54, 55

Group 11: Letting agent registration: removal from register
10, 11, 12, 14, 15, 16

Group 12: Letting Agent Code of Practice
17, 18, 19, 20, 21, 22, 56, 37

Debate to end no later than 2 hours 30 minutes after proceedings begin

Group 13: Enforcement of letting agent code of practice
23, 24, 25, 26

Group 14: Meaning of letting agency work
27, 28

Notes on amendments in this group
Amendment 27 pre-empts amendment 28

Group 15: Mobile home sites with permanent residents
29, 58, 30, 31

Debate to end no later than 3 hours after proceedings begin

Group 16: Tenement management schemes
59, 60, 61, 32, 33, 34

Group 17: Maintenance orders: report on exercise of powers
62
Group 18: First-tier Tribunal and private rented housing panel membership: parliamentary procedure
35, 36

Debate to end no later than 3 hours 35 minutes after proceedings begin
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 4, No. 19 Session 4

Meeting of the Parliament

Wednesday 25 June 2014

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-10468—That the Parliament agrees that, during stage 3 of the Housing (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

- Groups 1 to 3: 45 minutes
- Groups 4 to 6: 1 hour 20 minutes
- Groups 7 to 9: 1 hour 55 minutes
- Groups 10 to 12: 2 hours 30 minutes
- Groups 13 to 15: 3 hours
- Groups 16 to 18: 3 hours 35 minutes

The motion was agreed to.

Housing (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 4, 51, 52, 53, 8, 9, 12, 14, 15, 16, 28, 29, 58, 30, 31, 59, 32, 33, 34, 35, 36 and 37.

The following amendments were agreed to (by division)—
- 6 (For 82, Against 33, Abstentions 0)
- 10 (For 110, Against 6, Abstentions 0)
- 61 (For 100, Against 13, Abstentions 0)
- 70 (For 97, Against 12, Abstentions 0).

The following amendments were disagreed to (by division)—
- 38 (For 12, Against 103, Abstentions 0)
- 1 (For 13, Against 103, Abstentions 0)
- 2 (For 14, Against 103, Abstentions 0)
- 41 (For 14, Against 70, Abstentions 33)
- 42 (For 47, Against 70, Abstentions 0)
- 5 (For 41, Against 77, Abstentions 0)
- 45 (For 41, Against 76, Abstentions 0)
- 7 (For 41, Against 74, Abstentions 0)
- 46 (For 41, Against 75, Abstentions 0)
47 (For 41, Against 75, Abstentions 0)
48 (For 39, Against 75, Abstentions 0)
49 (For 37, Against 80, Abstentions 0)
50 (For 42, Against 75, Abstentions 0)
54 (For 39, Against 73, Abstentions 0)
55 (For 37, Against 74, Abstentions 0)
17 (For 43, Against 74, Abstentions 0)
18 (For 43, Against 74, Abstentions 0)
19 (For 43, Against 74, Abstentions 0)
20 (For 43, Against 72, Abstentions 0)
21 (For 42, Against 73, Abstentions 0)
22 (For 43, Against 73, Abstentions 0)
56 (For 42, Against 75, Abstentions 0)
23 (For 42, Against 73, Abstentions 0)
25 (For 9, Against 106, Abstentions 0)
27 (For 46, Against 69, Abstentions 0)
60 (For 51, Against 60, Abstentions 0)
62 (For 36, Against 71, Abstentions 0)
72 (For 37, Against 71, Abstentions 0).

The following amendments were not moved: 39, 40, 11, 24, 26, 67, 68, 69, 71 and 73.

Amendment 3 was moved and, with the agreement of the Parliament, withdrawn.

The Deputy Presiding Officer extended the time-limits under Rule 9.8.4A(a) and (c).

**Housing (Scotland) Bill - Stage 3**: The Minister for Housing and Welfare (Margaret Burgess) moved S4M-10438—That the Parliament agrees that the Housing (Scotland) Bill be passed.

After debate, the motion was agreed to (DT) by division: For 93, Against 12, Abstentions 0).
Scottish Parliament

Wednesday 25 June 2014

[The Deputy Presiding Officer opened the meeting at 14:00]

Business Motion

The Deputy Presiding Officer (John Scott): Good afternoon. The first item of business this afternoon is consideration of business motion S4M-010468, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Housing (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Housing (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

<table>
<thead>
<tr>
<th>Groups</th>
<th>Time Limit</th>
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<tbody>
<tr>
<td>1 to 3</td>
<td>45 minutes</td>
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<tr>
<td>4 to 6</td>
<td>1 hour 20 minutes</td>
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<td>7 to 9</td>
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<td>10 to 12</td>
<td>2 hours 30 minutes</td>
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<td>13 to 15</td>
<td>3 hours</td>
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<tr>
<td>16 to 18</td>
<td>3 hours 35 minutes</td>
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</tbody>
</table>

—[Joe FitzPatrick]

Motion agreed to.
Housing (Scotland) Bill: Stage 3

14:41

The Deputy Presiding Officer (John Scott):
The next item of business is stage 3 of the Housing (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after each debate. Members who wish to speak in a debate on a group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Section 1—Abolition of the right to buy

The Deputy Presiding Officer: Amendment 38, in the name of Alex Johnstone, is grouped with amendments 39, 71, 72 and 73. I draw members’ attention to the pre-emption information on the groupings.

Alex Johnstone (North East Scotland) (Con): The purpose of amendment 38 is to remove section 1 of the bill. The effect would be to remove from the bill the attempt to end the right to buy.

The right to buy council houses has been the greatest driver for social change in Scotland in 50 years. It has created strong mixed-tenure communities that to this day remain examples of how we can do that within many of our towns and cities across Scotland. It has driven the aspiration to home ownership and has been a positive thing in many areas.

The pressure to end the right to buy has existed in Scotland for some time and has been manifest within Parliament. However, the notion that we should somehow protect social housing has not been consistent through the discussions that have taken place. Indeed, the notion of social housing was, in effect, created by the Housing (Scotland) Act 2001. As a consequence, it is only since then that we have been able to divide social housing from rented housing or other forms of tenure.

I deny that the so-called loss of social housing is really happening. Of the 1,400 houses that were sold during the last full year for which information is available, only 347 were sold under the modernised right to buy. However, 1,173 houses were sold under the pre-2001 preserved right to buy to people who had been tenants in their properties for more than 12 years—many for significantly longer than that. I maintain that those who exercised their right to buy were long-term tenants who, had they not decided to buy, would have remained long-term tenants. Houses will not be freed up by removing their right to buy. In fact, the suggestion is that, in the first year, as few as 30 houses might be freed for new tenancies as a result of the proposed change.

Let us contrast that with the effect of the bill and its move to end the right to buy. Provisions in the bill will give a two-year period in which people who are entitled to exercise their right to buy will be able to make up their minds whether to exercise that right. I presume that, in an independent Scotland, rights will not be removed instantaneously from our people without compensation, so I presume that the opportunity to exercise an existing right will be maintained.

The effect of the attempt to remove the right to buy will, I believe, be a feeding frenzy in which the Government might lose rather more houses than it expects to save. I believe that it is a mistake to move forward with the abolition of the right to buy at this time, and I believe that doing so will prove to be counterproductive, by the Government’s own criteria.

I move amendment 38.

Mary Fee (West Scotland) (Lab): Amendment 72 seeks to reduce from two years to one year the period before abolition of the right to buy. That follows the recommendation of the Infrastructure and Capital Investment Committee and the majority of the evidence that the committee received, and it would enable removal of the right to buy as quickly as possible. Although I am sympathetic to the minister’s wish to allow as much time as possible for people to take up the right to buy before it is abolished, the issue has been in the spotlight for a considerable time, and those who wish to exercise the right have had a decent amount of time in which to do so. One year on from the passing of the bill is, therefore, a fair and equitable period.

I do not support amendments 38, 39, 71 and 73, in the name of Alex Johnstone, which seek to retain the right to buy.

Patrick Harvie (Glasgow) (Green): I once again record my support for the abolition of the right to buy and state that I oppose Alex Johnstone’s attempt to remove section 1.

Alex Johnstone makes the case that abolition of the right to buy will not, like a magic bullet, transform things overnight. Of course it will not; I do not think that anyone is suggesting that it will. I think that everybody who is proposing abolition of the right to buy recognises that the benefit of abolition will be achieved in the long-term and will
be maximised if the measure is accompanied by investment in new-build social housing. I support abolition on those grounds.

Alex Johnstone also tells us that the right to buy “has driven the aspiration to home ownership”.

I would go further; I would say that it has contributed to stigmatisation of other forms of tenure in our society. If we want mixed communities, we should be aspiring to a situation in which all forms of tenure—owner-occupation, the social rented sector and the private rented sector—are seen as respected options that can provide people with places in which they can choose to live with dignity, rather than to a situation in which the idea is that owner-occupation is the tenure of choice to which everybody ought to aspire.

I will oppose Alex Johnstone’s amendments and will support amendment 72, which will reduce to one year the period prior to abolition.

The Minister for Housing and Welfare (Margaret Burgess): The Scottish Government’s policy is to end the right to buy. It is a policy that the majority of stakeholders support; I am grateful for that support.

More than 450,000 homes have been sold under the right to buy, which has been a major cause of housing shortages in many areas. Lots of people choose to rent in the social sector, but for others it is their only option. We want to do everything possible to ensure that social rented housing is protected for those people and for future generations. Ending the right to buy will preserve valuable social housing, increase choice for tenants and people who are on waiting lists and help to ensure social housing’s role in mixed-tenure communities in which people want to live.

Again and again, stakeholders have told us that they support the policy. Tenants have told us of the damaging impact that the right to buy has had on the social housing sector, and social landlords have told us how ending the right to buy will help them with their planning and stock management. Yet, in the face of all the evidence saying that the right to buy has had its day and has no place in the Scotland that we want to build, Mr Johnstone continues to call for that outdated and unpopular policy to continue. That can surely only be because of his party’s historic attachment to the right to buy. However, surely even he must accept that it flies in the face of what is best for landlords, tenants and the community as a whole.

Our ending the right to buy does not mean that the Scottish Government does not support home ownership: far from it. However, we do not have to keep losing housing stock in order to help people to get on the housing ladder. We are committed to helping people into home ownership in other ways, and we support a range of schemes to achieve that. I therefore invite Mr Johnstone to seek to withdraw amendment 38 and not to move amendments 71 and 73.

Amendment 39 seeks to remove section 2 from the bill. That section has nothing at all to do with ending the right to buy; it simply clarifies two provisions in the Housing (Scotland) Act 2010. The section protects the right to buy of existing tenants who move to new-supply houses in circumstances that are outwith their control. It also makes it clear that people who lived in social housing before 2 March 2011 and who later became tenants should be treated as new tenants. That was always the 2010 act’s intention, but the provision could have been open to misinterpretation. The bill is simply the first legislative opportunity that we have had to tidy those matters.

Amendment 72, which Mary Fee lodged, would reduce from two years to one year the notice period before the right to buy ends. I share her wish to stop as soon as is reasonably possible the sale of socially rented homes. Most stakeholders told us that they wanted that, too. That is why I lodged a stage 2 amendment to reduce the notice period to two years from the three years that we originally proposed.

I know that Mary Fee disagrees with me, but I do not consider that a period of one year would be fair to tenants. If the notice period were to be reduced to one year, the risk would be that tenants could be rushed into buying something that they cannot afford and that is not right for them. It is important that tenants have time to read the guidance that the Scottish Government will produce, to consider their options and to obtain reputable financial advice.

I will raise one more thing about the notice period. It is important to take into account European convention on human rights considerations. Tenants must be given a fair and reasonable opportunity to exercise their right to buy before it ends. A minimum notice period of two years is fair and reasonable. For those reasons, I cannot support amendment 72.

Alex Johnstone: I will press amendment 38. The right to buy has in recent years been a significant and positive influence on the development of communities. The Government’s attempt to remove that right from Scotland has been driven by political rather than practical aspirations. It is one of those things on which time will tell who is right and who is wrong. I will determinedly dig in my heels today to defend a policy that I believe has contributed positively to large areas of Scotland.
At stage 2, I did not oppose the reduction in the notice period from three to two years, because two years and three years are largely similar. However, the further reduction to a single year that Mary Fee’s amendment 72 proposes would significantly limit individuals’ opportunity to take up an existing right. Consequently, I will oppose that amendment.

The Deputy Presiding Officer: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division at stage 3, I suspend the meeting for five minutes.

14:53

Meeting suspended.

14:58

On resuming—

The Deputy Presiding Officer (Elaine Smith): We move to the division on amendment 38. The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Urwahart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 12, Against 103, Abstentions 0.

Amendment 38 disagreed to.

Section 2—Amendment of right to buy provisions

Amendment 39 not moved.

Section 3—Reasonable preference in allocation of social housing

15:00

The Deputy Presiding Officer: Group 2 is on allocation of social housing and creation of short Scottish secure tenancies. Amendment 1, in the name of John Lamont, is grouped with amendments 40, 2, 41, 42 and 4.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): Amendments 1 and 2 seek to introduce a local connection criterion for social landlords to consider when allocating houses. One of the biggest concerns for my constituents is the frustration that local people cannot always secure local housing in their own communities. People are often forced to apply for and take housing in some of the larger settlements in the Borders, which might be several miles away from their family and community and some distance away from their place of work. Such an approach is not consistent with the aim of encouraging cohesive communities.

The purpose of amendment 1 is to enable social landlords to give extra priority to applicants who have a local connection. I initially proposed my amendments at stage 2, when the minister kindly said that although she was sympathetic to my aims, she was concerned that my amendments did not require the applicant to have an unmet housing need. I took that on board and I have lodged redesigned amendments that would ensure that housing need remains a priority for social landlords.

Amendment 1 would give social landlords discretion to define “particular connection” to meet their needs. In rural areas such as the Borders, a local area might be a particular town or village, whereas in a city it might be a particular street, or it might be even more specific than that.

Amendment 2 clarifies that and confirms the intentions behind amendment 1.

All political parties have paid lip service to the notion of supporting local housing allocations policy. Indeed, the Labour Party said in its 2011 manifesto that it wanted to reform the allocations system, to ensure that “sufficient weight” was “given to meeting the needs of local people.”

I hope that the Parliament will support my amendments today.

I move amendment 1.

Jackie Baillie (Dumbarton) (Lab): Amendment 40 is supported by a number of housing bodies: Homeless Action Scotland, Shelter Scotland, Scottish Churches Housing Action, Crisis and the Legal Services Agency. In essence, amendment 40 would place a requirement on the Scottish ministers to include a definition of “unmet housing needs” in guidance. I am grateful to the minister for meeting me, following stage 2, and for her subsequent letter setting out her intentions, which I will return to.

My concern centres on consistency of approach. The definition of “reasonable preference” appears to rest on the decision of each social landlord on whether someone’s housing needs could indeed be met elsewhere. How that assessment should be made, at what point it should be made and how social landlords will be held to account, particularly if they are not giving appropriate priority to allocating properties to people in housing need, are a bit vague and definitely subjective.

I recognise that the minister’s intentions are good, but I am sure that she would agree that removing the burden of making subjective decisions from social landlords would ensure consistency, which is certainly a desirable outcome.

The amendment also seeks to protect the role of social housing, so that it is not seen as the option of last resort, and links allocations policies to strategic housing priorities.

The minister’s letter helpfully addresses the points raised and it would be useful if she could supplement her response today by publishing the letter in the Scottish Parliament information centre. As the guidance is statutory, it would be helpful if the minister could clarify in her closing remarks
whether there would be oversight from the Scottish Housing Regulator.

Before I draw to a close, I will make a couple of brief remarks about John Lamont’s amendments 1 and 2, on local connection. As Homeless Action Scotland and Positive Action in Housing have pointed out, to give priority to people who have a local connection excludes those who are migrants and refugees. In England, where social landlords have introduced a local connection criterion, allocations to black and minority ethnic households have dropped by a quarter. Changes to allocations policies are adversely affecting diversity, so I urge opposition to amendments 1 and 2.

My amendment on succession for carers was not selected. It is the right of Presiding Officers not to select amendments, but nevertheless that was disappointing. There was substantial support for the amendment from carers and carers organisations across Scotland, as well as from a plethora of housing organisations.

I hope that the minister will agree to continue her dialogue with me and those organisations to provide practical reassurance on the implementation of the new restrictions on succession to ensure that the feared negative impact on carers does not materialise.

**Alex Johnstone:** Amendment 41 would have the unusual effect of putting back in something that the Government took out at stage 2. The consultation and the first draft of the bill contained a section to allow age to be taken into account as a criterion of allocations policy. The measure was removed by the minister at stage 2, following a campaign that argued that it could lead to widespread discrimination against younger people. I believe that the campaign was based on scaremongering and I am aware of no evidence to support the claims about discrimination. The minister argued that age in itself is not an indicator of housing need, but the five organisations that have given me input have never claimed otherwise. The case is based on the argument that, in considering how best to make a particular allocation to someone in significant housing need, it should be possible to consider age as a secondary factor where lifestyle or related issues need to be taken into account in order for a sensible, sustainable let to be made. I believe that the section should be reintroduced to the bill, and that would be the effect of my amendment.

On the other amendments in the group, I support John Lamont’s ideas and have significant experience from my mailbag of the difficulties in certain rural areas, with local people finding it impossible to find a house locally. If local connections were to be considered, that would play a significant role in creating stable communities.

Jackie Baillie’s amendment 40 is one of those amendments that seem to centralise and standardise all decision making. My concern is that it would have the opposite effect and would allow local considerations to be taken into account. Mary Fee’s amendment 42, on the other hand, would have significant value if John Lamont’s amendments or my amendment were not successful. I therefore support amendment 42.

**Mary Fee:** Amendment 42 would allow the sustainability of communities to be a factor in housing allocation. My amendment would allow local authorities and registered social landlords the flexibility that they told us they wanted when they gave evidence to the Infrastructure and Capital Investment Committee. Local authorities and RSLs know best what is needed to build and sustain their communities. The amendment would allow for a more holistic approach to housing allocation and would have regard to what is best for communities and individuals. It would also allow RSLs and local authorities to build and sustain strong communities.

For the reasons that I have just given, I feel that my amendment deals with allocation in a more appropriate manner, which would not be discriminatory to any group, while still allowing flexibility. For that reason, I will abstain in the decision on amendment 41, in the name of Alex Johnstone.

On amendment 4, I am pleased that the minister has taken on board the points that I raised in my amendment at stage 2 with regard to short Scottish secure tenancies. I am happy to support that amendment.

**Patrick Harvie:** I wonder whether, before the member finishes her contribution, she would talk about the concerns raised by the Glasgow and West of Scotland Forum of Housing Associations about her amendment 42, which, it suggests, implies that there exists a legal prohibition on taking certain issues into account. The forum does not think that such a prohibition exists. Would she also respond to Shelter’s concern that housing need should be the primary issue? Would Mary Fee respond to those concerns about amendment 42, as this is the only chance to do so?

**Mary Fee:** I thank the member for his intervention. Amendment 42 specifically addresses the issue of housing need, which should always be a paramount concern. Local authorities and RSLs need to have the flexibility to build and sustain communities, and amendment 42 would give them the flexibility to do that.

Amendment 4 will ensure that any tenant who was to be moved to an SSST is told about the
action that caused that, what support is available to them and their right of appeal. I welcome amendment 4.

Margaret Burgess: I will begin by speaking to amendments 1 and 2. As I said at stage 2, I understand communities’ wish for priority to be given to the housing needs of local people but, as I have previously explained, landlords can already take account of the fact that someone lives in a particular area and can give priority to local people, and some landlords do so.

Amendment 1 would require all social landlords to give reasonable preference to applicants with a local connection, regardless of local circumstances. I believe that it is better for landlords to have the flexibility—as they do at the moment—to take local connection into account if they consider that that is right for their area. That more flexible approach is very important for those landlords who provide housing for a particular client group, such as elderly people or veterans, for whom local connection is not always a relevant factor. Those examples illustrate that making local connection a reasonable preference category in legislation would remove a flexibility that is necessary in some cases.

Amendment 2 would allow landlords to take into account the length of time for which an applicant had been resident in an area when they allocate social housing. As I have said, I understand the wish for priority to be given to the housing needs of local people, but that must be balanced against the needs of all applicants. Landlords can already take local connection into account and can consider how long an applicant has been on the housing list. I am concerned that taking into account the length of time for which an applicant has lived in an area could make it more difficult for people to move when they have good reasons for wanting to do so.

Overall, I think that there is sufficient flexibility in the current arrangements, and I do not think that amendments 1 and 2 are the right way forward. Therefore, I invite John Lamont not to press them.

Jackie Baillie’s amendment 40 would remove “unmet housing needs” from the definition in section 3 and instead would require that the circumstances for unmet housing needs should be prescribed in guidance. As Jackie Baillie said, the committee considered an identical amendment at stage 2, when I argued that having the definition on the face of the bill makes it clear that allocations should focus on addressing cases of unmet needs and that a landlord’s reasonable preference categories should give priority to that. That remains the Government’s position.

As Jackie Baillie also said, I met her to discuss that and other points that she had raised. We discussed the steps that we can take to ensure that there is reasonable consistency in the way that landlords assess unmet housing needs. Jackie Baillie and Homeless Action Scotland argued that tying the assessment to local housing strategies would help to achieve consistency. After the meeting, I wrote to Ms Baillie to confirm that section 4 of the bill requires social landlords to have regard to the Government’s guidance on allocation policies, so the guidance is statutory. I also advised that section 4 requires a landlord to have regard to local housing strategies in developing its allocations policy, and that the Government will use the statutory guidance on allocations to highlight that duty.

Jackie Baillie was also interested in how the impact of the new provisions on allocations will be monitored. The independent Scottish Housing Regulator is responsible for monitoring and reporting on the performance of all social landlords. It does so by reference to the Scottish social housing charter, in which the Government has set the outcomes and standards that landlords should meet, which include outcomes on housing options and access to social housing. The Government will use the regulator’s reports for evidence of how the new arrangements are working.

I hope that the outline that I have provided reassures Jackie Baillie and that she will be content not to move amendment 40. If she does so, I invite the chamber to reject it.

15:15

Alex Johnstone’s amendment 41 would reintroduce section 5 into the bill. That would allow landlords to take age into account in the allocation of social housing. I explained in detail at stage 2 my reasons for lodging an amendment to remove section 5, and my position has not changed.

Section 5 provoked a strong reaction. Landlords were keen to have flexibility to manage their stock effectively. Others, such as Scotland’s Commissioner for Children and Young People, were concerned about the potential for discrimination against young people. I discussed the conflicting views with stakeholders. Having carefully weighed up all the arguments, I decided to remove section 5 from the bill.

I was concerned about the possibility of some groups, such as young people, being unintentionally discriminated against, and I was simply not prepared to run that risk. I am very much aware that antisocial behaviour can cause nuisance and distress to neighbours and communities. That is why I am introducing measures under the bill that will provide landlords with additional tools to tackle antisocial behaviour.
As I said at stage 2, there is more scope for sensitive lets to be used by social landlords. Officials will work closely with landlords to develop guidance to provide more advice on how sensitive lets can be used effectively in allocations. Removing section 5 was the right thing to do, and I do not support amendment 41, which seeks to reintroduce it.

The stage 2 equivalent to Mary Fee’s amendment 42 was discussed in committee. I completely understand what Ms Fee is trying to achieve, and why. It is not clear, however, how amendment 42 would work in practice to deliver the outcomes that Mary Fee seeks.

The amendment refers to “effects ... on the sustainability of particular localities or communities”. but it does not define what is meant by “sustainability”. I am concerned that, with no proper definition, the provision would mean different things to different people, and would place landlords in an almost impossible position when they had to interpret and apply it.

Different landlords, through different interpretations, could end up applying the provision in very different ways, leading to highly inconsistent and potentially unfair outcomes for people seeking housing in different areas. I do not believe that that is what Mary Fee seeks, but it is what is likely to happen.

Mary Fee: The minister mentioned sensitive lets. Does she not agree with me that the core of my amendment 42 is that same principle of sensitive letting, and that that is what local authorities want to be able to provide?

The Deputy Presiding Officer: Minister, I would be grateful if you could begin to draw your remarks on this grouping to a close.

Margaret Burgess: I will cover the point that Mary Fee has raised.

There is a problem with landlords having to reconcile conflicting interests. The fact that the main stakeholders are divided—as Patrick Harvie mentioned—on the merits of amendment 42 suggests that it is unlikely to achieve what Mary Fee is seeking. The Scottish Federation of Housing Associations supports it, but Shelter and the Glasgow and West of Scotland Forum of Housing Associations oppose it. However, landlords can take account of the overall circumstances, including an individual’s housing needs and the housing options that are available, when making allocations.

As I said earlier, we will work closely with stakeholders and landlords to ensure that that is included when we make guidance on sensitive lettings and local letting initiatives, which we will develop through consultation. The guidance will illustrate the flexibility that is already open to landlords. I believe that that is a more effective means of achieving what Mary Fee and all of us want.

I lodged amendment 4 because of an issue that Mary Fee raised at stage 2. I was happy to do so at this stage, because I agree that it is right that tenants should have enough information to challenge a landlord’s decision to convert their tenancy, if they want to do so.

Amendment 4 provides for that by requiring social landlords to set out a number of things in the conversion notice: first, details of the behaviour of the tenant or other person that the landlord has taken into account; secondly, the reasons why the landlord is serving the notice; and finally, information about the tenant’s right to appeal. I was pleased to take that on board following Mary Fee’s equivalent amendment at stage 2.

The Deputy Presiding Officer: I call on John Lamont to wind up.

John Lamont: The minister states that she believes that the current flexible system is adequate, but it is clear from the correspondence that I get from my constituents that the current system is not adequate, in that local families are not always able to stay in the local community of their choice.

I will deal with some of the remarks that Jackie Baillie made about my amendment 1. Clearly, there is some misunderstanding about the intentions behind my amendments 1 and 2. Those who are homeless, or other priority groups, would still get priority under my proposed measures. Amendment 1 would simply ensure that, where all other factors are equal, local connections would count more than they currently do.

On the suggestion that ethnic minorities could be disadvantaged by my proposal, I point out that it is often the case that ethnic minority groups also want to live close to family members as part of their own community, so they would also be able to take advantage of the amendment.

Jackie Baillie: Could John Lamont explain what has changed about the process in England, where there has been a change to local connection policies and a quarter fewer houses are now allocated to ethnic minority communities than was the case before?

John Lamont: Amendment 1 is not the same as what has been introduced south of the border. I am proposing my own amendment, which I hope will deal with the concerns that I am getting in my mailbag—I am sure that Jackie Baillie is also
receiving letters from her constituents, voicing similar concerns about how local social housing is allocated. I intend to press amendments 1 and 2.

The Conservative group will not be supporting amendment 40, in the name of Jackie Baillie, as we would prefer the matter to be left to the discretion of local authorities. We will support amendment 41, in the name of Alex Johnstone, and we will also support amendment 42, in the name of Mary Fee, which we believe gives further discretion to local landlords in the allocation of social housing.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christain (North East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carriick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherford) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McCougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)

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Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 13, Against 103, Abstentions 0.
Amendment 1 disagreed to.
Amendment 40 not moved.
Amendment 2 moved—[John Lamont].

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen ( Clydesdale) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)

Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marr, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Sicbhan (Central Scotland) (Lab)
McMillan, Stuart (Midlothian North and Musselburgh) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
The Deputy Presiding Officer: The result of the division is: For 14, Against 103, Abstentions 0.

Amendment 2 disagreed to.

After section 4

Amendment 41 moved—[Alex Johnstone].

The Deputy Presiding Officer: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glashow) (Con)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
AlIan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Balfourshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions

Ballie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
The Deputy Presiding Officer: The result of the division is: For 14, Against 70, Abstentions 33.

Amendment 41 disagreed to.

Amendment 42 moved—[Mary Fee].

The Deputy Presiding Officer: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Con)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Grant, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Ludington and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dunde City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neill, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 47, Against 70, Abstentions 0.

Amendment 42 disagreed to.
Section 8—Creation of short Scottish secure tenancy: antisocial behaviour

Amendment 4 moved—[Margaret Burgess]—and agreed to.

Section 17—Regulated and assured tenancies etc

The Deputy Presiding Officer: Before we turn to the next group, I should say that we have passed the agreed time limit under rule 9.8.4A but that I consider it necessary to allow the debate on group 3 to continue beyond the limit in order to allow those with the right to speak on the amendment in the group—Jim Hume and the minister—to do so. I am afraid that time is very tight this afternoon and, as members will appreciate, we are now over our time limit.

Group 3 is on the right to representation at the first-tier tribunal. Amendment 3, in the name of Jim Hume, is the only amendment in the group.

Jim Hume (South Scotland) (LD): I am pleased to be able to speak to my amendment 3. I was disappointed that a similar amendment did not receive the necessary support at stage 2. However, I stated then that I was minded to lodge another amendment on the same issue at stage 3 because I believe that the issue is important.

The first-tier tribunals are a welcome addition to the bill. They will deal with some sensitive and important cases, none more so than the eviction of a tenant. Given the seriousness of that matter, I believe that it is important that we ensure that a tenant can obtain legal representation to make the best possible case at a tribunal.

I accept the rationale that the tribunal will provide a more relaxed setting in which to resolve disputes, but evictions are serious and require serious representation. I am keen to ensure that the new tribunal system is not introduced without a clear understanding of how tenants can access justice. That is why I propose that those affected be afforded legal representation through legal aid or an equivalent, assuming that the necessary eligibility criteria are met.

The minister asked me to withdraw a similar amendment at stage 2. She accepted that some people might require legal representation, but the absence of a guarantee from her ensured that I was forced to lodge another amendment on the issue at stage 3.

I thank the minister for meeting me and Homeless Action Scotland earlier this month—after stage 2—to discuss the issue further. I hope that she has taken time to reflect on it and considered how best the Scottish Government can ensure that tenants before a tribunal who face the distressing prospect of losing their home have the ability to present the best possible case. I believe that my amendment 3 can help to achieve that, and I hope that colleagues will support it.

I move amendment 3.

15:30

Margaret Burgess: I agree with Jim Hume that the issue is important, and I will further clarify my position on it.

I still believe that the amendment is not required for the tribunal to balance the interests of landlords and tenants. People who take cases to the tribunal will be able to be represented if they wish. That could be by a friend, family member, lay representative or someone who is legally qualified. Nothing in the bill or in the operational detail of the tribunal will affect that.

Tribunal committees will have a legally qualified chairperson, who will have the expertise to ask questions and seek further information to help parties to make the best of their case. The intention is to set up a system in which most people do not need legal representation, although I am absolutely conscious that some people might need assistance to present their case effectively. I am aware that some cases could raise complex issues and that the subject matter is of a serious nature, particularly when the result could be someone losing their home.

We will consider the most appropriate form of support for parties as part of considering the operational detail of the tribunal. Those issues will be taken into account. Access to justice is at the heart of the process, and we want to allow people to access the tribunal system. We expect that support could be delivered through the provision of funding for legally qualified representation or through the provision of some form of lay representation. When we are setting up the way in which the tribunal operates, we will certainly consider that.

There is nothing in the bill that prevents legal representation for people. My clear intention is that, where it is required, it will be available.

Jim Hume: There can be nothing more gallling than facing eviction. It is difficult to believe that a tenant facing eviction will always be the best-placed person to put forward their case. That is why I believed that it was necessary to get a clearer understanding of how tenants can access justice, and why I lodged amendment 3, with the help of Homeless Action Scotland. We have heard words that lead me to believe that tenants will be able to get such help, I shall therefore seek to withdraw the amendment.

Amendment 3, by agreement, withdrawn.
After section 21

The Deputy Presiding Officer: Group 4 is on landlord registration: letting code. Amendment 5, in the name of Patrick Harvie, is the only amendment in the group.

Patrick Harvie: During the discussion on the bill, I have consistently welcomed the Government's intention to produce a code of practice for letting agents. At stage 2, I lodged amendments that explored further details that might be included in the code of practice, and we will have the chance to debate those suggestions again this afternoon.

Although the Government was not persuaded on the inclusion of those specific issues in the code of practice for letting agents, the minister said that the issues would be addressed in the code. If that happens, we will end up with a welcome situation in which letting agents have a code of practice. However, individual landlords will not have a code of practice that sets out the management standards that they need to meet.

If we are to take the whole private sector seriously and improve standards across the board—I am sure that all of us, including the Government, want to do that—we should not have a situation in which those who pay their rent to a letting agent can expect a higher standard than those who pay their rent to a landlord.

Since the Housing (Scotland) Act 2006 inserted a change into the Antisocial Behaviour etc (Scotland) Act 2004, the Government has had the power to produce “a code of practice, to be known as the Letting Code, making provision about the standards of management of any relevant person who enters into, or who seeks to enter into, a lease or occupancy arrangement by virtue of which an unconnected person may use a house as a dwelling and... any other person who acts for such a relevant person in relation to such a lease or occupancy arrangement.”

Through that pre-existing power to issue a letting code, the Government could have addressed landlords and letting agents in the same way, although perhaps with different approaches that are relevant to those different parts of the industry. That would have addressed the needs of the tenants of landlords as well as the tenants of letting agents. I hope that the minister will say why that route has not been taken and how the Government intends to offer the same protection to the tenants of landlords as the tenants of letting agents are to receive.

I move amendment 5.

The Deputy Presiding Officer: Two members wish to contribute. I am afraid that contributions must be brief.

Mary Fee: I will be very brief, Presiding Officer.

I support amendment 5, in the name of Patrick Harvie, on the letting code. A letting code is an important part of the legislation. Letting agents and landlords need a clear and unambiguous code. The amendment would make a sensible addition to the bill and would strengthen the private rented sector. I therefore support amendment 5.

Alex Johnstone: I will also be brief.

The success of the system that we are putting in place today will rely on the understanding that exists between landlords and tenants. We are trying to make all the landlords—and letting agents, for that matter—do what the good ones have been doing for years. When we do that, we sometimes have to think in terms of carrot and stick. I believe that the amendment is too much stick and not enough carrot.

Margaret Burgess: As Patrick Harvie said, at present the issuing of letting codes is a discretionary power. The power to issue a code was created in 2006. No code has been issued and there are currently no plans to do so.

The relevant legislation would require ministers, before issuing a code, to assess the effectiveness of existing obligations and voluntary arrangements relating to standards of management and, in particular, the effectiveness of landlord registration in dealing with harassment, unlawful evictions and unlawful management practices.

Those important issues will be considered as part of our on-going commitment to consider the effectiveness of the enforcement of landlord registration, but at present we do not consider that a code is needed to address such issues. Significant changes have been made to the regulation of the private rented sector since 2006, including those proposed in the bill. The regulation of letting agents will have a positive impact on letting and property management across the sector.

I reassure Mr Harvie that I remain open to issuing a letting agents code at some point in the future if it would genuinely enhance the existing controls that are in place. I invite him to withdraw amendment 5.

Patrick Harvie: I am sorry that the minister does not see the opportunity to commit now to producing a letting code. She talked about the need to review the effectiveness of landlord registration. However, by the time that the amendment—if it were passed—kicked in and required action from Government, the landlord registration scheme would have been in operation for well over a decade. That would be more than ample time to review its operation.

I think that most members, including those like myself who supported the creation of the landlord
registration scheme, would recognise that it has not achieved everything that was hoped for from it, not only because of the legislation but because of the resources available for it.

Finally, in response to Alex Johnstone, I point out that I spent about 10 years as a tenant in the private rented sector and I recognise the big bag of carrots that I gave to my landlords every month. Landlords get paid rent— that is their carrot. It is our responsibility to regulate to ensure that the provision of housing meets the needs of tenants. That is why I will press amendment 5.

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dumfriesshire) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Barnfife and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine)
The Deputy Presiding Officer: The result of the division is: For 41, Against 77, Abstentions 0.

Amendment 5 disagreed to.

The Deputy Presiding Officer: Group 5 is on houses let for holiday purposes. Amendment 45, in the name of Drew Smith, is grouped with amendments 48 and 67.

Drew Smith (Glasgow) (Lab): The amendments in group 5 relate to housing that is let for holiday purposes and specifically to an issue that many MSPs will be aware of—very short-term letting of residential property or so-called party flats.

Amendment 45 seeks to extend the scope of landlord registration to encompass such properties in order that records can be kept of individuals who operate those businesses. That will have the effect of making it easier to trace the landlords responsible should disturbance to neighbours become an issue as a result of very short-term letting. It will also mean that landlords who seek to operate holiday businesses in what are otherwise residential buildings will be subject to a fit-and-proper-person test.

By way of very brief background, my motivation for the amendments in group 5 has been the experience of many of my constituents in Glasgow city centre who have had the enjoyment of their homes severely limited by the letting of neighbouring flats, which has resulted in severe and sustained antisocial behaviour, noise nuisance and problems in maintaining common areas.

At a meeting with members of the Beresford residents committee on Monday, I was told of how some guests at these properties seemed to be under the impression that the residents’ concierge in their building was in fact a hotel porter. In itself, that might not be a very serious issue but it illustrates the point that many of the guests who book such properties are entirely unaware that they are in fact hiring rooms in a building in which others have their homes.

None of my amendments seek to ban very short-term holiday letting; they are about a sensible level of regulation, which will ensure that the use of one person’s property or number of properties does not have an impact upon others that restricts their ability to enjoy their home and which results in police being called regularly.

Amendment 48 was previously rejected by Government members at the committee stage. It seeks to extend the power of closure of party flats to local authorities. The power to close is not a new one and clear criteria already exist as to when such a last resort action is appropriate—when there are persistent issues of antisocial behaviour relating to a particular property and when the authorities think that continued operation is likely to result in further nuisance to neighbours.

At present, that power resides only with the police. My proposal is simply to extend that power to include councils, which are likely to be better informed than the police about the issues that are occurring regularly and the extent to which landlords have been prepared to help resolve them. Crucially, I think that councils have more time than the police to take proportionate action in support of long-term solutions rather than simply address the situation as it exists when a police officer is called.

Amendment 67 is a straightforward consequential amendment so I will not take up Parliament’s time on it.

I move amendment 45.

The Deputy Presiding Officer: We have little time. Alex Johnstone is next—very briefly, please.

Alex Johnstone: Very briefly indeed, I thank Drew Smith for bringing the issue of party flats to my attention and to the attention of others when it was discussed at committee stage. However, I have concerns about the amendments, given that they specifically address houses that are let for holiday purposes. I am not reassured that the amendments would not have an effect that significantly oversteps the effect that Drew Smith seeks to achieve.

Margaret Burgess: I understand the problems that can be caused by antisocial behaviour in properties that are let on a short-term basis, but I consider that it would be a disproportionate response to require every house that is used for holiday purposes to be registered, as proposed by amendment 45. To do so would mean that properties that are let even for a short period of time would have to be registered, placing a significant additional burden on property owners, local authorities and the tourism industry of Scotland more generally. Landlord registration was not introduced for that purpose.

Local authorities already have powers to tackle antisocial behaviour in properties that are let for holiday purposes. For example, under part 7 of the Antisocial Behaviour etc (Scotland) Act 2004, local authorities can serve an antisocial behaviour notice on a private landlord where an occupant or visitor engages in antisocial behaviour at, or in the locality, of the house.
In a landmark case last year, the City of Edinburgh Council successfully used existing legislation to apply for a management control order for two party flats in Grove Street. That enabled the council to assume all landlord responsibilities for a period of 12 months. I expect other local authorities to use the existing legislation to take similar action where antisocial behaviour in holiday lets is causing difficulties.

Amendment 48 is the same as an amendment that Drew Smith lodged at stage 2. I explained then that the Scottish Government introduced an order in March 2011 that gives local authorities the powers to deal specifically with the problem of antisocial behaviour in properties that are let for holiday use.

I have already highlighted City of Edinburgh Council’s success in using existing legislation to tackle the issue, and I do not consider that amendment 48 is necessary. Local authorities have a range of powers that they should use to deal with antisocial behaviour in holiday lets.

I do not support Drew Smith’s amendment 45, and I ask him not to move amendments 48 and 67.

Drew Smith: I understand the minister’s principal objection, which is that existing law already allows most of those problems to be resolved. However, if that was the case, I would not be having meetings with members of the public such as the one that I had on Monday in which people told me that their home life is being made a living hell as a result of the inappropriate use or inconsiderate behaviour of others.

Those people were very complimentary about the action that Glasgow City Council took in their case, and they recognised that the council had been instrumental in reducing the problems that they had faced. However, they made it clear to me that issues remain where landlords are unco-operative and unwilling to engage in finding a solution.

Officials from the council are in the Parliament today; they recognise that my amendments could result in more work, but they are willing to do that work to restore the quality of life for those who are affected.

None of the amendments that I have lodged are prescriptive. Amendment 48 simply enables the Scottish Government to provide for closure regulations if it sees fit and if evidence is forthcoming from councils that that would make a difference.

On Alex Johnstone’s point, amendment 45 on registration would leave it up to the Scottish ministers to define precisely who would be affected. Regulations under the Antisocial Behaviour etc (Scotland) Act 2004 mean that the types of dwellings to be registered would remain entirely in the gift of ministers, so Alex Johnstone’s concern that the provision would be too broad could be factored into the guidance that will be produced if the amendment is successful. The amendment simply removes the current blanket exemption for homes that are let for any holiday purpose.

I press amendment 45.

The Deputy Presiding Officer: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (LD)
McArthur, Liam (Orkney Islands) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)  
Brown, Keith (Clackmannanshire and Dunblane) (SNP)  
Burgess, Margaret (Cunninghame South) (SNP)  
Campbell, Aileen (Clydesdale) (SNP)  
Carlaw, Jackson (West Scotland) (Con)  
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)  
Constance, Angela (Almond Valley) (SNP)  
Crawford, Bruce (Stirling) (SNP)  
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)  
Davidson, Ruth (Glasgow) (Con)  
Dey, Graeme (Angus South) (SNP)  
Don, Nigel (Angus North and Mearns) (SNP)  
Doris, Bob (Glasgow) (SNP)  
Dornan, James (Glasgow Cathcart) (SNP)  
Eadie, Jim (Edinburgh Southern) (SNP)  
Ewing, Annabelle (Mid Scotland and Fife) (SNP)  
Ewing,ergus (Inverness and Nairn) (SNP)  
Fabiani, Linda (East Kilbride) (SNP)  
Fergusson, Alex (Galloway and West Dumfries) (Con)  
FitzPatrick, Joe (Dundee City West) (SNP)  
Gibson, Kenneth (Cunninghame North) (SNP)  
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)  
Goldie, Annabel (West Scotland) (Con)  
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)  
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)  
Hyslop, Fiona (Linlithgow) (SNP)  
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)  
Johnstone, Alex (North East Scotland) (Con)  
Keir, Colin (Edinburgh Western) (SNP)  
Kidd, Bill (Glascow Anniesland) (SNP)  
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)  
Lochhead, Richard (Moray) (SNP)  
Lyle, Richard (Central Scotland) (SNP)  
MacAskill, Kenny (Edinburgh Eastern) (SNP)  
MacDonald, Angus (Falkirk East) (SNP)  
MacDonald, Gordon (Edinburgh Pentlands) (SNP)  
Mackay, Derek (Renfrewshire North and West) (SNP)  
MacKenzie, Mike (Highlands and Islands) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)  
Matheson, Michael (Falkirk West) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McGregor, Jamie (Highlands and Islands) (Con)  
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)  
McLeod, Aileen (South Scotland) (SNP)  
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)  
McMillan, Stuart (West Scotland) (SNP)  
Milne, Nanette (North East Scotland) (Con)  
Mitchell, Margaret (Central Scotland) (Con)  
Neil, Alex (Airdrie and Shotts) (SNP)  
Paterson, Gil (Clydebank and Milngavie) (SNP)  
Robertson, Dennis (Aberdeenshire West) (SNP)  
Robison, Shona (Dundee City East) (SNP)  
Russell, Michael (Argyll and Bute) (SNP)  
Scanlon, Mary (Highlands and Islands) (Con)  
Scott, John (Ayr) (Con)  
Smith, Liz (Mid Scotland and Fife) (Con)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
Stewart, Kevin (Aberdeen Central) (SNP)  
Sturgeon, Nicola (Glasgow Southside) (SNP)  
Swinney, John (Perthshire North) (SNP)  
Thompson, Dave (Skye, Lochaber and Badnoch) (SNP)  
Torrance, David (Kirkcaldy) (SNP)  
Urguhart, Jean (Highlands and Islands) (Ind)  
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)  
Wheelhouse, Paul (South Scotland) (SNP)  
White, Sandra (Glasgow Kelvin) (SNP)  
Wilson, John (Central Scotland) (SNP)  
Yousaf, Humza (Glasgow) (SNP)  

The Deputy Presiding Officer: The result of the division is: For 41, Against 76, Abstentions 0.  
Amendment 45 disagreed to.  

Section 22B—Electrical safety inspections  

The Deputy Presiding Officer: Group 6 is on private rented housing: the repairing standard. Amendment 6, in the name of the minister, is grouped with amendments 7, 46 and 47.  

Margaret Burgess: Amendment 6 proposes to remove the transitional provision in the electrical safety inspection regime for private rented housing, which was inserted in the bill at stage 2 by an amendment in the name of Bob Doris.  

The transitional provision in section 22B would give those who are already landlords when the regime comes into force a year to undertake electrical safety inspections. However, there are two difficulties with that. First, landlords would have only a year from the commencement date to arrange inspections, and the provision would not recognise any inspections that had been carried out before it came into force. That would cause practical difficulties for landlords and electricians, and it would likely discourage landlords from carrying out any planned inspections in the period prior to commencement. That would be worse for tenants and contrary to the intention of the original amendment.  

A transitional provision is still required, but I intend to use the general power in section 85(5) to make the commencement order for section 22B. That approach will allow time to work with stakeholders and develop a provision that will avoid delay, protect tenants and be fair to landlords.  

I have written to Bob Doris about amendment 6, and he has indicated that he supports the approach. The Electrical Safety Council and the Scottish Association of Landlords, two of the key stakeholders whose submissions encouraged me to support Bob Doris’s original amendment, have also indicated their support.  

Amendment 7 seeks to introduce a provision on energy efficiency standards in private rented sector properties. Claudia Beamish lodged a similar amendment at stage 2, and I acknowledge that she has sought in this new amendment to address one of the concerns that I expressed at that time. However, several issues remain that mean that the amendment is unnecessary and inappropriate.  

Under the Climate Change (Scotland) Act 2009 and the Energy Act 2011, the Scottish ministers already have powers to introduce minimum
standards for energy efficiency in private sector housing, and we have made very clear our commitment to improving energy efficiency to help address fuel poverty and reduce carbon emissions from housing. For example, central Government spend in Scotland in the past financial year is higher than that elsewhere in the UK at an average of £36.48 for each low-income household in Scotland compared with only £3.52 in England. We are working with stakeholders including environmental, fuel poverty, local authority, private rented sector and consumer interests to identify proposals for minimum energy efficiency standards for consultation in spring 2015.

Although amendment 7 extends the timescale, it would still constrain the time available to understand properly the issues identified by the working group, particularly on the level of regulation that is technically feasible and appropriate, and to conduct supporting research. Consultation on the Scottish Government's sustainable housing strategy also strongly indicated the need for a sufficient lead-in time for the sector to prepare for minimum standards.

My amendment to enable the repairing standard to be amended by regulations, which was agreed to at stage 2, provides the means to vary the repairing standard. After appropriate consideration and consultation, we think that this is the most effective way to regulate the private rented sector. For those reasons, I do not consider that amendment 7 is necessary or that it would achieve the desired purpose.

Amendment 46 seeks to make landlords in breach of the repairing standard if they fail to pay for their share of work to common parts, and makes such a failure a criminal offence. Private landlords are already required to meet the repairing standard, and that requirement can be enforced by an application to the Private Rented Housing Panel by a tenant and, under the provisions introduced by the bill, by a local authority on behalf of a tenant. In addition, an owner of a tenement property can already enforce a majority decision of owners about repairs against any other owner under the tenement management scheme.

Amendment 46 would also make repairs that are not required under the repairing standard, such as repairs to common entry systems or common public lighting that is inadequate but not in serious disrepair, matters that can be brought before the Private Rented Housing Panel. I do not think it appropriate to widen the panel's remit and require it to adjudicate in disputes between owners instead of dealing with matters that are set out in legislation on behalf of the tenants.

Amendment 47, in the name of Malcolm Chisholm, seeks to specify two additional types of person who may apply to the Private Rented Housing Panel for a determination in respect of the repairing standard. The bill enables local authorities to make such applications, and new inspection powers that are part of the third-party reporting provisions support the strategic role that local authorities play in ensuring that properties across Scotland meet minimum standards. The bill also enables ministers to make an order extending the range of bodies that can make applications in future, if that is considered useful.

However, I believe it important first to allow local authorities the time to exercise the bill's new powers to tackle poor standards in the private rented sector. Consideration of the effective use of third-party reporting powers by local authorities once the provisions are implemented will indicate whether there is any justification for expanding the powers to additional types of person.

I believe that the bill strikes the right balance in allowing local authorities to make the applications and granting a power to ministers to broaden access to the Private Rented Housing Panel through secondary legislation, if that is considered necessary and appropriate in the future.

I move amendment 6.

Claudia Beamish (South Scotland) (Lab): Amendment 7 seeks to allow the Scottish ministers to create regulations on energy efficiency standards, which would be included as part of the repairing standard in the private rented sector. It would also establish a system of inspection and enforcement.

As she highlighted, the minister put forward reasons for not supporting my amendment at stage 2. I intend to address the amendment, even though those remarks have already been made.

First, it was highlighted today that the minister felt that including the provision in the bill was unnecessary because the Climate Change (Scotland) Act 2009 provides powers to introduce minimum standards of energy efficiency. Although that is the case, I still argue that the phraseology of section 64 of the 2009 act is different and less focused than what I suggest. It requires ministers to set regulations to provide for the assessment of energy performance and greenhouse gas emissions and requires owners to take steps to improve the accommodation. That may or may not be realised through minimum standards, which is what I propose. In addition, it does not specifically address the standards where a house forms only part of a premises, which my amendment does.

Another argument that the minister put forward against the amendment was that a working group is already tasked with reporting back on measures to improve energy efficiency in the domestic housing sector. Again, I support the reasoning...
behind the setting up of such a group and wish it well, but there are energy efficiency measures that my amendment highlights that would be best placed in the bill among the provisions that relate to the repairing standard. Organisations such as the Royal Institution of Chartered Surveyors, the City of Edinburgh Council and Friends of the Earth Scotland agree with that approach.

Others may disagree and would like to wait for some as yet not defined piece of legislation in the future. If and when that legislation comes before the chamber, there is no reason why it cannot refer to the amendment to the bill. I see no reason to wait and to actively oppose amendment 7. Tenants are suffering from fuel poverty in multi-ownership houses, and it is important that that is addressed now.

The final criticism that the minister put forward at stage 2 related to the timescale. As she has acknowledged today, I have altered the timescale. That should help the possibility of amendment 7 being accepted and the regulations being taken forward. Even at this late stage, I hope that the minister will reconsider.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Amendments 46 and 47 deal with massive problems in Edinburgh, which is why their substance was supported by the Labour-Scottish National Party council in Edinburgh in its submission on the bill.

Amendment 46 deals with the problem of landlords not taking part in and paying their share of common repairs. It says that it would be a breach of the repairing standard if a landlord failed “to pay the landlord’s share of the cost of repairs”.

Under amendment 46, the landlord could be referred to the Private Rented Housing Panel and, if they did not contribute to common repairs, they could be found guilty of an offence and face removal from the register. It is time that we used the register to put pressure on landlords and not just as a bureaucratic exercise. This could be one important example of using the register.

The minister referred to the Tenements (Scotland) Act 2004, but it can be a disincentive for some people because of its complexity and the time that the process sometimes takes.

Amendment 47 would allow owners of an adjoining property and organisations that provide advice services to report breaches of the repairing standard to the Private Rented Housing Panel; in other words, it says that not just the local authority should do that. Certain people may not want to go to the local authority or, indeed, the local authority could decide not to report, I presume. Therefore, we should give that power to adjoining residents. Again, that problem is often brought to me in surgeries, and I know that my constituents would expect me to press the amendment.

The issue of advice services is also relevant, because some residents may prefer to access support through an advice agency rather than the local authority either because it is conveniently located or because they have some special relationship with it.

I am minded, as we all are on this side of the chamber, to oppose the minister’s amendment 6 on removing the obligation for a landlord to ensure that an inspection is carried out within 12 months of the housing act coming into force. I listened carefully to her arguments, but if she identified such a problem, why did she not move an amendment saying that an inspection had to be carried out one year from the commencement date unless one had been carried out in the intervening period? That would have been the absolutely simple and obvious thing for her to do, if the reason that she gave was the real reason.

16:00

The Deputy Presiding Officer: I have two members who wish to contribute. Bob Doris will be followed by Alex Johnstone; I ask that they be as brief as possible.

Bob Doris (Glasgow) (SNP): I will try to be brief and to stick to amendment 6.

I am content that the general power under section 85(5) would be adequate in relation to the commencement order in section 22B, which was added to the bill at stage 2 by my amendment. The vast majority of section 22B remains fully intact. It will place a requirement on all private landlords to ensure that all fixtures, fittings and appliances have relevant electrical safety checks every five years. That is a new burden and responsibility on the private sector. Amendment 6 is merely an implementing and consequential amendment, to ensure that there are no unintended consequences.

I point out to Malcolm Chisholm that Electrical Safety First, the organisation that worked with me to bring my amendment to the Parliament, is content with the provisions; so, too, is the Scottish Association of Landlords, which has been critical about the issue.

It is not very often that a member comes to the chamber and places an additional burden and responsibility on landlords and they step forward and say, “Yes, we’re up for that. It is the right thing to do.” That is what has happened and we should welcome that. We should support amendment 6.

I thank Electrical Safety First and the Scottish Association of Landlords. I ask that Parliament support amendment 6.
Alex Johnstone: I support amendment 6, in the name of the minister, and I accept her position on amendments 7 and 47. However, I confess that I have some attraction to amendment 46, in the name of Malcolm Chisholm.

I heard what the minister said about the repairing standard and how that process is available by other means. I seek further assurances from her that the means that she described to deal with the circumstances are not of the type that would, in effect, exclude people as a result of onerous processes.

The Deputy Presiding Officer: Members will note that we have passed the agreed time limit for the debate on group 6. Therefore, I exercise my power under rule 9.8.4A to allow the debate on the group to continue beyond the limit in order to avoid the debate being unreasonably curtailed.

I ask the minister to wind up.

Margaret Burgess: In response to Malcolm Chisholm, I accept that it would have been preferable to set out the transitional rules in the bill. However, as Bob Doris said, we want to ensure that there are no unintended consequences. I have considered the views of stakeholders. Consequently, we need further engagement to develop a solution that will protect tenants, be fair to landlords and avoid unnecessary delay in bringing the measure into force.

On energy efficiency standards, we are taking a proportionate approach. We are examining how to progress the issue with the active participation of stakeholders. It is only sensible to continue that process by looking at all private housing and not just the rented sector.

The Deputy Presiding Officer: Excuse me, minister. I am afraid that the noise in the chamber is becoming rather loud. Can we hear the minister, please?

Margaret Burgess: If, after the Scottish Government's planned consultation on energy efficiency, it is considered appropriate to vary the repairing standard in relation to energy efficiency, that can be done through regulation-making powers.

The Deputy Presiding Officer: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)

Beatie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McGregor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Mckelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
The Deputy Presiding Officer: The result of the division is: For 82, Against 33, Abstentions 0.

Amendment 6 agreed to.

After section 22B

Amendment 7 moved—[Claudia Beamish].

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Gray, Iain (East Lothian) (Lab)

Against

Yousaf, Humza (Glasgow) (SNP)
Dorrian, John (North East Scotland) (SNP)
Donaldson, Greenie (Eastwood) (SNP)
Dorrian, John (North East Scotland) (SNP)
Donnie, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Earl, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Ferguson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)

Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McIntyre, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McManus, Siobhan (South Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mctaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Clydebank) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Earl, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Ferguson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
The Deputy Presiding Officer: The result of the division is: For 41, Against 74, Abstentions 0.

Amendment 7 disagreed to.

Before section 23

Amendment 46 moved—[Malcolm Chisholm].

The Deputy Presiding Officer: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Miline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Barnffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 41, Against 75, Abstentions 0.

Amendment 46 disagreed to.

Section 23—Third party application in respect of the repairing standard
Amendment 47 moved—[Malcolm Chisholm].

The Deputy Presiding Officer: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crabbe, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 41, Against 75, Abstentions 0.

Amendment 47 disagreed to.

After section 25

Amendment 48 moved—[Drew Smith].

The Deputy Presiding Officer: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahan, Michael (Uddingston and Bellshill) (Lab)
McMahan, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowsley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamsom, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beatlee, Colin (Midlothian North and Musselburgh) (SNP)
B_TAC, Alasdair (North East Scotland) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Neil (Angus North and Mearns) (SNP)
Dorris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Etrurry, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
McKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 39, Against 75, Abstentions 0.

Amendment 48 disagreed to.

The Deputy Presiding Officer: The next group of amendments is on private rented housing, rent reviews, rent increases and security of tenure. Amendment 49, in the name of James Kelly, is grouped with amendments 50, 68 and 69.

James Kelly (Rutherglen) (Lab): There is no doubt that the biggest problem that we face in Scotland in relation to housing is the lack of supply. That is partly because we have the lowest number of completions since 1947. That is witnessed in the social housing waiting list of 155,000 people.

One of the consequences of that has been the massive growth in the private rented sector, which has doubled in size to 300,000 households and contains people who have not been able to get houses either in the social sector or in the private purchasing sector. There is no doubt that the resultant rise in the private rented sector has placed too much power in the hands of landlords and letting agents and that, as a consequence, there have been unacceptable rent rises in some parts of the country.

That can be witnessed by the recent Citylets quarterly report, in relation to which Thomas Ashdown of Citylets said that urban hotspots are providing great returns for landlords. There is no doubt that that is true, and the report gives some examples. Average rents in the EH8 postcode in Edinburgh have experienced a year-on-year rise of 8.9 per cent. The figure for DD1, in Dundee, is 17.5 per cent, and the figure for G2, in Glasgow, is 21.5 per cent. Those inflation-busting rises heap misery on many of the families who are struggling in the private rented sector. The Joseph Rowntree Foundation reckons that, of the 120,000 households that are in poverty, 40 per cent are having to cut back on heating and a third are cutting back on food.

Through this bill, Parliament has the opportunity to do something about that by supporting Labour’s proposals to cap rent rises and to ensure that rent reviews take place no more than once a year. We are not proposing a specific scheme; we are asking for Parliament to agree to the principle and for the Scottish Government to lay regulations before Parliament by 1 April 2015. That would allow the Government, in proper consultation, to work up a proper scheme and to cap rises at an acceptable level.

The issue is also linked to tenancies. As the size of the market has grown, there has been a growing number of short tenancies. It is reckoned that 74 per cent of the tenancies in the market are short tenancies, which drive up rent. They also result in pressure being put on vulnerable tenants, who sometimes have to deal with housing problems not being addressed, repairs not being done and a lack of quality housing. Therefore, we propose a three-year tenancy, giving tenants the ability to terminate a tenancy with one month’s notice and landlords the ability to terminate contracts with two months’ notice. Again, we want regulations on that matter to be laid before Parliament by 1 April 2015.

The recent welfare expert group recognised that issue and supported longer tenancies. It also supported capping rent increases. Surely, on this issue, if it is good enough for the Government’s expert group, it should be good enough to be included in the bill.

I urge Parliament to support the amendments.

I move amendment 49.

The Deputy Presiding Officer: We are tight for time, so I ask Mr Johnstone to be brief.

16:15

Alex Johnstone: I do not disagree with James Kelly’s analysis of the cause of the growth in the private rented sector. It is only fair to say that the demand that other pressures in the system have created is demonstrating how supply and demand work in a marketplace, although the way in which the rental market in some areas of Edinburgh and Aberdeen operates is divorced from the system that we have been describing.
However, I disagree with James Kelly on the solutions. The private rented sector has grown so much because of demand, and it has satisfied that demand because the market has supported it. If we intervene in the market by capping rents or doing other things, the private rented sector will simply begin to melt away. If a private landlord sees a lack of return from his property, he has the option to place it on the market, which shrinks the private rented sector.

There are definitely problems. James Kelly has identified them, but he has not identified the appropriate solution.

**Patrick Harvie**: Alex Johnstone attempts to portray a picture of a well-functioning market. We can no longer afford to regard the private rented sector as involving just a free market exchange between equals. As James Kelly said, the sector has doubled in size in 10 years. Some in the sector want it to double again in coming years.

For a growing proportion of our population, no other housing is available. Our society is not making social housing available and the economy is not making owner occupation affordable, so those people are stuck between a rock and a hard place. They are left to depend only on the private rented sector and they are far too open to exploitation.

I will support amendments 49 and 50, but I particularly support the security of tenure proposals. Security of tenure underpins pretty much everything else that the Government is trying to achieve under the bill. It underpins every area in which tenants are vulnerable to exploitation by landlords who are willing to exploit their current position of power.

The Government has previously indicated that it will not accept amendments to the bill on such subjects but that it is open to the longer-term argument. I hope that the minister will say something about the timescale on which the Government intends to take action, even if it does not support amendments 49 and 50.

On security of tenure and rent reviews, we are not looking for anything dramatically radical; we are looking only to join the European main stream, where some rent control and a more secure model of tenure are the norm. That enables tenants to live with a bit of dignity in the private rented sector.

**Margaret Burgess**: When we debated similar amendments from James Kelly at stage 2, I said that they would impose potentially onerous regulations without any consultation and without a clear understanding of their impact on tenants and landlords.

Rent levels were not raised by anyone in the ICI committee’s evidence sessions or at stakeholder events, other than by Patrick Harvie. Many stakeholders have expressed their surprise at the proposed late addition to the bill and have noted their concerns about the lack of proper consultation.

In contrast to Mr Kelly’s last-minute intervention, the Scottish Government has been looking at reform of the private rented sector tenancy regime as part of its wider strategy for the sector. We commissioned an independent review of the tenancy regime last year and received the report of that review a few weeks ago.

The review recommended that we introduce a new tenancy regime. We will consult on that in the autumn and, at the same time, we will explore issues that relate to rent levels. That will allow us to understand the problem across Scotland—including in hotspots such as Aberdeen—and to identify in consultation with tenants and landlords what might need to be done to ensure that tenants in the private rented sector get a fair deal.

That is the right way to develop legislation on complex matters, so that we minimise the risk of it backfiring on tenants and landlords, as I fear that the approach in Mr Kelly’s amendments would do.

Amendment 50 would place a duty on the Scottish ministers to introduce regulations to establish the new type of tenancy that I mentioned. Like amendment 49, it would introduce a significant new duty on ministers in respect of matters that formed no part of the bill as introduced. Consequently, I have the same objection in principle to amendment 50 as I had to amendment 49. I have talked about what we are doing in relation to a new tenancy in the private rented sector.

**James Kelly**: The minister suggested that the amendments that I have lodged are somehow last-minute amendments. When we debated housing in December, I made absolutely clear, in response to a speech from Patrick Harvie, that we would consider rent controls and tenancies. I made that clear at stage 1, too. These are not last-minute amendments; they are amendments that address issues that are happening on the ground just now, which it is incumbent on the Government to address.

Alex Johnstone said that the market merely responds to demand and that landlords are entitled to a fair return. However, the Citylets report talks about rent rises of 16 per cent in Dundee and Aberdeen. Landlords are getting massive returns.

The minister complained that my proposed approach would be too onerous for landlords and letting agents. What about the onerous burdens that are being borne by people in poverty, who must decide whether to cut back on their fuel bills
so that they can pay their rent? Those are the onerous burdens that we should be addressing.

Why is the Government launching another consultation? All afternoon, in response to amendments from other parties, the Government has said that it will launch a consultation. This Government had three years to consult on the bill; it should be getting it right now—[Interruption.]

The Deputy Presiding Officer (John Scott): Order.

James Kelly: We lodged amendments that would make a difference on the ground and help tenants in the private rented sector. It is time to consider what would make a difference. I urge members to support the amendments in this group and help tenants in the private rented sector.

The Deputy Presiding Officer: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For:
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against:
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame North) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Amendment 50 moved—[James Kelly].

The Deputy Presiding Officer: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For:
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Humie, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Ruterglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougal, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against:
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 80, Abstentions 0.

Amendment 49 disagreed to.

Amendment 50 disagreed to.

The Deputy Presiding Officer: The result of the division is: For 37, Against 80, Abstentions 0.

Yousaf, Humza (Glasgow) (SNP)
Wilson, John (Central Scotland) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 80, Abstentions 0.

Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 80, Abstentions 0.

Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against:
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 80, Abstentions 0.

Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseannia (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Garvie, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kirkintilloch) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Ken (Highlands and Islands) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Alileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milton, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Peterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Housing should provide homes for individuals and families; it should not be a source of exploitation of tenants or other criminality.

Members who represent Glasgow will be aware that Govanhill is an area where a range of problems relating to housing exist and where concerted effort is needed to make change at the community level. Glasgow members will also be aware that amendments 51 and 70 are supported by COSLA and explicitly by Glasgow City Council.

Glasgow City Council told me that the minister’s decision not to include enhanced enforcement areas in the bill, as promised, restricts its ability to support the community in Govanhill to achieve a better quality of local environment and decent and safe homes for the people who live there. I ask Parliament to support amendment 51.

I move amendment 51.

The Deputy Presiding Officer: As we are falling behind, I invite Sandra White to speak briefly.

Sandra White (Glasgow Kelvin) (SNP): I rise to support amendment 51, which will tackle the very serious problems that Drew Smith mentioned. A previous group of amendments concerned party flats. I believe that people in the Beresford building and other places in Glasgow city centre in my constituency who live near antisocial tenants will benefit from the power in amendment 51. I thank the minister for meeting me and others and I look forward to supporting amendment 51.

Alex Johnstone: I understand why amendment 51 has been lodged, but surely when we pass the bill its powers should be enforced fairly and equally across the country. I believe that there should be enhanced enforcement, but I believe that people outside enhanced enforcement areas should have the same level of protection as those within them. For that reason I believe that we should not have enhanced enforcement areas.

Margaret Burgess: I appreciate the concerns from members across the chamber regarding local authorities’ ability to tackle poor property management and conditions. We have included further powers in the bill for local authorities to tackle those problems, including a new power of inspection where a local authority believes that the repairing standard is not being met, and third-party reporting rights to the Private Rented Housing Panel. Those powers will apply throughout Scotland.

We recognise that, as Drew Smith said, the power to designate enhanced enforcement areas would be used in exceptional circumstances and that many local authorities might not use it. However, the power would be there for local authorities to use in circumstances in which it would help to tackle acute problems in their area. On that basis the Government is happy to support amendments 51 and 70 and invites the chamber to do the same.
**Drew Smith:** Alex Johnstone’s argument was perhaps for an extension of enhanced enforcement areas. Perhaps he could take up the issues that he was concerned with in the areas that he represents.

I am grateful for the comments from Sandra White and the minister and for the Government’s support for the amendment. I hope that it will lead to a continuation of the partnership that I believe exists between Glasgow City Council and the Scottish Government on tackling the serious issues that are faced by the constituents of a number of members in the Govanhill area. I hope that lessons learned in that area will assist communities represented by other members.

*Amendment 51 agreed to.*

16:30

**Section 30—Fit and proper person considerations**

**The Deputy Presiding Officer:** We move to group 9. Amendment 52, in the name of the minister, is grouped with amendments 53, 8 and 9.

**Margaret Burgess:** I will first speak to amendments 52 and 53. The Scottish Government is giving full and careful consideration to the recent Supreme Court ruling that mandatory disclosure of all previous convictions, including spent convictions, is contrary to article 8 of the European convention on human rights. The amendments to the fit-and-proper-person test for letting agents are in response to that ruling. They retain the policy intention to be able to check the accuracy of information that has been disclosed, but clarify that that does not include spent convictions.

Amendment 53 will change the existing level of disclosure for letting agent registration that may be required by the Scottish ministers, where they have reasonable grounds to suspect that material falling under section 30(2) of the bill is, or has become, inaccurate. That will now be at the basic disclosure level. Amendment 52 further makes it clear that spent convictions do not fall under the material that is set out at section 30(2).

Amendments 8 and 9 are also in my name. Both amendments will modify section 35, which deals with revocation of a registration. At present, section 35 will allow the Scottish ministers to deregister a letting agent if the agent or key personnel are no longer fit and proper. Amendments 8 and 9 will also allow that where the letting agent or key person is not fit and proper. For example, if a mistake had been made, or information had been withheld at the time of the application, the Scottish ministers may find that the applicant or key person had never been fit and proper, and would subsequently seek to remove them from the register.

Amendment 9 also provides the power to revoke a registration where a change of circumstances under section 33 triggers a failure of the fit-and-proper-person test, where a key person transpires not to be, or is deemed no longer to be, fit and proper.

I move amendment 52.

**James Kelly:** I wish to support amendments 52 and 53. They make good sense in that they are consistent with current employment practice and ECHR, as they will ensure that spent convictions are not taken into account in the fit-and-proper-person test.

In relation to amendment 53, which deals with the inclusion of the criminal conviction certificate, what checks can be introduced to ensure that the information that will be collected as a result of section 30 is accurate, and to flag up inaccuracies? What monitoring will be in place as a result of section 30?

**Margaret Burgess:** Amendments 52 and 53 will ensure accuracy. I am not sure what Mr Kelly is looking for, further to that. We are retaining the policy intention to be able to check the accuracy of information that has been disclosed, but as I previously said, we are clarifying that it will be a basic disclosure and not enhanced disclosure.

*Amendment 52 agreed to.*

**Section 31A—Fit and proper person: criminal record information**

Amendment 53 moved—[Margaret Burgess]—and agreed to.

**Section 34—Duration of registration**

**The Deputy Presiding Officer:** We move to group 10. Amendment 54, in the name of Mary Fee, is grouped with amendment 55.

**Mary Fee:** As amendments 54 and 55 are fairly simplistic, Presiding Officer, you will be pleased to know that I will be fairly brief. Both of them would require landlords to register on an annual basis—[Interruption.]

**The Deputy Presiding Officer:** Could members who are leaving the chamber do so quickly and quietly, please?

**Mary Fee:** Amendments 54 and 55 would require landlords to register annually instead of every three years, as is proposed in the bill. My amendments would tighten up the process and would lead to greater confidence and security for tenants, because they would allow problems to be caught and dealt with more quickly.
There is nothing to suggest that the registration process would be onerous once the initial registration had been done, so it makes sense to require landlords to reregister annually.

I move amendment 54.

Margaret Burgess: As things stand, the Scottish ministers can consider a breach of the fit-and-proper-person test or of the code of practice at any time during the three-year registration period. Section 35 provides the Scottish ministers with the power to revoke a registration if the agent is no longer a fit and proper person. I consider the use of a three-year registration cycle to be a proportionate approach that will safeguard clients without placing an onerous burden on the industry. It would be disproportionate to have a period of anything less than three years, so I do not support amendments 54 and 55.

Mary Fee: I welcome the minister’s comments, but she makes the presumption that registration is a lengthy and onerous process and that we would be placing a burden on the Government and letting agents. There is no evidence to support that so, on that ground, I press amendment 54.

The Deputy Presiding Officer: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougal, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (East Ayrshire) (SNP)
Lockett, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Easter) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (Highlands and Islands) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alasdair (Airdrie and Shotts) (SNP)
Paterson, Gil (Claybank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
The Deputy Presiding Officer: The result of the division is: For 39, Against 73, Abstentions 0.

Amendment 54 disagreed to.

The Deputy Presiding Officer: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
MacIntosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glascow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Elaine (Coatbridge and Chyeston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross- shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinnery, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 74, Abstentions 0.

Amendment 55 disagreed to.

Section 35—Revocation of registration

Amendments 8 and 9 moved—[Margaret Burgess]—and agreed to.

After section 35

The Deputy Presiding Officer: We come to group 11. Amendment 10, in the name of the minister, is grouped with amendments 11, 12 and 14 to 16.

Margaret Burgess: Currently, the bill makes no specific provision to allow a letting agent to terminate their registration voluntarily—for example, if the agent retires. Amendment 10 provides a mechanism for a letting agent to apply to the Scottish ministers to terminate their registration. The mechanism requires the Scottish ministers to comply if they are satisfied that the agent has ceased to operate or that it is otherwise appropriate to do so. Should the Scottish ministers decide to refuse an application, they must provide their reasons for doing so.

Alex Johnstone’s amendment 11 also seeks to establish a mechanism for removal of a registration, on application. However, amendment 11 would require the Scottish ministers to be satisfied that "the letting agent has made adequate arrangements with respect to" the business. It is unclear, however, what those arrangements would be. Given that the Scottish ministers would be required to assess the arrangements’ adequacy, I cannot support the amendment. I therefore ask Alex Johnstone not to move amendment 11.

Amendment 12, in my name, will prevent a letting agent who has been deregistered at their own request from seeking to recover costs and charges that are incurred for work done after the date of deregistration. In other words, it will discourage that letting agent from continuing to operate.

Amendments 14 to 16 are linked to amendment 12. They clarify what is meant by the relevant date for deregistration, and confirm that costs that are incurred by a letting agent before the date of their deregistration are recoverable.

I move amendment 10.

Alex Johnstone: Amendment 11 is a resubmission of an amendment that was lodged and debated at stage 2. As members can see by the consecutive numbering on the marshalled list, it may have crossed in the post, so to speak, with the minister’s amendment 10. Having read through amendment 10, I believe that it will achieve the objective that was set out in my amendment at stage 2, and in amendment 11 today at stage 3. Consequently, I am inclined to support amendment 10.

The only area that I am somewhat concerned about is subsection (2) of the proposed new section that will be introduced by amendment 10, which says that "The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine."

I seek reassurance from the minister at this stage that the fee will be reasonable and will be designed only to cover the costs of such a process. If that reassurance is given, I will support the minister’s amendment 10 and the other Government amendments in the group, and I will not move my amendment 11.

Mary Fee: I support all the amendments—10 to 12 and 14 to 16—in the group. I support the amendments in the names of both Margaret Burgess and Alex Johnstone because they are all sensible and practical additions to the bill. They offer a straightforward solution to agents who wish to be removed from the register, and they will allow the register to be kept up to date. The consequence of all the amendments will be to tighten up the sector, so they must be welcomed.

Margaret Burgess: I have no comments other than to give Alex Johnstone the assurance that he seeks—that the fee will be appropriate.

By reason of subsection (2) of the proposed new section that will be introduced by amendment 10, which says that "The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine."

I seek reassurance from the minister at this stage that the fee will be reasonable and will be designed only to cover the costs of such a process. If that reassurance is given, I will support the minister’s amendment 10 and the other Government amendments in the group, and I will not move my amendment 11.

Mary Fee: I support all the amendments—10 to 12 and 14 to 16—in the group. I support the amendments in the names of both Margaret Burgess and Alex Johnstone because they are all sensible and practical additions to the bill. They offer a straightforward solution to agents who wish to be removed from the register, and they will allow the register to be kept up to date. The consequence of all the amendments will be to tighten up the sector, so they must be welcomed.

Margaret Burgess: I have no comments other than to give Alex Johnstone the assurance that he seeks—that the fee will be appropriate.

The Deputy Presiding Officer: The question is that amendment 10 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
The minister did not agree with my amendments that I raised would be addressed in the code. I hope that, even if she is not persuaded that my amendments would help to set that out in the code, she will give some further indication of the means by which the issues will be addressed.

At stage 2, I lodged a number of amendments seeking to explore the detail of what would be included in the code of practice that the Government intends to produce for letting agents, and I am again seeking to explore specific issues that the code of practice could—and, I believe, should—address.

The minister did not agree with my amendments at stage 2, but did give a commitment that the issues that I raised would be addressed in the code. I hope that, even if she is not persuaded that my amendments would help to set that out in the bill, she will give some further indication of the means by which the issues will be addressed.
Specifically, I am asking that issues around the level of advance rent and level of deposit are addressed. Members will be aware that there are letting agents who are seeking workarounds to the provisions that we have put in place in the past, by finding other ways of describing the payments or pretending that they are not really advance rents or deposits. Even when advance rent is called advance rent, there are situations, as we can see from the Citizens Advice Scotland report that has been circulated to all members, in which people are being asked not just for one or two months' rent but for three months' rent and, in some cases, even six months' advance rent.

Another issue that I would like the code of practice to address is socioeconomic discrimination and discrimination against benefit recipients. The term “no DSS” will be very familiar to anyone who has looked at the private rented sector. The minister has said that she wants to see an end to the use of that term, but I am seeking an end to the practice itself, regardless of the use of the term. Discrimination against people because they are in receipt of benefits basically undermines the provision of housing, which the private rented sector is seeking the right to manage on behalf of our society. Housing has to be available not just to those whom individual landlords or letting agents consider to be good, reliable, dependable tenants. That housing must be available to those who need it, and that means ending discrimination.

If we consider the two issues in concert—discrimination on the ground that people are benefit recipients and the requirement for three or six months' advance rent—it will be pretty clear to anybody that someone who is given notice to quit one property and is seeking to find another while they are on benefits, and who is asked to come up with three months' or six months' advance rent, will find that it is simply not feasible.

My amendments in this group also seek to end discrimination on the grounds of immigration status. That is connected with the wrong-headed provisions that have been put through the Westminster Parliament in the Immigration Act 2014. I ask the minister to take this opportunity to address the interaction between the reserved function of immigration and the devolved function of housing. How can we ensure that we use housing law to prevent any undue discrimination against migrants and immigrants who are in need of housing in Scotland from the private rented sector?

I acknowledge that amendment 56 proposes an alternative means of addressing some of the issues that I have outlined, and I look forward to hearing the argument for that amendment. However, I hope that with amendment 37 I am on ground that the Government will be more comfortable with. I moved an amendment at stage 2 to require the code of practice for letting agents to be laid before the Parliament within a year. The minister explained that that was a wee bit too much but said that she shared my “wish to see progress being made to develop the code ... but I want to ensure that the code is drafted with proper consideration”.

She went on to say:

“I wish to reassure Mr Harvie about my commitment to progressing the development of the code, which I expect to be laid before Parliament within 18 months of the bill’s enactment.”—[Official Report, Infrastructure and Capital Investment Committee, 21 May 2014; c 3104.]

Amendment 37 is my new version of my stage 2 amendment and it suggests that 18-month timescale. On that basis, I am sure that the minister can find no reason at all to object to amendment 37.

I move amendment 17.

The Deputy Presiding Officer: I call Mary Fee to speak to amendment 56 and other amendments in the group.

Mary Fee: Amendment 56 seeks to strengthen the code of practice as it would require deposits to be paid into a tenant deposit scheme, prohibit letting agents from charging fees to tenants or prospective tenants before or after a tenancy and prohibit letting agents from discriminating against those in receipt of benefits. Amendment 56 aims to strengthen the private rented sector; it is a sensible amendment that would give more safety and security to tenants.

I support Patrick Harvie’s amendments 17 to 22 and 37. Amendments 17 to 22 would strengthen and enhance the code of practice because they seek to protect tenants from overcharging and discrimination by letting agents. Amendment 37 makes sense, as it sets out a timetable for the code of practice to be published.

Alex Johnstone: There is an old story that the traditional definition of a croft is a small piece of land surrounded by legislation. The amendments in this group would take us to a point at which we might be in some danger of a private let being defined as a property surrounded by regulation. There is a significant danger that if we regulate over-onerously in this area we will create regulations that are unenforceable and a situation that would be worse than the one that we would have, described by Patrick Harvie, under the bill as it stands. It is important that regulation should be capable of implementation and of policing, but I am not convinced that if we pass all the amendments in this group we will get to a stage at which that is possible.
Margaret Burgess: I will begin by speaking to Patrick Harvie’s amendments 17 to 22. The equivalents of all those amendments were debated at stage 2 and were rejected by the Infrastructure and Capital Investment Committee. I understand Patrick Harvie’s intention, which is to prohibit letting agents from discriminating against a prospective tenant on various grounds, including socioeconomic, being in receipt of state benefits and immigration status. I sympathise with people who are struggling to find affordable rented property while in receipt of state benefits and with those whose immigration status is uncertain, but we will take up the whole issue of discrimination and barriers to accessing housing with the letting agent industry through the process of developing the code of practice.

I welcome Patrick Harvie’s amendment 37. I had intended, as I indicated at stage 2, to lodge a similar amendment, but Patrick Harvie beat me to it. I welcome amendment 37 and I am happy to support it.

What Mary Fee’s amendment 56 seeks was debated and rejected by the Infrastructure and Capital Investment Committee at stage 2. I said then that the Scottish ministers have already clarified the law to make crystal clear what is allowed. It is unacceptable for a letting agent to flout the law on the charging of premiums. On discrimination, I have said in my responses to Patrick Harvie on numerous occasions, including my response to his amendments 17 to 22, that the Scottish Government will discuss equality issues with the letting agents industry in the context of developing the code of practice. The issues in all Patrick Harvie’s amendments are appropriate issues to discuss when developing the code of practice, which we will consult on, as that is the right and proper thing to do. On that basis, I invite Mary Fee not to move amendment 56.

Patrick Harvie: My excitement knows no bounds at hearing that an Opposition member will have an amendment agreed to for the second time today—although perhaps I have slightly undercounted. I thank the minister for the commitment to amendment 37, which will set a clear timescale for the development of a code of practice, as it will have to be laid before the Parliament within 18 months. I am grateful for that.

I understand the minister’s position on amendments 17 to 22, although it disappoints me. I am sure that she intended to say that she will consult not only with letting agencies and industry bodies but with a wide range of other organisations, including those that represent tenants as well as equality and anti-poverty organisations. I am sure that she intends to consult all those. However, I will press amendment 17.

Presiding Officer, I suspect that the support for amendments 17 to 22 will be the same so, if it saves time, can they be decided on as a group?

The Deputy Presiding Officer: No, they will all have to be decided on individually, but thank you, anyway.

The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Ballie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Amendment 17 disagreed to.

The Deputy Presiding Officer: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMaon, Michael (Uddingston and Bellshill) (Lab)
McMaon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richar
Amendment 20 moved—[Patrick Harvie].

The Deputy Presiding Officer: The result of the division is: For 43, Against 74, Abstentions 0.

Amendment 19 disagreed to.

The Deputy Presiding Officer: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: The result of the division is: For 43, Against 72, Abstentions 0.

Amendment 20 disagreed to.

17:00

Amendment 21 moved—[Patrick Harvie].

The Deputy Presiding Officer: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
Amendment 21 disagreed to.

Amendment 22 moved—[Patrick Harvie].

The Deputy Presiding Officer: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)

Against

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

The Deputy Presiding Officer: The result of the division is: For 42, Against 73, Abstentions 0.

The Deputy Presiding Officer: The result of the division is: For 42, Against 73, Abstentions 0.

Amendment 21 disagreed to.

Amendment 22 moved—[Patrick Harvie].

The Deputy Presiding Officer: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Amendment 22 disagreed to.

The Deputy Presiding Officer: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Ruterglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lamont, Johann (Glasgow Pollok) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen North) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 42, Against 75, Abstentions 0.

Amendment 56 disagreed to.

Section 43—Applications to First-tier Tribunal to enforce code of practice

The Deputy Presiding Officer: We move to group 13. Amendment 23, in the name of Patrick Harvie, is grouped with amendments 24, 25 and 26.

Patrick Harvie: Amendments 23 and 24 make one relatively simple change to section 43.

Section 43 introduces the procedures for the application to first-tier tribunal in relation to the enforcement of the letting agent code of practice. All members have acknowledged that there is a great deal of strength in that process and welcome the general thrust of the bill as it stands. However, at the moment, the applications can be made only by a tenant or a landlord—those being the individuals or bodies that would be seen to have a complaint against a letting agent as the go-between. My amendments simply seek to broaden that provision to ensure that a third party can make an application on behalf of a group of tenants.

The minister has previously said that she is perfectly comfortable with the idea that tenants could be supported in the application process. I am sure that some tenants will be articulate enough, know what they are doing and have the confidence to make an application on their own behalf without support. However, others will not have that confidence and may feel that they will be put under pressure or receive threats from their landlord or letting agent if they make such an application. Alternatively, they may simply not know how to go about the process.

For an individual to be supported in that situation may be enough, but I am concerned about groups of tenants—for example, in a student community, where a large number of tenants are in rapid turnover in short-term tenancies and do not necessarily have the motivation or confidence to take a complaint about a letting agent’s behaviour to the tribunal.

A single letting agent may be the source of a number of complaints that affect a whole community or a large group of students. It seems entirely reasonable that we allow the student rights organisation or another welfare rights or housing adviser to make the application on the students’ behalf. It might be a long-term problem for the student community concerned but only a short-term problem for any individual tenant or, even, particular household, so it would be reasonable to allow third-party applications on behalf of groups of tenants where that is the only way for the tribunal to address the issue.

Amendments 25 and 26 address compensation. It seems unreasonable that tenants should be expected to pay rent during a period in which their letting agent is in breach of the code. The code will exist to protect tenants as well as landlords and, if a tenant is not being given the standard of service to which they are entitled under it, they should not pay rent.

I sought to raise that issue at stage 2. The minister said to me that the amendment that I proposed was not appropriate because the letting agent could simply pass the cost on to the landlord even though the reason for the breach of the code may not be the landlord’s responsibility. Therefore, in amendment 25, I suggest that compensation should be given to the tenants in respect of the rent that they pay during the period in which the letting agent is in breach of the code but that that compensation be paid for by the letting agent.

I hope that the minister will show greater willingness to address those issues in the form that I have proposed this time.

I move amendment 23.
Mary Fee: I support amendments 23 and 24 in Patrick Harvie’s name. As he has already expressed most of the reasons that I would have given for supporting them, I will be brief.

Amendments 23 and 24 would allow for third-party representation to a tribunal for groups of tenants to be properly represented. It is only fair and right that groups of tenants who may otherwise be prohibited from going to a tribunal be able to be represented by a third party and take their complaint to the tribunal. It is a sensible approach and a good way forward.

Although I have a great deal of sympathy for what Patrick Harvie said when he spoke to amendment 25, I cannot support it or amendment 26. I am concerned with the way that amendment 25 is drafted in relation to compensation that would be paid to a tenant if a letting agent did not comply with the code. It may not be just or equitable and could be open to abuse, as a tenant could delay proceeding to accrue compensation.

Alex Johnstone: I agree with Mary Fee’s position on amendments 25 and 26.

On amendments 23 and 24, I have some concerns about the ability of third parties to act on behalf of groups of tenants. One of the things that we are trying to achieve in the bill is a better relationship between the tenant and landlord or letting agent. We need to work hard to ensure that that relationship is genuine and direct. The introduction of third parties acting on behalf of groups of tenants would have the potential to turn relationships into adversarial positions that are not helpful to the long-term outcome of the bill.

Margaret Burgess: Patrick Harvie requests first-tier tribunal representation by a third party, but I have some reservations about that.

The arrangements for representation would be a matter for the tribunal’s rules in due course. There is nothing in the bill to prevent a group of tenants seeking support from a third party in assisting them with progressing their complaint. However, I would have concerns about a third party proceeding with the sort of class action that I believe that Patrick Harvie has in mind.

As the bill currently indicates, the Scottish Government can bring an action to the first-tier tribunal on behalf of a group of people. Given the complexities that may arise from third parties doing so, it would be unwise to rush through such an amendment without proper consideration of the consequences. For example, if a third party advises the tribunal that he or she is acting for a particular group of tenants, how would the tribunal know that all the tenants in that group have agreed to be part of the action? What would happen if one of the tenants were to change his or her mind and drop out?

Patrick Harvie: Just to reinforce my point, part of the argument in favour of the amendment concerns situations in which not all tenants have the motivation, concern or desire to raise a case but a potential or alleged breach of the code by a letting agent will still be a long-term problem for others who will be living in those properties. I mention students because they often have short-term tenancies that run for a year or six months.

How will the code be enforced against letting agents in situations where tenants have no motivation to bring a case because they know that they will soon be moving on?

Margaret Burgess: As I said in my earlier remarks, the Scottish Government can, in circumstances such as the one that Patrick Harvie outlines, make an application to the first-tier tribunal, and the tribunal can order an inspection of the premises, so that issue is covered.

I understand what Patrick Harvie is getting at, but when we look at the detail of what he proposes we see that it is incredibly complex. I am well aware that other tribunals, such as the Homeowner Housing Panel, can deal with conjoined cases in which a number of complainers have lodged an application against the same person. Tribunals will often allow a third party to support a complainer or a group of complainers, but Patrick Harvie’s proposal goes further. Amendment 24 would allow a third party to act for a group of tenants in complaining about—in some instances—multiple letting agents.

I suggest that we allow the new legislation time to bed in. If the provision to allow the Scottish Government to make applications is not sufficient, we can reassess the position with the benefit of experience and with the time to reflect on the complexities that the amendment generates. I invite Patrick Harvie to withdraw amendments 23 and 24.

Patrick Harvie’s amendment 25 is well-intentioned, but it is flawed because there is no requirement in the bill for landlords to comply with the letting agent code of practice or an enforcement order that is made by the tribunal.

There are already a number of enforcement measures that can be taken if a letting agent does not comply with the code. The tribunal is able to award compensation on a proportionate basis, and it may also inform the Scottish ministers of the failure to comply. In the event that the letting agent is considered to be no longer a fit and proper person, that could result in their registration being revoked. It is also an offence to fail to comply with an enforcement order, which could result in a fine on conviction.
On the basis that other penalties exist in the bill, I cannot support amendments 25 and 26, and I ask Patrick Harvie not to move them.

**Patrick Harvie:** Without wanting to labour the point, I note that the minister may find that some of us will seek to hold her to the commitment that the Scottish Government will raise those applications with the tribunal on behalf of tenants. There will be cases in which tenants do not wish to proceed but the issues still need to be addressed.

I am sorry that the Government is not persuaded of the need for my amendments, either with regard to third-party applications or the need to protect tenants who will still be left paying rent through a letting agent who is breaching the code.

I press amendment 23, and I will move amendment 25 when the time comes.

17:15

**The Deputy Presiding Officer (Elaine Smith):**

The question is, that amendment 23 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Gaithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelerhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

**The Deputy Presiding Officer:** The result of the division is: For 42, Against 73, Abstentions 0.

**Amendment 23 disagreed to.**

**Amendment 24 not moved.**

**Amendment 25 moved—[Patrick Harvie].**

**The Deputy Presiding Officer:** The question is, that amendment 25 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**
Finnie, John (Highlands and Islands) (Ind)
Harvie, Patrick (Glasgow) (Green)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)
Urquhart, Jean (Highlands and Islands) (Ind)

**Against**
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alieen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)

Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rathglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGregor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Peterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 9, Against 106, Abstentions 0.

Amendment 25 disagreed to.

The Deputy Presiding Officer: I call amendment 26, in the name of Patrick Harvie, which has already been debated with amendment 23. Do you wish to move or not move, Mr Harvie?

Patrick Harvie: I know when I am beaten, Presiding Officer.

Amendment 26 not moved.

Section 51—Meaning of letting agency work

The Deputy Presiding Officer: Group 14 is on the meaning of “letting agency work”. Amendment 27, in the name of Alex Johnstone, is grouped with amendment 28.

I draw members’ attention to the pre-emption information in the groupings. If amendment 27 is agreed to, I cannot call amendment 28 because of pre-emption.

Alex Johnstone: I am sure that we will be okay with the pre-emption, Presiding Officer.

Amendment 27 is a re-lodging of an amendment that I lodged at stage 2, while amendment 28, which was lodged at about the same time for stage 3, seeks to have the same effect.

The problem lies with section 51(1)(b), which seeks to define the term “letting agency work”. Although it was fairly obvious from previous discussions that the bill’s drafters knew what they meant by the terms in section 51(1)(b), I was not convinced that that was what the bill actually said. As a consequence, I lodged an amendment to delete section 51(1)(b) completely.

With the minister’s amendment, which seeks to clarify the definition in section 51(1)(b), I believe that the wording is now far more effective and, indeed, will mostly have the desired effect. However, I am not convinced that redrafting the paragraph is the right way to go, and I think that we would better off if, as amendment 27 suggests, section 51(1)(b) were deleted completely. I will therefore move and press amendment 27, but, if it fails, I am prepared to support amendment 28 as a fall-back position.

I move amendment 27.

Margaret Burgess: During stages 1 and 2, some stakeholders noted concerns about the definition of letting agency work, as Alex Johnstone pointed out. They felt that it might inadvertently cover those who repair or improve a landlord’s property, such as roofers, painters and other contractors, which would unintentionally bring them within the scope of letting agent regulation.

Amendment 28 clarifies the position by amending the existing definition of the property management aspect of letting agency work to make clear the range of management activities that the Scottish ministers intend to be within the scope of letting agency work. Those activities include collecting rent, inspecting the house and arranging repairs, maintenance, improvement or insurance. The amendment will make it clear that people who solely provide building services to the private rented sector are not intended to be covered by the letting agent regulatory regime.

Amendment 27, which was lodged by Alex Johnstone, would simply delete all section 51(1)(b). That would remove property management work from the scope of letting agency work and narrow the scope of the regulatory regime. I cannot support that consequence.

In light of my amendment 28, which clarifies the position, I ask Alex Johnstone to withdraw his amendment 27.

James Kelly: Both amendments in the group seek to deal with the discussion that took place at stage 2, when it was clear that there was confusion about the wording of section 51 in respect of letting agency work. Having studied the amendments and listened to the contributions, I am convinced that Alex Johnstone’s solution is the best way forward, but if his amendment is defeated, we will support the minister’s amendment.

Alex Johnstone: I will be brief. I think that we have come to a reasonable solution. I will press amendment 27 but commit my support to amendment 28 should amendment 27 not be agreed to.

The Deputy Presiding Officer: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNee, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Namest (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Covendenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Alian, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Aliard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Donnan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 46, Against 69. Abstentions 0.
Amendment 27 disagreed to.
Amendment 28 moved—[Margaret Burgess]—and agreed to.

Section 61—Fit and proper person considerations

The Deputy Presiding Officer: Group 15 is on mobile home sites with permanent residents. Amendment 29, in the name of the minister, is grouped with amendments 58, 30 and 31.

Margaret Burgess: Amendment 29 makes it explicit that a local authority must, when running the fit-and-proper-person test, take into account any issues around the site owner profiteering from providing utilities to residents. The amendments reflect amendments that Mary Fee lodged during stage 2. There were some technical issues that we wanted to consider after stage 2. I am happy to say that we have worked through them so that amendment 29 addresses the issues that were raised by Mary Fee’s stage 2 amendments.
Amendment 58 clarifies that, when a site licence applicant provides details of convictions in their application, only unspent convictions should be covered. This technical amendment would put beyond doubt that only convictions not yet spent under the terms of the Rehabilitation of Offenders Act 1974 are required to be disclosed. Any spent convictions that a person has will not require to be disclosed; the amendment ensures that the bill is clear on that requirement.

I will now speak to amendment 30. One of the measures in the bill will allow a local authority to take emergency action on a site where there is imminent risk of serious harm. That is an important measure that allows a local authority to take action quickly and fix a significant problem where someone could be seriously harmed.

However, the bill as drafted includes three requirements that have to be met before a local authority can take emergency action on a site without a licence. One of those requirements would mean that a local authority would have to establish that the person in control of the land was “causing or permitting” the land to be used as a mobile home site with permanent residents. Amendment 30 will remove that requirement. The key issues in such a situation are that a site exists and that there is imminent risk of serious harm; whether someone is “causing or permitting” land to be used as a site is irrelevant. A local authority’s power to take emergency action is for use when there is a dangerous situation that needs to be urgently addressed. We want to avoid a local authority having to go through unnecessary stages before it can take that action.

Amendment 31 provides that, where an offence has been committed under part 5 of the bill by a corporate body and it can be proven that a specific individual played a role in committing the offence, that person also commits an offence and can be punished accordingly. That would mean that, for example, unscrupulous site owners cannot evade legal responsibility for their actions by setting up companies to own land and hold the site licence.

Amendment 31 reflects the position in other similar licensing regimes, including the new mobile home licensing regimes in England and in Wales. It provides a useful additional measure to tackle unscrupulous site owners, and I ask members to support it.

I move amendment 29.

Mary Fee: I will speak to amendments 29 and 30, in the name of the minister.

As the minister said, amendment 29 reflects an amendment that I lodged at stage 2 about the ability of local authorities to take into account breaches of gas, electricity and water agreements by mobile home site owners when carrying out a fit-and-proper-person test. I am grateful for the minister’s agreement to take forward my proposal and I am happy to support amendment 29.

I am also happy to support amendment 30, and I welcome the minister’s additional clarification today. I had concerns about the wording of subsection 2 of new section 322 of the Caravan Sites and Control of Development Act 1960—my concern was about the drafting and whether the wording was too broad or would curtail certain things—but, given her comments, I am happy to support the amendment.

Margaret Burgess: We have covered the issue of profiteering in the bill as a local authority must have regard to all the circumstances of a case. I was pleased to take forward the amendments on profiteering that Mary Fee lodged at stage 2.

I have nothing further to add on amendments 58, 30 and 31.

Amendment 29 agreed to.

Amendment 58 moved—[Margaret Burgess]—and agreed to.

AMENDMENT 31

Section 67—Emergency action

Amendment 30 moved—[Margaret Burgess]—and agreed to.

Before section 70

Amendment 31 moved—[Margaret Burgess]—and agreed to.

Section 72—Tenement management scheme

The Deputy Presiding Officer: Group 16 is on tenement management schemes. Amendment 59, in the name of Sarah Boyack, is grouped with amendments 60 and 61, and 32 to 34.

17:30 Sarah Boyack (Lothian) (Lab): Under subsection (4) of new section 4A of the Tenements (Scotland) Act 2004, as introduced by section 72 of the bill, a local authority will be required to notify an owner if it intends to pay a share of scheme costs on that owner’s behalf. Amendment 59 seeks to ensure that the bill is sufficiently clear about the process in circumstances in which the reason for the local authority intervening is an inability to identify or find the owner in question. When I raised the issue at stage 2, I was directed to section 30 of the 2004 act, which states that, when an owner cannot be identified, a notice will be deemed to have been sent if it is delivered to the property addressed to the owner, proprietor or something similar.

That might seem to be a trivial point, but I am keen for us to be clear about what that means and
I want to tease out from the minister whether the current requirement in the bill to notify an owner is consistent with the issuing of an official notice under the 2004 act. Amendment 59 would remove any ambiguity around that point.

Amendment 60 would require the Scottish Government to publish guidance about the operation of section 4 of the 2004 act on tenement management schemes and new section 4A on the power of local authorities to pay a missing share of scheme costs. New section 4A introduces significant and welcome new powers to minimise delays and assist owners who take their maintenance responsibilities seriously to get repairs moving.

Getting the powers right is one thing; ensuring that they are being used to the best effect is another challenge. The requirement for the Scottish Government to produce guidance in consultation with local authorities and other stakeholders will help to ensure that all parties are aware of the provisions and the scope that they provide for ensuring that common repairs are implemented timeously. That will also allow for a review of any existing guidance that is available to local authorities and others on the operation of the tenement management scheme to ensure that, 10 years on from the 2004 act, the legislation is operating effectively. From talking to local authority colleagues, I think that it is clear that the existing legislation is complex and not necessarily being used to best effect. It would be useful to bring together the new legislation with existing legislation.

Alongside official guidance for professionals, I would welcome the minister’s comments on whether, in light of the bill, the Government will revisit and update the “Common Repair, Common Sense” booklet to assist consumers and residents to navigate the amended legislation that we are going to pass tonight.

Amendment 61 acknowledges that registered social landlords would benefit from having a discretionary power to recover their costs from private owners by a repayment charge along the same lines as that introduced for local authorities. I was first made aware of that by a constituent who sought support from the local housing association to help with getting repairs carried out when the housing association owns one or more properties, but the housing associations would not act. When I raised the issue in evidence sessions on David Stewart’s Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill, there was a strong mood that we need to act on the issue.

I am pleased that the minister has listened to the arguments that I made on the issue at stage 2 and I am also grateful for her assistance in crafting a revised amendment that I hope will be crafted in such a way that we can pass it happily this afternoon. Housing associations are expected to ensure that the properties that they let meet the minimum standard that is set out in the Scottish housing quality standard, but they cannot do that in some cases because they cannot get consent from owners in other parts of the buildings to carry out common works. As co-owners, they have the right to carry out work in tenements in which they own a majority of flats or if they can secure the support of a sufficient number of owners to form a majority, but they cannot force those other owners to come to the table. That is left up to civil remedies, which are not as successful because the process is protracted and hugely costly and it is not a route that housing associations choose.

We clearly have a problem here. If registered social landlords had the discretionary power to recover costs from private owners by using repayment charges that are along the same lines as those introduced for local authorities by using repayment charges that are along the same lines as those introduced for local authorities in section 72 of the bill, that would transform the situation.

Amendment 61 creates a regulation-making power. Before using it, the Scottish Government would be required to carry out a consultation and consider the views of stakeholders. That is critical, because it gives everyone the opportunity to comment on the detail of how the regulation might be made. If we put it in the bill today, it means that it will happen, but the details need to be sorted out. Enabling the minister to propose the regulatory powers would be the right way to do that, because it would mean that the Parliament would be able to scrutinise them.

I am aware that housing associations have been forced to take properties out of their letting pools because they cannot afford to cover the necessary common repairs. That reduces the availability of social housing when we already have a challenge because of a shortage of housing. Amendment 61 is crucial because it will allow housing associations to play their part in ensuring that buildings are kept wind and watertight and up to the Scottish housing quality standard. The amendment provides protection for vulnerable home owners who might be adversely affected by a registered social landlord’s decision to recover costs because it includes a right to appeal to ministers.

The amendments in this part of the bill are crucial to strengthening the bill when it is passed tonight.

I move amendment 59.

**Margaret Burgess:** Amendment 32 replaces the current fixed 30-year period for repayment of a debt that is owed to a local authority in connection with work that has been done to repair and maintain private homes with a flexible period of
between five and 30 years, to be determined by the local authority.

That recovery power will also apply to the new missing-share power for tenement buildings that will be introduced by section 72, and will provide local authorities with an effective tool to secure repayment of their costs in paying a missing share.

Amendments 33 and 34 make a similar change to charging order powers under the Housing (Scotland) Act 1987.

Amendment 59 changes the wording of the duty to notify owners before using the new missing-share power by local authorities. The tenement management scheme provides a framework for collective decision making by owners of tenements. It helps them to take responsibility for work to common parts of their own homes and allows them to enforce majority decisions against owners who will not cooperate.

Although new section 4A provides a power for local authorities to intervene to support majority decisions, that is intended to be a last resort, and the operation of the tenement management scheme is primarily a matter between owners, to which the local authority would not normally be party. It is not obvious what purpose would be served by publishing guidance to local authorities about the operation of section 4.

As Sarah Boyack said, the Scottish Government already provides non-statutory guidance to home owners in the leaflet “Common Repair, Common Sense”, which we took over from Consumer Focus Scotland last year and which we will be revising to bring up to date. We also provide guidance for local authorities on their role in providing assistance to home owners under the Housing (Scotland) Act 2006. We will also be revising that guidance to take account of other changes in the bill.

Amendment 61 seeks to address an issue that was raised during the stage 2 debate. Together with the amendments in my name in this group, the amendment will provide a powerful debt recovery tool to support registered social landlords who need the co-operation of private owners to carry out work to address poor-quality tenements.

As Sarah Boyack mentioned, since stage 2 I have discussed her concerns with her and have considered the views of the SFHA. It is important that there should be protection for vulnerable tenants, so I am pleased to note the scope for an appeal procedure in the amendment.

In conclusion, I ask members to support amendments 32, 33, 34, 59 and 61. I invite Sarah Boyack not to move amendment 60.

Alex Johnstone: I am happy to support amendments 32, 33 and 34, because they make valuable improvements to the bill.

With regard to Sarah Boyack’s amendments, I am happy to support amendment 59. In all honesty, I am happy to support amendment 60 as well, as it simply requests the Government to provide clarity by publishing the guidance to which it refers.

The minister has accepted amendment 61, but I still have some concerns about it. It extends the scope of the provisions for the recovery of expenses from local authorities to registered social landlords. I contend that local authorities and RSLs are rather different in their operation and their perspective and that, as a consequence, it would be irresponsible of us to assume that the same legislation could act effectively for the same purpose.

Sarah Boyack proposes that we should legislate today and then consult. I am more cautious and I am concerned that we need to get the provisions right. I understand the suggestion that we should extend the approach to RSLs, but I am not convinced that amendment 61 is the right way to do that. I will support any process that leads us in that direction, but it would be premature of us to support the amendment.

Sarah Boyack: I am delighted that, as I understand it, the minister will support amendment 59. On amendment 60, I agree with her that the tenement management scheme should be the first port of call, but I am concerned that that is not the case for many residents. That is partly because of a lack of guidance and partly because local authorities lack the power to concentrate minds.

When the bill is passed, it will give local authorities more powers to act—that will be discussed further in the debate on the next group of amendments. Amendment 60 would strengthen those powers.

The legislative provisions are complex. When the situation is difficult, most owners walk away from sorting out the problems, which leaves us with a major public safety problem and a major
problem with the maintenance and repair of our buildings.

The new framework that we will create tonight will improve matters hugely. I am keen for the Scottish Government to be as proactive as possible in ensuring that local authorities and owners know as much as they can, so that the difficult part of forcing people to pay is the last backstop and not the first approach.

We have not mentioned the statutory notices problem in Edinburgh; notices were used principally because owners did not work together. The bill will help, because it will tell owners that, if they do not work together, the local authority will step in. Owners will still have to pay, but the works will definitely go ahead. For that reason, the bill is a huge step forward.

I say to Alex Johnstone that not including registered social landlords would be a huge missed opportunity. They must be part of the picture. That would improve the situation significantly when RSLs can act and are ready to act.

We know that the principle is the right thing to do, but it is only right and proper that the detail should be in separate regulations. Many members have argued for such an approach to different issues in the past.

It is important to support all the amendments in my name, which form a package, alongside the minister’s proposed measures. The amendments would strengthen the bill and ensure that it delivers on the aspirations that we all have for it.

Amendment 59 agreed to.

Amendment 60 moved—[Sarah Boyack].

The Deputy Presiding Officer: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mcculloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire South and Kinross-shire) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 51, Against 60, Abstentions 0.

Amendment 60 disagreed to.

17:45
Amendment 61 moved—[Sarah Boyack].

The Deputy Presiding Officer: The question is, that amendment 61 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For:
Adam, George (Paisley) (SNP)
Adamson, Claire (Central Scotland) (SNP)
Aliard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Doman, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Bar Giovane and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Amendment 62 aims to dig into the operation of the existing powers by requiring the Scottish Government to report regularly on the use of maintenance orders. If the amendment is agreed to, it will require the Government to produce a report on a variety of issues to do with local authorities’ use of maintenance orders from the time when the powers came into force to the present day. The amendment would also require subsequent reports to be produced on a three-yearly basis. Such reports would provide us with useful insight into how the powers are being used. The findings would put us in a much better position to be able to assess whether the powers as currently constituted are achieving their purpose, or whether further work is needed to support local authorities to use them effectively.

We have the Tenements (Scotland) Act 2004, and we have since 2004 considered several bills that relate to housing. It is important that the Scottish Government monitor the effectiveness of our legislation and that the Parliament carry out legislative scrutiny. Amendment 62 would help us to achieve those objectives by providing for reporting mechanisms, so that we can be sure that the provisions in the bill and previous housing legislation are being put into effect and used by local authorities, as Parliament intended.

I move amendment 62.

**Alex Johnstone:** We often come across situations in which it turns out that local authorities have powers that they did not know about. When the amendment that was similar to amendment 62 was lodged at stage 2, the minister’s defence was that the powers already exist for local government. I was and remain content with the explanation, but as we progress towards the end of stage 3 I look forward with interest to hearing what the minister will say.

**Margaret Burgess:** Amendment 62 would require the Scottish Government to produce a report on local authorities’ use of maintenance order powers, which were brought into force on 1 April 2009. Local authorities have made less use of the powers than was expected because they find administration of the process to be onerous. In response to those concerns, I have made a number of changes that will streamline the process, and which are set out in sections 74 and 75 and were supported by most local authorities during the Scottish Government’s consultation.

One of the changes is to move information on maintenance plans from the land register to the building registers that are held by local authorities. That will reduce the cost of using maintenance orders, but will mean also that there is no central point of information for some of the details that the provision in amendment 62 seeks to require the Scottish Government to obtain.
I am happy to engage with local authorities on the use that they make of the powers that we provide for them, and I am happy to seek information on numbers from the keeper of the Registers of Scotland and from local authorities, as required. The amendments that we have made to the bill demonstrate that we have been listening and have made changes to improve use of the maintenance powers, but I do not think that the proposal to formalise reporting on the numbers of orders and plans would help with that. I therefore cannot support amendment 62.

Sarah Boyack: Notwithstanding the minister’s comments, I will press amendment 62.

The Deputy Presiding Officer: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McLeod, Aileen (Lothian) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Glasgow Southside) (SNP)

The Deputy Presiding Officer: The result of the division is: For 36, Against 71, Abstentions 0.

Amendment 62 disagreed to.
After section 76

Amendment 32 moved—[Margaret Burgess]—and agreed to.

Section 76A

Amendments 33 and 34 moved—[Margaret Burgess]—and agreed to.

Section 77B—Private rented housing panel: disqualification from membership

The Deputy Presiding Officer: Group 18 is entitled “First-Tier Tribunal and private rented housing panel membership: parliamentary procedure”. Amendment 35, in the name of the minister, is grouped with amendment 36.

Margaret Burgess: At stage 2 the Government amended the bill to provide ministers with powers to vary certain tribunal disqualifications. Amendments 35 and 36 will change the procedure that is to be used from negative to affirmative. The change responds to an issue that was raised by the Delegated Powers and Law Reform Committee. Although the powers relate to quite straightforward administrative matters, I am content to amend the powers to require use of affirmative procedure, as recommended by the committee.

I move amendment 35.

James Kelly: Disqualification from the Private Rented Housing Panel is a serious matter that should get appropriate scrutiny by Parliament. The change from use of negative procedure to affirmative procedure makes good sense, so I support the minister’s amendments.

Alex Johnstone: I was not going to say anything, but I decided to stand up merely to defend the negative procedure, which is much maligned in Parliament. Committees often argue that affirmative procedure is preferable to negative procedure, but I find the negative procedure very attractive and responsive. We should use it with pride in our parliamentary processes.

Notwithstanding that comment, I support amendment 35, which is in the minister’s name.

Nigel Don (Angus North and Mearns) (SNP): As the convener of the Delegated Powers and Law Reform Committee, I am delighted that the Government has responded to our suggestion.

Amendment 35 agreed to.

Section 82—Subordinate legislation

Amendments 67, 68 and 69 not moved.

Amendment 70 moved—[Drew Smith].

The Deputy Presiding Officer: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Ballie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alieen (Clydesdale) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caitliness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Ruterglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Amendment 72 moved.

Amendment 37 moved—[Patrick Harvie]—and agreed to.

Section 85—Commencement

Amendment 71 not moved.

Amendment 72 moved—[Mary Fee].

The Deputy Presiding Officer: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Balie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 97, Against 12, Abstentions 0.

Amendment 70 agreed to.

Amendment 36 moved—[Margaret Burgess]—and agreed to.

Amendment 37 moved—[Patrick Harvie]—and agreed to.
Housing (Scotland) Bill

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-10438, in the name of Margaret Burgess, on the Housing (Scotland) Bill.

I call Margaret Burgess to speak to and move the motion. Minister, you have around 10 minutes, but at this stage we have some time for interventions.

18:01

The Minister for Housing and Welfare (Margaret Burgess): Thank you, Presiding Officer.

I will start by thanking everyone who contributed to the development of the Housing (Scotland) Bill, including members of all parties and stakeholders from across all sectors of housing. I am grateful to those stakeholders for their considered thoughts on the bill, both while the Government was shaping its policy and during the Parliament’s consideration of the bill, and I thank the members of the Infrastructure and Capital Investment Committee for their detailed scrutiny of the bill. I was pleased to lodge a number of amendments at stage 2 in response to the committee’s recommendations.

I believe that the broad consensus in favour of the policies in the bill reflects our commitment to working with stakeholders on its provisions. Following its enactment, we will continue that dialogue as we develop draft guidance and proceed with implementation.

The Scottish Government published its strategy for housing, “Homes Fit for the 21st Century”, in February 2011. It included a number of measures that required legislation, and the bill fulfils our commitment. The bill will safeguard the interests of consumers, support improvements to the quality of housing and secure better outcomes for communities. It will introduce greater flexibility for social landlords to manage their houses and, by ending the right to buy, it will provide social landlords with more certainty in planning to invest in those houses as well as in new homes.

The committee and stakeholders had concerns that a three-year notice period was too long for ending the right to buy, and I reduced it to two years. I believe that a two-year period balances the need to stop social housing being sold at a discount as soon as is reasonably possible while ensuring that those who have the right to buy and are able to exercise it will have a reasonable opportunity to do so. A period of two years will give them time to consider their options carefully.

The Deputy Presiding Officer: The result of the division is: For 37, Against 71, Abstentions 0.

Amendment 72 disagreed to.

Amendment 73 not moved.

The Deputy Presiding Officer: That ends consideration of amendments.
and to seek reputable financial advice without being rushed into a decision.

Ending the right to buy sits alongside the Government’s target to deliver 30,000 new affordable homes in the five years of this session of Parliament. By 31 March 2014, we had already delivered 19,903 affordable homes, 14,294 of which were for social rent. That represents 71 per cent of our social rent target. We are therefore on track to meet the 30,000 target, and we have now committed £1.7 billion to delivering those vital homes in the five years of the current session of Parliament. Yesterday, the First Minister announced that we had reached a spend of £1 billion, which is a substantial investment in housing. That spend is not only an investment in housing; it sustains 8,000 jobs each year.

James Kelly (Rutherglen) (Lab): The minister refers to the £1 billion spend that the First Minister announced yesterday. Do you recognise that there has been a 29 per cent cut in the housing budget, as a result of which we have seen the lowest number of completions since 1947? The effect of that is apparent in our constituencies, where there are growing waiting lists. That is the effect that the cuts in the budget are having.

Margaret Burgess: The Scottish Government is investing more and is building more social houses than any previous Administration in the Parliament—more council houses and more houses by registered social landlords. That is a fact; it cannot be disputed. [Interruption.] We are doing that at the same time as we are investing in affordable houses in mid-market rent—[Interruption.]

The Deputy Presiding Officer: Order, please.

Margaret Burgess: We are committed to housing in this country. There are more houses per head of population being built in Scotland than in the rest of the UK. We are building the houses—[Interruption.]—no matter what James Kelly is trying to say. We are outperforming any other place in the UK in building houses.

The private rented sector has grown significantly over the past 10 years. That is why the Government consulted on and published the first private rented sector strategy for Scotland. The bill introduces measures that will strengthen the regulation of that sector. It gives local authorities increased powers to tackle poor conditions through third-party reporting to the private rented housing tribunal and the power to inspect a property. It gives local authorities new discretionary powers to tackle disrepair in the owner-occupied sector. It establishes a housing tribunal to deal with private rented sector cases.

James Kelly: What does the bill offer to tenants in the private sector who are facing rent rises of nearly 20 per cent? What is your answer to those tenants, minister?

The Deputy Presiding Officer: Members should remember to speak through the chair, please.

Margaret Burgess: The Government is absolutely committed to those who rent in the private sector. We introduced the first private sector strategy for Scotland. We are ensuring that the landlord registration scheme is being enforced. We will also regulate the letting agency industry, ensuring that tenants get a fair deal. We are already examining the tenancy regime, and I will discuss that later in my speech. We were considering that long before James Kelly ever talked about it.

All those measures were developed through consultation with stakeholders. I am clear that they will help to ensure that there are good standards across the private rented sector. There is broad consensus for the approach to regulating letting agents, and I believe that the framework has been strengthened during the scrutiny of the bill.

The Scottish Government will continue to work closely with stakeholders and others to develop the code of practice and to ensure that it delivers a robust regime. I hope that that answers Patrick Harvie’s earlier point: when we are considering the code of practice, it will be a very wide consultation, and not just with the letting agency industry. Members from all parties have been keen to understand what the code will cover, so it is right that it should come back to Parliament for consideration and agreement before being implemented.

Measures to improve standards in the sector have been strongly supported. The new requirements on landlords to have regular electrical safety checks and to install carbon monoxide detectors—provisions that were introduced by Bob Doris and Jim Eadie—have been welcomed by landlord and tenant organisations alike.

There are those in the chamber who have been critical, saying that the bill does not go far enough and that it should include measures on energy efficiency, increasing security of tenure and capping rent increases. The Scottish Government is pursuing work to develop energy efficiency standards for the private rented sector and will consult on them in 2015. The consultation will invite views on what those standards should be, as well as on the timescale for introducing the standards. It is right that we take time to work with stakeholders to identify the right proposals and to consult fully on them.

The independent private tenancy review group published its report last month. I have accepted its
recommendation for a new single private tenancy that would cover all future lets in the sector. We will develop detailed proposals for that, and we will consult on them in the autumn. Those measures deal with issues that were identified by the private rented sector strategy group and the Government’s consultation on its draft strategy. That group, which was made up of stakeholders from across the sector, did not identify issues with rent levels or rent increases.

James Kelly’s proposals to cap rent increases would require major legislative change. Any such change should be based on a clear understanding of the nature and scale of the problem and of what the options are for addressing it, so that we can be sure that it has a positive outcome and that it avoids any unintended consequences. That should be done through discussion, consultation and careful drafting of provisions if required, not by an amendment that gives ministers very broad powers and sets unrealistic timescales for introduction. We will be looking at the issue in our consultation on the tenancy regime in the autumn.

A crucial factor in driving up rents in the private rented sector is limited supply. The Government is working with a range of partners to deliver homes for mid-market rent through initiatives such as the national housing trust, which is on track to deliver more than 2,000 much-needed new homes in communities across Scotland. We are also supporting Homes for Scotland in its work to attract new institutional investment into the sector, by funding a dedicated Scottish private rented sector champion who will be tasked with bringing developers and potential funders together to deliver new high-quality homes in the sector.

I am not complacent. As I said earlier during the consideration of amendments, the consultation on a new single tenancy will also explore issues relating to rent levels in the private sector.

The bill also introduces new rights for those living in mobile homes, many of whom are elderly people who live permanently on sites across Scotland, and they will benefit from the provisions that update legislation dating from the 1960s. The measures will ensure that site owners are fit and proper persons and will strengthen local authority licensing powers so that they can target those who are not complying with the law.

The Housing (Scotland) Bill brings together a wide-ranging package of measures that the Infrastructure and Capital Investment Committee concluded will make improvements across the social, private rented and owner-occupied sectors. The measures were developed in consultation with stakeholders and have been strengthened by the scrutiny of the Parliament, and I commend them to members.

I move,

That the Parliament agrees that the Housing (Scotland) Bill be passed.

The Presiding Officer (Tricia Marwick): I call Mary Fee, to be followed by Alex Johnstone. I point out at this stage that we have a little time in hand, so I will be as flexible as I can.

18:12

Mary Fee (West Scotland) (Lab): I welcome the opportunity to speak in the debate on the Housing (Scotland) Bill, and I confirm that Scottish Labour members support the aims of the bill and welcome many of the measures that it brings to the housing sector.

There can be no denying that housing in Scotland faces some significant and complex challenges, and I am sure that everyone in the chamber will agree that we want a strong and growing housing sector. Although we support the principles of the bill, we feel that it is a missed opportunity, and I will expand on that as I progress.

This is the eighth year in which the current Administration has been in control of Scotland’s housing sector, and we are now about to pass its second housing bill. In the past eight years, the Scottish Government has failed to make housing a priority. More than 150,000 people are on waiting lists in Scotland, many of them in houses that are unsuitably small or in poor condition, and many in the private rented sector are paying far more than they can afford.

House building is at its lowest level since the end of world war two, with fewer than 15,000 homes completed in the past few years. However, we can hardly be shocked at that figure, as the capital housing budget was cut by 29 per cent between 2008-09 and 2011-12. Audit Scotland has estimated that Scotland will need 500,000 new homes over the next 25 years to meet demand. In the period from 2001 to 2006, there were 144,749 home completions under Labour, with a further 112,319 home completions between 2007 and 2012 under the Scottish National Party. It can be easy for both sides to assign blame, but it does not change the fact that not enough houses have been built.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): When will Mary Fee point out that the decline has been due to a decline in the private house building sector but not in the public sector?

Mary Fee: There is a decline across housing in general in Scotland. I remind the member that housing is devolved and that it is the Scottish Government’s responsibility. The budget has been...
cut and we are facing a shortfall of 160,000 homes. I have carefully read the Government’s white paper and I would be grateful if a member could point out to me on which page it tells us how much more the Scottish Government will invest in housing to make it right and better when we are independent. There is no answer from any member on that.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): It is not relevant.

Mary Fee: It is relevant.

Patrick Harvie (Glasgow) (Green): Will the member give way?

Mary Fee: Can I just make a little progress?

When key stakeholders across the sector are saying that housing in Scotland is in crisis, we must listen to them. [Interruption.]

The Presiding Officer: Ms Baillie and Ms Sturgeon, you are at it again.

Mary Fee: I would like to progress.

The Presiding Officer: One minute, Ms Fee. Ms Baillie and Ms Sturgeon, you are at it again. Will the two of you just behave yourselves?

I call Mary Fee.

Mary Fee: Thank you, Presiding Officer.

The Housing (Scotland) Bill was an opportunity to take control of this crisis and start tackling the challenges that we face. We would have liked to have seen more progressive parts included in the bill and are disappointed that our proposed amendments to create sustainable committees, cap yearly rent rises and ensure security for tenants in the private rented sector did not gain support.

The abolition of the right to buy has been long overdue and needed to protect social housing, and we welcome the measure in the bill. However, we would have preferred, in line with the recommendation of the Infrastructure and Capital Investment Committee and the majority of those who gave evidence to it, for the right to buy to be abolished one year, rather than two years, from the date of royal assent.

Protecting social housing does not stop at ending the right to buy. Ensuring that everyone has a right to social housing that is suitable for their needs remains a priority for Scottish Labour. That is why we wanted the amendment on sustainable communities. With such an approach, we can consider sustainability by matching tenants to homes and, we hope, build long-lasting communities. Living in sustainable communities benefits everyone. Our local authorities and housing associations, working with community groups, know best what their communities need. Working to make sure that people can sustain their tenancy and tackle antisocial behaviour is a priority for Labour.

Part 3 of the bill, on the transfer of power to the first-tier tribunal, is a practical move. Sheriff courts across Scotland are struggling to support criminal justice proceedings, and it is a step in the right direction to take housing-related issues out of those courts. However, careful monitoring is required to ensure that tribunals remain fair and representative.

On the private rented sector, James Kelly proposed amendments on rent reviews and increases in tenancy lengths that would have improved the bill. Indeed, the SNP’s expert working group on welfare said in relation to the private rented sector:

“This means looking at the nature of tenancies, for example, giving tenants in the private sector longer-term tenancies than generally exist at present, as well as building into tenancy agreements that rents should increase in line with inflation but not above it”.

Another feature of the bill is the registration of letting agents. We need a strong, well-regulated private rented sector with meaningful sanctions that give confidence and security to both tenants and landlords. I am pleased that the minister has recognised the merit of my stage 2 amendments on short Scottish secure tenancies, and I welcome her amendment that ensures that tenants will get more information on why they are being transferred to a Scottish secure tenancy, what action will be taken and the right of appeal.

At stages 1 and 2, concerns were raised regarding mobile home site owners adding further charges for utilities. Again the minister took on board my proposed amendment on that issue and has amended the bill with her amendment.

I can confirm that Scottish Labour will support the passing of the bill. As I mentioned earlier, the housing sector in Scotland faces some complex and difficult challenges going forward. It is disheartening that the bill does not contain any new or radical proposals, but that highlights the lack of vision on housing from the Scottish Government.

Scottish Labour’s vision would be for a strong and vibrant housing sector. We would engage with key stakeholders across Scotland to build a policy that makes a real difference, with a long-term strategy for rural and urban housing. We would seek to regenerate our town centres and to tackle the empty properties that affect all of Scotland. We would be innovative and have a long-term housing action plan that would tackle Scotland’s housing crisis head on.
Alex Johnstone (North East Scotland) (Con): It has been an exciting afternoon. I can say that because sitting on the front benches dealing with the amendments allows the time to pass rather more quickly than it does for the poor unfortunates who find themselves sitting at the back trying to do paperwork and watching the clock. It has been an exciting day. I have made a spirited defence of the negative procedure, which puts me in a minority in the Parliament. I also managed to lead my party into voting against an amendment that was consequential to one that we had agreed to earlier in the proceedings. It has been an eventful day so far. By the way, Presiding Officer, that was a mistake, but these things happen.

In this debate on the motion that the bill be passed, I will cover a number of key issues. The bill has some things that are of value. Commendable work is being done to reach a position in which those who work in the private rented sector and who are reputable can succeed in providing housing for those who need it. The work that the Government is doing with the private sector representative organisations—the landlords organisations—is commendable.

The bill is the first attempt to bring letting agents into line. Landlords and letting agents have an enormous amount to contribute to housing in Scotland in the long term. By bringing them into the regulatory structure, we can ensure that, as I have said before, all landlords do what the good landlords have been doing for ages. That is important.

In Scotland, our housing structure is creaking at the seams. I know that I have been accused of defending some of the issues that might have caused that. However, there is hope in the discussion that we have had today. I believe that our obsession with social housing masks a fault or flaw in the market in Scotland. We seem to take the view that government responsibility at local and national level is to deal with those who are in the greatest need through the provision of social housing. Implicit in that is the idea that everyone else can look after themselves, but I do not believe that that is the case. We need to think long and hard about the shape of the Scottish housing market. That is why I was particularly delighted to hear the minister talk in her opening remarks about the Government making efforts to bring together developers and investors so that they can go on and build affordable houses in Scotland.

The greatest pressure on social housing today comes from the fact that there is no process by which those who are in it can move up the ladder. We can provide the next rung on the ladder by taking the investment opportunities that I know exist to build affordable housing for mid-market rent in large quantities. The reason why there is such demand in the private rented sector is our failure to provide an alternative in the centre of the housing market. What I heard from the minister suggested that the Government might put more effort into achieving what can be achieved through private or institutional investment and through the developers that are in a position to build homes and relieve the pressure in the market.

Another positive element of the bill is the move to first-tier tribunals in dispute resolution. From the evidence on the bill, it was obvious that there is an appetite for that. In fact, those who saw the opportunities that are offered by introducing that for the private rented sector want to extend it to the social rented sector. The minister has spoken about that in previous debates. We can take heart from the fact that the Government’s view is that, if the tribunals are a success in their proposed form, a future opportunity will be taken to consider extending their range so that we make more effective use of their powers.

There are, however, things that I wanted to see in the bill that are not in it. The change to the allocations policy that would have allowed age to be taken into account in allocations was in the original draft of the bill but was removed by the minister at stage 2. I tried to put it back in today, but my amendment was rejected. We have problems in our allocations policy that we need to address, and I saw taking age into account as a criterion as a small first step towards dealing with some of those problems. The Government’s failure to press ahead with the recommendations of its consultation in that area is, I believe, a weakness in the bill.

Another issue that was addressed in the original consultation draft but which never saw the light of day when the bill was published is the concept of starter or initial tenancies. At stage 2, I lodged a detailed amendment on the subject that was rejected. I would have liked something in the bill that would have given us a specific tenancy to be granted to those who have the greatest difficulties and required those who supply tenancies to be taken into account in allocations was in the bill. The change to the tribunals are a success in their proposed form, a future opportunity will be taken to consider extending their range so that we make more effective use of their powers.

The Presiding Officer: Can you bring your remarks to a close?

Alex Johnstone: Sorry—I thought that I was still in time, Presiding Officer. I will bring my speech to a close.

My key point relates to the right to buy. I understand that I will have the opportunity to close the debate on behalf of my party, so I will leave that part of my speech until later.

The Presiding Officer: Thank you, Mr Johnstone. I appreciate your efforts.
We move to the open debate. At the moment, I can offer members five minutes each instead of four minutes.

18:27

Jim Eadie (Edinburgh Southern) (SNP): I am pleased to take part in the stage 3 debate on the Housing (Scotland) Bill.

In the stage 1 debate, I welcomed the general principles of the bill, particularly the abolition of the right to buy, which will result in more than 15,000 homes in the social rented sector being retained over the coming decade. We must remember that the right to buy led to a significant reduction in the number of houses that are available for rent. Over the years, since it was introduced, the right to buy has greatly diminished the amount of housing stock of good quality that is available for rent to families throughout Scotland. We have a duty to provide homes of good quality for all families, including those who cannot afford to buy. The abolition of the right to buy will ensure that better properties in the more desirable areas will no longer be sold off, reducing the number of homes that are available for social rent. The abolition of the right to buy is long overdue, which is why it has been widely welcomed across Scotland. It will enhance social housing and protect the investment that is made in it.

I want to nail the lie that the Government’s record is anything other than a good one. The Government is outperforming the previous Labour-Liberal Democrat Administration’s record on council house building. Since 2007-08, 4,618 new council homes have been completed, compared with only six under the previous Administration. In fairness to James Kelly, whenever the issue has been raised in the chamber, he has always pointed to the fact that that statistic ignores the number of housing association homes that were completed. However, the SNP Government’s record in that area is also impressive. Since 2007-08, 30,292 housing association homes have been completed, which represents a rise of 12 per cent on the 27,000 homes that were completed under the Labour-Liberal Democrat Administration.

The bill has been greatly enhanced and strengthened by the improvements that have been made during its passage through Parliament. In a number of key areas, the Government has worked with stakeholders and MSPs from across the chamber to strengthen the bill. The Minister for Housing and Welfare, Margaret Burgess, deserves credit for the positive way in which she has entered into constructive dialogue on a range of issues. She has been willing to listen to and reflect on the arguments that have been presented to her, and the bill is better as a consequence of the approach that she has taken.

I am particularly grateful to the minister for meeting me and my colleague Alex Rowley to discuss temporary accommodation for homeless families. We were both concerned as a result of representations that we received from Shelter Scotland that, although the number of homeless families being placed in temporary bed and breakfast accommodation had reduced significantly since changes to legislation were introduced in 2004, a number of families, particularly pregnant women and children, were still being placed by some local authorities—by no means all—in accommodation that, to be frank, was not suitable for human habitation and was unacceptable in a civilised society.

The outcome of our discussions is that the Government will amend the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 to include a reference to accommodation being wind and watertight. The amended order will provide further clarity to local councils regarding the provision of temporary accommodation. All people, regardless of what type of accommodation they find themselves in, have a right to enjoy their lives in comfort, safety and dignity. I look forward to the amended order coming into force by the end of the year to achieve that. I very much welcome the progress that has been made on that during the bill’s passage. I am grateful to Alex Rowley for his support and to Shelter Scotland for its expertise on the issue.

I was also grateful for the opportunity to meet the minister along with Sarah Boyack to discuss a number of issues on behalf of the City of Edinburgh Council. As a result of that meeting, the Government introduced further changes in relation to the recovery of costs under a repayment charge that will allow local authorities to determine a repayment period of between five and 30 years and provide a right of appeal for any person who is aggrieved by the period of the charge.

The final area on which progress has been made is making carbon monoxide detectors mandatory in the private rented sector. Again, I am pleased to have worked with Shelter Scotland to bring about that change and I am glad that the Parliament has acted to address the issue so that all private tenants can feel safe from the threat of that so-called silent killer.

18:32

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): In the stage 1 debate, I welcomed much of the bill and said that the problem was the issues that were missing from it. That is still the situation at the end of stage 3. In between, of course, some amendments have been accepted. I welcome that, but I regret that several that would have been useful have been rejected today.
I came at the bill from two points of view: first, because of the problems on housing that constituents regularly bring to me and, secondly, because of the issues that the City of Edinburgh Council highlighted. Jim Eadie referred to the latter in his speech.

In the stage 1 debate, Jim Eadie and I raised some of the issues that the Labour-SNP council in Edinburgh had brought to our attention. Although it is true that the council will be pleased that there has been some flexibility on the 30-year repayment period, it is fair to say that it will be disappointed that none of the other proposals that it made has been accepted. The Government rejected today the amendment on maintenance plans, which was a reasonable proposal by Sarah Boyack, modifying the original position. Of course, all the amendments that I lodged, which were all based on the council’s submission, were also rejected. The City of Edinburgh Council will not be pleased that the main amendments that it highlighted for the bill have not been progressed.

Over and above that, I came at the bill from the point of view of constituents. I am sure that all members deal with housing issues regularly at their surgeries, so I will pick up on four of the issues that I am regularly asked about.

Supply is obvious. We all know about issues with housing supply. I do not object to the abolition of the right to buy, but there is a danger that we will overstate its effect on housing supply. It is not the most important measure that can be taken to improve the supply of housing in the social rented sector, but I certainly do not object to it, although it would have been better to accept the amendment that Mary Fee moved at stage 2 to reduce the notice period for abolition to one year.

The more significant issue with regard to supply concerns the housing association grant and the declining trajectory of the number of social rented houses that are being built. A lot of the half-respectable figures that are presented to us in that respect are based on the higher HAG levels in the earlier years of the SNP Administration. Given the current HAG levels, we will have increasing difficulties in keeping up the number of social rented homes. Nicola Sturgeon changed the levels slightly last summer, but the housing associations all tell us that there is still a problem.

The second problem that constituents bring to me—and, I am sure, to every other member—is antisocial behaviour. I hope that the short SST will help in that respect, but Mary Fee was quite right to lodge an amendment, which was agreed to in committee, to require more information on all the safeguards that are needed.

The number of tenants who cause problems is obviously very small, but we all have examples in which massive problems are caused by a very small number of people. I welcome the increased availability of the short SST, which I hope will make it easier to evict the very small number of people who unfortunately require to be evicted because of their behaviour.

With regard to tackling antisocial behaviour, it would have been better if Drew Smith’s amendment on holiday lets had been accepted. In addition, we could do more to beef up the landlord registration system in order to get more effective action from landlords in the private sector.

In general, it is on the private sector that there are the most parts missing from the bill. I mentioned briefly the issue of repairs. Even Alex Johnstone and his colleagues almost supported my amendment on common repairs, and I was very encouraged by that, although they did not press the right button in the end. Nevertheless, he and his colleagues recognised that—as people bring to our attention all the time—there is a big problem with regard to repairs. So, it is a pity that my amendment was not accepted.

The provision for electrical safety checks is a step forward, but what will happen with all the existing tenancies? I do not know why the minister did not accept my amendment on that point.

My time is nearly up, but I highlight, as one of the most important amendments—possibly the most important—that was lodged at stage 3: James Kelly’s amendment on capping rent rises. Again, the minister used the standard response of, “Oh well, it’s very complicated and we would need to do more work.”

The Presiding Officer: You need to bring your remarks to a close, Mr Chisholm.

Malcolm Chisholm: James Kelly’s amendment would have required the introduction of regulations, and the work could have been done in the context of those regulations. It is deeply regrettable that his proposal—which was also a proposal of the SNP’s expert working group on welfare—was not accepted.

18:37

Jim Hume (South Scotland) (LD): I welcome the opportunity to participate in this evening’s debate. The bill is important, and I hope that it will begin to make the private rented sector more fit for purpose. The sector has experienced extraordinary growth in the past decade, and more than 300,000 households are now renting privately. That is little wonder when one considers that, since March 2007, more than 11,000 properties have been lost from social renting housing stock and the ever-increasing length of
waiting lists has driven people towards the private sector.

It is long since time that we ensured that standards in the sector were improved, and I reiterate my support for the regulation of letting agents; the introduction of a tribunal system; the inclusion of basic safety measures; and the scrapping of the right to buy. It is for those reasons that I and the Liberal Democrats will vote for the bill later on.

Since I last had an opportunity to debate the policy measures in the Government's bill at stage 1, a series of interesting amendments has come to the fore. Many of those amendments genuinely enhance the package of measures that the Government has laid before the Parliament, and I am pleased to see that some—although not all—of them are included in the final bill on which we will vote later.

I was disappointed when my amendments were defeated at stage 2, in particular my amendment that sought to clarify the position regarding legal representation for tenants participating in the new tribunal process. I felt that it was important to reintroduce the amendment at stage 3, but—as I said earlier—I am satisfied, after discussions on the issue with the minister and Homeless Action Scotland, and following the minister's positive words earlier in today's proceedings, that the matter is now in hand and that a satisfactory conclusion has been reached. I am grateful to the minister for her words in that regard.

My inbox, like those of many of my colleagues, has been inundated in the past week—and even during today's debate—with emails from landlords. I understand their concerns, and there is no doubt that the majority of landlords are diligent, fair and provide a good level of service. However, there is also no doubt that a minority operate in a predatory fashion and prey upon the vulnerability of some tenants. We need to weed those people out of the sector, and I appreciate the fact that letting associations agree with that.

I had some sympathy with the proposal to introduce more secure tenancies. Had amendment 50 been agreed to, a landlord would have retained the ability to terminate a tenancy after the first six months for antisocial behaviour, the accrual of rent arrears or if the landlord had planned to change the use of the property or even use it for his or her own living accommodation. The amendment would have afforded the tenant two months' notice to vacate a property, and I believe that to be a fair compromise, given the upheaval and inconvenience caused by such an event.

Although I appreciate that many tenants in the private rented sector are struggling with unreasonably high rent increases, I could not support amendment 49, which related to rent control. The new duty that was set out in the amendment was so significant that it could not have been reasonably introduced without the sector having the opportunity to comment on it first or, for that matter, without full parliamentary scrutiny. That said, I reiterate that some people are struggling with exorbitant rent increases. The Minister for Housing and Welfare must reflect upon that and consider how she can assist with that in the future.

An important amendment that I did not lodge at stage 2 because it was not supported by any other party related to the fact that local authorities do not always use referrals under section 5 of the Homelessness etc (Scotland) Act 2003 for homeless families or individuals. I wonder whether the minister will at least keep an eye on that matter.

We had the usual SNP rhetoric about its building more houses than we built but, as Mary Fee has already pointed out, completions of social rented houses are at a lifetime low. We also heard again the change in language with regard to the 6,000—

The Presiding Officer: You must bring your remarks to a close, Mr Hume.

Jim Hume: The 6,000 socially rented houses that were promised have now become 6,000 affordable houses, and as we all know, there is quite a difference in that respect.

I welcome the passage of the bill, although I still believe—

The Presiding Officer: I am sorry, Mr Hume—your time is up.

18:42

Maureen Watt (Aberdeen South and North Kincardine) (SNP): I feel honoured to have played a part in taking the bill through Parliament, and I look forward to its being passed at decision time.

For me—and, I am sure, for many in the Parliament and in wider Scottish society—this is landmark legislation. Abolishing the right to buy social rented housing will have a very positive effect on all those involved in the sector. It will protect and enhance social housing, and it will protect the public investment that has been made in such housing over generations.

Since the right to buy was introduced, around 455,000 properties have been taken out of the social rented sector, and that continual depletion of social housing stock is unsustainable in the face of continued high levels of need for social housing in Scotland. As a representative from Shelter has
said, the right to buy is like trying to fill a sink without the plug in. Moreover, David Bookbinder of the Chartered Institute of Housing in Scotland told the Infrastructure and Capital Investment Committee:

“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.”—[Official Report, Infrastructure and Capital Investment Committee, 22 January 2014; c 2429.]

Removing the right to buy will give social landlords greater confidence to build new homes, and 15,500 social rented houses will be safeguarded for future generations.

As we know, many right-to-buy properties end up in the private rented sector, where the rents are higher and higher benefit claims can be made.

The protection of the social rented stock, together with the Government’s commitment to build new social housing, is welcomed by the sector. Some 30,292 housing association homes have been completed since 2007-08, which is a rise of 7 per cent on the previous seven years, and 1,324 council houses were completed in 2013-14 alone. That is a far cry from the six that were built in the last four years of the Labour-Lib Dem Administration.

Abolition of the right to buy and other aspects of the bill will increase the flexibility that social landlords have when they allocate homes to allow them to better respond to their communities’ needs and make better use of affordable rented housing.

I turn to the legislation on mobile homes. There are a number of mobile homes in my constituency and I welcome the strengthening of the protection for those who live in them. People in my area who contacted me about the legislation seemed to be content with the way in which their site was run, but I was really surprised by how little they knew about the existence of organisations that represent those who live in park homes. Many sites are well run, but there is definitive evidence of unscrupulous landlords. Giving local authorities more powers in that area is therefore very welcome. I look forward to seeing the new model standards for mobile home sites reflecting up-to-date best practice.

I cannot conclude without commenting on Labour members’ cynical stance on the bill. Mary Fee said that the abolition of the right to buy was long overdue. Labour had eight years to abolish it, but it did not do so.

James Kelly said that he spoke about rents in one of Labour’s debates in December. I cannot recall that, but why did he not therefore support Patrick Harvie’s amendment, which specifically called for rent controls? Labour members on the committee did not ask any questions of witnesses or stakeholders with whom the committee engaged during its consideration regarding rent controls.

James Kelly: Will the member give way?

The Presiding Officer: I am sorry, Mr Kelly, but the member is in her last 30 seconds.

Maureen Watt: Labour members had to wait until Ed Miliband gave them their lead from down south. Their conflation of private and public house building is typical of them, but they are not believed by the sector or, indeed, the public, who are much more savvy than Labour gives them credit for.

The Presiding Officer: You need to end, Ms Watt.

Maureen Watt: Yes. Alex Johnstone mentioned the Government’s initiatives in ensuring that the private sector and the public sector get together to build more houses.

I have great pleasure in supporting the bill.

18:47

Alex Rowley (Cowdenbeath) (Lab): I thank the minister for meeting Jim Eadie, Shelter and me, and for the positive response that we got.

I will certainly support the bill because, as Sarah Boyack and others have said, there are a number of positive measures in it, although it must be said that it would be a fairly dire situation if a housing bill that did not address some of the concerns that are out there was brought forward at this stage.

I think that it is fair to say that the bill will not be judged as something that grasped the issues of the time; nor will it be remembered for trying to tackle the many problems out there. It lacks that level of ambition. I say to Margaret Burgess that the next Labour Government that is elected to the Scottish Parliament in 2016 will cap rent increases, because that is the right thing to do. Hiding behind technicalities is not an excuse for not doing the right thing.

I remember the poverty trap in the 1980s and the 1990s and the number of people who were caught in it and therefore unable to progress, take employment and move forward. The excessive rents in the private sector now are creating that poverty trap again and holding many people back from getting into work and taking jobs that are not necessarily the best paid.
We can talk about the facts. Mary Fee mentioned the Audit Scotland report “Housing in Scotland.” The report says that one of the major challenges is a 29 per cent real-terms cut in the capital housing budget from 2008-09 to 2011-12. It also acknowledges that the number of new homes in the private sector has more than halved in recent years, despite the pressures of an ageing population.

The fact is that there are fewer affordable homes available for rent now than there were in 2008, 2010 or 2011. As Jim Hume said, we can have a bun fight over who built more houses, but to the people who come to my surgeries and the families who are homeless, it does not matter who built what. The fact is that we have a major housing crisis in every community the length and the breadth of the country but we are not making any radical proposals that would begin to tackle that. Therefore, I intend to work with Shelter over the next year or so to highlight why its policy to build 10,000 houses a year is the right one to begin to tackle the issues that are out there.

The private sector cannot solve the housing crisis; it is a flawed strategy that believes that the private rented market can tackle the housing crisis. I am not ideologically driven by public or private, but in this particular sector we need to build council and housing association housing now and at a much faster rate.

There are many families and people who are trapped in housing that is not suitable for them. Some families’ houses are massively overcrowded. I would have thought that every MSP must have a massive housing caseload and be engaged with their local authorities.

I also make the point to the minister that a lot of the housing that is being built up and down the country is being built by councils. Those councils have been quite innovative in working with tenants to raise money to build houses, so when we are giving credit for the houses that are being built, that credit should go to the local authorities.

The Presiding Officer: You need to wind up, Mr Rowley.

Alex Rowley: I will conclude, Presiding Officer, by saying that, while I support the bill, we have a housing crisis that the bill does not begin to address. That is what we need to do.

18:53

Patrick Harvie (Glasgow) (Green): The private rented sector is not just a market; a tenancy agreement is not just a transaction. A home that is available for rent is not just an investment: it is someone’s home; it is where they live. That is its primary function in public policy terms—it is not an investment, it is a home.

If the private rented sector wants to continue to grow and manage more of our country’s housing stock, it must recognise that meeting someone’s housing need is not just about giving them the keys. It is a much more complex job than that. There are landlords and letting agents who get that and who understand that their responsibility to a tenant is not just to give them the keys and rake in the cash; rather, their responsibility goes much deeper than that.

It may be that we should be seeking to support and cultivate social enterprise to get involved in the private rented sector—the people and organisations who understand more than just a financial bottom line. It may be that we should be supporting the landlords and letting agents who understand the issues, but there are many—I suggest that this applies to most of them—who do not, who regard their property merely as an investment and who are not interested in meeting someone’s housing need, but simply in gaining the profit from that investment.

If we continue to see the private rented sector growing and if, at the same time, economic recovery leads again to a period of rising house prices and property values, then we are sowing the seeds of greater inequality. In the long run, people will continue to spend their money on rent that makes somebody else wealthier, and we will see rising inequality.

We need to recognise our responsibility to regulate the private rented sector for the public good, particularly at a time when so many—a growing proportion of our population—do not just spend a year or two in the private rented sector while they are a student or while they are moving from one job to another. There is an increasing proportion of people who have no other choice, for whom we have made no social housing or not enough social housing available, and for whom we have allowed economic conditions to make owner-occupation unaffordable.

There is more to welcome in the bill than the abolition of the right to buy, but I will say a few words about that. It is true that the abolition of the right to buy will deliver maximum benefit only in the context of increased investment in supply. However, the supply of social housing is not just about how much money the Scottish Government is spending from its budget each year. That is a big part of it, but it is not the whole of it. I encourage members and ministers who work on housing issues to look again at what the land reform review group had to say about the affordability and availability of land. That is crucial if we want to improve the affordability and availability of housing, and if we want to make it
easier for developers, whether they are in the private sector or the social rented sector, to build more housing of the type that is needed. I encourage members to take a look at that.

There are three areas in which there is work to do and to which the Government has committed. There is security of tenure. There is also a code of practice for letting agents and, again, I welcome the clear and fixed timescale that has been committed to on that. There is also energy efficiency. There is work to do within the current term of the Scottish Parliament and opportunities to influence those pieces of work to ensure that they meet the public good, and pressure will be needed. I will continue to advocate for that pressure, and the Infrastructure and Capital Investment Committee will also have a role to play.

I have welcomed the opportunity to engage with that committee in recent weeks and months. I know that the political atmosphere is charged right now but, frankly, I was dismayed at the level of hostility on display between the two larger parties in that committee. The committee must understand that it has a responsibility to hold the Government to account, not to go in to bat for ministers. Large parties in Opposition and Government will have the responsibility to come together once our political atmosphere is less charged in a few months’ time, and find common ground on which they can work together for the common good.

18:57

Alex Johnstone: All of us in the chamber come from a diverse range of backgrounds and arrive here with political priorities that differ greatly. Our responsibility is to serve those who put us here and to serve the Scottish people as a whole.

Political principles often mean that individuals or parties in the Parliament will hold to a philosophy that sets us out on a limb. Nowhere is that more obvious than in the Conservative Party’s steadfast support for the right to buy.

Many people in Scotland aspire to own property and we have a responsibility to understand and support that where appropriate. We all agree that a house is not just a house, but a home; Patrick Harvie said that just a few moments ago. It is, however, appropriate for Scots to aspire to own the home that they live in and we should be willing to support that.

Many of us are lucky enough to be in a position to be homeowners through choice. We are able to participate in the market and use the resources that are available to us to buy our homes and live in them. That is a privilege and we should all consider ourselves lucky to have it. Should it be a privilege for only the most wealthy in our communities? We should aspire to give the right to own their home to everyone in society who is willing to make the necessary sacrifice to achieve that objective.

This Government appears to understand that. It has gone some way towards introducing shared equity schemes and other opportunities that will allow people to become home owners. However, the problem is that, as yet, we have failed to find an alternative way to enable that objective to be achieved on the scale of the right to buy.

Many people who used the first right to buy were long-term tenants. As we have seen from the figures that are available from last year, the vast majority of those who continue to seek to exercise their right to buy are, themselves, long-term tenants. By ending the right to buy, we free up very few houses, and we end the opportunity for many to become home owners.

It is an essential part of our responsibility to ensure that we do not miss the opportunity to enable people to aspire to property ownership. The Minister for Housing and Welfare has, in recent speeches in the chamber, talked about the need to ensure that people can accrue wealth. For many, the only opportunity to accrue wealth in a modern society is to borrow against the value of a house and then pay it up over time.

We need to make mortgages more affordable and make the opportunity to buy homes more available to those on lower incomes.

The Conservative Party, through its support for the right to buy, has changed the dynamic of Scottish housing. It has turned us into a country in which we are home owners, not simply home renters. It has turned us into a country in which people aspire to improve themselves.

There is much that is good in the bill—although less than there was when it was published at stage 1. However, as a result of this Government’s decision to use the bill to end the right to buy, the Conservatives will vote against it at decision time.

19:02

James Kelly (Rutherglen) (Lab): In her initial remarks, the Labour Party’s Mary Fee said that we will be supporting the bill at decision time, in recognition of the fact that some of the issues that are addressed in the bill will improve the housing sector and help us to make progress. However, Mary Fee and Alex Rowley also gave an accurate portrayal of some of the issues that are faced in housing in Scotland: the pressures that exist in relation to supply, the consequences of that in terms of a lack of affordable housing, and the impact of the growth of the private sector on rent
levels that people are having to endure. There are wider issues that need to be addressed, aside from the issues with which the bill deals.

I was a bit disappointed by the process around the passage of the bill. I feel that Labour interacted quite positively with the bill. We lodged an awful lot of amendments that were, on the whole, rejected. Listening to the minister during the course of the debate, I was struck by the fact that we have a plethora of consultations and working groups. The minister herself said that the Government's housing strategy was launched in February 2011, which means that it has taken three years for the bill to come to fruition. We seem to have a lot of talking shops, but what people really need on the ground is action and practical support.

The bill's headline issue, which the Government wants to promote, is abolition of the right to buy. We have supported that; it is the right thing to do. However, I do not think that abolishing the right to buy will have the grand consequences that the Government envisages. The figure that Maureen Watt quoted—15,500 social rented houses being safeguarded over 10 years—is welcome, but when we have 155,000 people on social housing waiting lists, its impact will be minimal.

As for action on letting agents and landlords, a number of members have spoken about the growth in the private rented sector, which means that proper regulation is needed. Many letting agents and landlords are responsible, but there are a number of unscrupulous individuals, which is why proper regulation is needed. The bill will improve the situation, but if some amendments that were not agreed to had been taken on board, the bill could have improved it more.

A similar point is true of the measures on maintenance plans, which Sarah Boyack raised, and on electrical safety. Such provisions could have been strengthened.

I was disappointed that the Government did not accept my amendments to control rent increases and to introduce longer and more stable tenancies. I was particularly disappointed because between stages 2 and 3 I changed my amendments to give the Scottish ministers more time. I was looking for the Government to lay regulations by April 2015, which would have given it nearly 10 months to work up proposals. I thought that that was a reasonable way forward; the response that the task would be too onerous or too difficult is not satisfactory.

In such debates, members always trade a lot of statistics to back up their arguments—I acknowledge that I do it, too. However, in a lot of ways, I do not need to look at the statistics on housing. I can look at the area that I grew up in, which I am lucky enough to represent and where I still stay. Almost weekly, I see people at my surgeries who stay in overcrowded accommodation and who cannot access adequate housing. I see houses that have been in my constituency since before I was born and that are falling into disrepair but where people still stay. We have problems with people getting on the housing ladder, accessing social housing and living in inadequate accommodation.

The Presiding Officer: Can you bring your remarks to a close?

James Kelly: The challenge for the Government and all political parties is to come up with a plan for housing that addresses the supply issues and which does something for people who do not stay in good-quality accommodation and who are struggling to find a house. We all have a responsibility to improve the lives of our constituents and people throughout Scotland. We should bear that in mind when we bring forward legislation and plans for housing.

19:08

Margaret Burgess: We have had a lot of consensus throughout the debate, although we still disagree on some issues. I reiterate that I appreciate stakeholders' support for the bill. I say to James Kelly that that is not about talking shops; we talk to and listen to our stakeholders. We worked up the bill in consultation with and along with them, which is why many aspects of the bill have so much stakeholder support. That is an important point.

James Kelly: In all the discussions with stakeholders, were excessive rent levels and the length and security of tenure raised with the Government?

Margaret Burgess: I said when I was speaking to amendments that, during the discussions, rent levels were not raised with us, other than by Patrick Harvie. Shelter Scotland mentioned security of tenure early on, but the bill had progressed through a stage by then. We discussed the issue, which is why we set up the review group to look at the tenancy regime in the private sector. The group is not a talking shop. It is chaired by Douglas Robertson and its 18 stakeholder members include representatives from landlords associations, letting associations, the Chartered Institute of Housing, the Convention of Scottish Local Authorities, the Council of Mortgage Lenders, the Scottish Property Federation, Shelter Scotland, Homeless Action Scotland and Edinburgh private tenants action group. The group came together to discuss the tenancy regime, and I have said today that we will take forward its recommendations. We will consult in the autumn, and as part of that we will look at rent levels.
Alex Rowley and Mary Fee also talked about capping rents. I say to them that we are absolutely keeping rent levels under review. We are aware that rising rents are an issue in parts of Scotland—in particular in Aberdeen. I repeat that it is important to be clear about the nature and scale of the problem and the options for addressing it, so that we can be sure that action that we take has a positive outcome and does not have unintended consequences. I stand by that.

The Joseph Rowntree Foundation recently reported that households in Scotland spend a smaller share of their income on housing than households in England. In the same report, the foundation said that poverty rates in Scotland are lower than they are in England, across all housing tenures. However, the Scottish Government is not complacent about the matter. That is why we continue to support affordable and mid-market rents and to work with the house building industry to increase institutional investment in building new homes for private rent.

That is the right way to take on an issue of the magnitude of the one that James Kelly talked about. It is right to consult and take evidence from stakeholders, to work up proposals and to bring them to Parliament for full scrutiny. That is what we intend to do, and it is the right approach, as opposed to parachuting in proposals at stage 2 of a bill. If we tried to give the Scottish ministers more powers, James Kelly would criticise us for doing so, but the right to buy has had its day in Scotland, and I think that all parties support us on that except, of course, the Conservatives. That does not surprise me.

This bill will introduce other landmark measures, such as tribunals for the private rented sector, which will ensure that there is fair and easy access to justice in the private sector. That is new and it is a landmark. It is something that we have been asked to do for some time. We have worked the measure out. It is a very important thing, which tenants will very much appreciate.

Regulation of letting agents is another landmark. It was good to get the support of the letting industry and landlords organisations for the measure. We got that because we worked together with them. We listened to what they had to say and took some of it on board, but we made it absolutely clear from the outset that we intended to regulate and that our regulation would have teeth. That is what we will do. When we work out the code of guidance our view on that will not change. The regulators of the private sector will have teeth. The private sector welcomes that as well, because it does not—

The Presiding Officer: Can you bring your remarks to a close, minister?

Margaret Burgess: Sorry, Presiding Officer.

I ask members to support the bill. We have done something today that we should all be proud of. We have got there by working together, and I hope that that continues.
Decision Time

19:17

The Presiding Officer (Tricia Marwick): There are three questions to be put as a result of today’s business.

The first question is, that motion S4M-10438, in the name of Margaret Burgess, on the Housing (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
The Presiding Officer: The result of the division is: For 93, Against 12, Abstentions 0.

Motion agreed to,

That the Parliament agrees that the Housing (Scotland) Bill be passed.
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Housing (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision about housing, including provision about the abolition of the right to buy, social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes.

PART 1

RIGHT TO BUY

1 Abolition of the right to buy
(1) Sections 61 to 81, 84 and 84A of the 1987 Act (right to buy provisions) are repealed.
(2) Section 52 of the 2001 Act (reports on right to buy) is repealed.
(3) Sections 145 to 147 of the 2010 Act (duties to collect information in relation to right to buy) are repealed.

2 Amendment of right to buy provisions
In the 1987 Act—
(a) in section 61ZA(1) (limitation on the right to purchase: new tenants), after “occupation” insert “as a tenant”, and
(b) in section 61F (limitation on the right to purchase: new supply social housing), repeal the words “created before the relevant day” in each place where they occur.

PART 2

SOCIAL HOUSING

Allocation of social housing

3 Reasonable preference in allocation of social housing
In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (1) substitute—
“(1) A social landlord must, in relation to all houses held by it for housing purposes, secure that in the selection of its tenants a reasonable preference is given to the persons mentioned in subsection (1ZA).

(1ZA) The persons are—

(a) persons who—

(i) subject to subsection (1A), are homeless persons and persons threatened with homelessness (within the meaning of Part 2), and

(ii) have unmet housing needs,

(b) persons who—

(i) are living under unsatisfactory housing conditions, and

(ii) have unmet housing needs,

(c) tenants of houses which—

(i) are held by a social landlord, and

(ii) the social landlord selecting its tenants considers to be under-occupied.

(1ZB) For the purposes of subsection (1ZA), persons have unmet housing needs where the social landlord considers the persons to have housing needs which are not capable of being met by housing options which are available.”.

4 Rules on priority of allocation of housing: consultation

(1) After section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), insert—

“20A Rules on priority of allocation of housing: consultation

(1) Before making or altering its rules governing the priority of allocation of houses, a social landlord must—

(a) consult the persons mentioned in subsection (2), and

(b) prepare and publish a report on the consultation.

(2) The persons are—

(a) applicants on its housing list (within the meaning of section 19),

(b) tenants of the landlord,

(c) bodies for the time being registered in the register of tenant organisations maintained by the landlord under section 53(3) of the Housing (Scotland) Act 2001 (asp 10), and

(d) such other persons as the landlord thinks fit.

(3) A social landlord may publish a consultation report mentioned in subsection (1)(b) in such manner as it thinks fit (and may in particular publish a joint report with any other social landlord).”.

(2) In section 21 of the 1987 Act, after subsection (3) insert—

“(3A) In making or altering its rules governing the priority of allocation of houses, a social landlord must have regard to—
Part 2—Social housing

(a) any local housing strategy (within the meaning of section 89(1)(b) of the Housing (Scotland) Act 2001) for its area, and

(b) any guidance published by the Scottish Ministers.

(3AA) Before publishing any guidance mentioned in subsection (3A), the Scottish Ministers must consult such persons as they consider appropriate.

(3B) The Scottish Ministers may by regulations prescribe persons of a description or type who a social landlord must include in its rules governing the priority of allocation of houses.

(3C) Regulations under subsection (3B) are subject to the affirmative procedure.”.

(3) The title of section 21 of the 1987 Act becomes “Rules relating to the housing list and transfer of tenants”.

6 Factors which may be considered in allocation: ownership of property

(1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (2)(a)(viii) substitute—

“(viii) where any of the circumstances in subsection (2C) apply to that person, the ownership of, or value of, heritable property owned by—

(A) the applicant,
(B) a person who normally resides with the applicant, or
(C) a person who it is proposed will reside with the applicant.”.

(2) After subsection (2B) insert—

“(2C) The circumstances are that—

(a) in the case of a property which has not been let, the owner cannot secure entry to that property,
(b) it is probable that occupation of the property will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)) from some other person residing in that property,
(c) it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that property or elsewhere,
(d) occupation of the property may endanger the health of the occupants and there are no reasonable steps which can be taken by the applicant to prevent that danger.”.

7 Determination of minimum period for application to remain in force

(1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing)—

(a) in subsection (2)(a)(iii), at the beginning insert “except to the extent permitted by section 20B,“., and

(b) in subsection (2)(b)(i), at the beginning insert “except to the extent permitted by section 20B,”.
(2) After section 20A of the 1987 Act (inserted by section 4(1)), insert—

**20B Determination of minimum period for application to remain in force**

(1) A social landlord may impose a requirement that an application must have remained in force for a minimum period before the applicant is eligible for the allocation of housing falling within section 20(1) if, before making that application, any of the circumstances mentioned—

(a) in subsection (5) applied in relation to the applicant, or

(b) in paragraphs (a) to (g) of subsection (5) applied in relation to a person who it is proposed will reside with the applicant.

(2) But a social landlord may not impose a requirement under subsection (1) if the landlord—

(a) in relation to the same application has previously relied on the same circumstance as it applied to an applicant or a person who it is proposed will reside with the applicant to impose a requirement under subsection (1), or

(b) is a local authority and has a duty to the applicant under section 31(2) (duty to secure accommodation where applicant is homeless).

(3) In considering whether to impose a requirement under subsection (1), a social landlord must have regard to any guidance about this section (including the matters mentioned in subsection (4)) published by the Scottish Ministers.

(3A) Before publishing any guidance mentioned in subsection (3), the Scottish Ministers must consult such persons as they consider appropriate.

(4) The Scottish Ministers may by regulations prescribe—

(a) the maximum period preceding the application which a social landlord may consider in relation to any circumstances mentioned in subsection (5),

(b) the maximum period for an application to have remained in force which a social landlord may impose in relation to any circumstances mentioned in subsection (5), and

such regulations may make different provision for different cases.

(5) The circumstances are—

(a) the person has—

(i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person,

(ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person, or

(iii) acted in an antisocial manner, or pursued a course of conduct which is antisocial conduct, in relation to an employee of the social landlord in the course of making the application,

(b) the person has been, or has resided with a person who has been, convicted of—
(i) using a house or allowing it to be used for immoral or illegal purposes, or
(ii) an offence punishable by imprisonment which was committed in, or in the locality of, a house occupied by the person,

(c) an order for recovery of possession has been made against the person in proceedings under—
   (i) the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118),
   (ii) the Housing Act 1985 (c.68),
   (iii) this Act,
   (iv) the Housing (Scotland) Act 1988 (c.43),
   (v) the Housing (Scotland) Act 2001 (asp 10),

(d) the person’s tenancy has been terminated by the landlord under section 18(2) of the Housing (Scotland) Act 2001 (repossession where abandoned tenancy),

(e) the person’s interest in a tenancy has been terminated by the landlord under section 20(3) of the Housing (Scotland) Act 2001 (abandonment by joint tenant),

(f) in relation to a house where the person was a tenant, a court has ordered recovery of possession on the ground set out in paragraph 3 or 4 of schedule 2 to the Housing (Scotland) Act 2001,

(g) there is or was any outstanding liability (for payment of rent or otherwise) in relation to a house which—
   (i) is attributable to the person’s tenancy of the house, and
   (ii) either—
      (A) section 20(2A) would not be satisfied in respect of that debt, or
      (B) in the case of a debt which is no longer outstanding, section 20(2A) would not have been satisfied at any time while that debt remained outstanding,

(h) the person knowingly or recklessly made a false statement in any application for housing held by a social landlord,

(i) the person has refused one or more offers of housing falling within section 20(1) and the landlord considers the refusal of that number of offers to be unreasonable.

(6) In subsection (5)—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).
(7) The Scottish Ministers may by regulations modify subsections (5) and (6).

(7A) After the social landlord imposes a requirement under subsection (1) (whether or not previously varied under this subsection), it may—

(a) withdraw the requirement, or

(b) vary the requirement in order to shorten the period imposed for the application to have remained in force.

(8) An applicant may by summary application appeal to the sheriff against any decision of a social landlord under subsection (1).

(9) Regulations under subsection (4) and under subsection (7) are subject to the affirmative procedure.”.

Short Scottish secure tenancy

8 Creation of short Scottish secure tenancy: antisocial behaviour

(1) In section 34 of the 2001 Act (short Scottish secure tenancies)—

(a) in subsection (7), for “or 2” substitute “, 2 or 2A”, and

(b) after subsection (8), insert—

“(9) A landlord must have regard to any guidance published by the Scottish Ministers—

(a) before creating a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, and

(b) when taking any steps in relation to such a tenancy with a view to—

(i) extending the term of the tenancy under section 35A, or

(ii) raising proceedings for the recovery of possession of the house under section 36.

(10) Before publishing any guidance mentioned in subsection (9), the Scottish Ministers must consult such persons as they consider appropriate.”.

(2) In section 35 of the 2001 Act (conversion to a short Scottish secure tenancy)—

(a) for subsection (2) substitute—

“(2) The landlord may serve a notice under subsection (3) only where—

(a) the tenant (or any one of joint tenants) or a person residing or lodging with, or a subtenant of, the tenant is subject to an antisocial behaviour order under—

(i) section 234AA of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), or

(b) the tenant (or any one of joint tenants), a person residing or lodging with, or a subtenant of, the tenant, or a person visiting the house has, within the period of 3 years preceding the date of service of the notice—
(i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person, or

(ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.”,

(aa) in subsection (3)—

(i) the word “and” immediately preceding paragraph (b) is repealed,

(ii) in paragraph (b), after “order” insert “or, as the case may be, has behaved as described in subsection (2)(b)”, and

(iii) after paragraph (b), insert—

“(c) if the notice is served under subsection (2)(b), specify—

(i) the actions of the tenant or other person which the landlord has taken into account, and

(ii) the landlord’s reasons for serving the notice, and

(d) explain the right of appeal conferred by subsection (5).”, and

(b) after subsection (6), insert—

“(7) In this section—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”.

(3) In section 37(1) of the 2001 Act (conversion to Scottish secure tenancy), in paragraph (a) for “or 2” substitute “, 2 or 2A”.

(4) In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy)—

(a) after paragraph 2 insert—

“Other antisocial behaviour

2A (1) A person mentioned in sub-paragraph (2) has, within the period of 3 years preceding the date of service of the notice—

(a) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, or

(b) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.

(2) The persons are—

(a) the prospective tenant,

(b) any one of prospective joint tenants,
(c) a person visiting a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, and
(d) a person who it is proposed will reside with the prospective tenant.

(3) In sub-paragraph (1)—
“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,
“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and
“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”, and

(b) for paragraph 6 substitute—
“Accommodation for person in receipt of housing support
6 The house is to be let expressly on a temporary basis to a person—
(a) to whom no other paragraph of this schedule applies, and
(b) who is in receipt of a housing support service.”.

(5) In section 31(5) of the 1987 Act (permanent accommodation where duty to secure accommodation for persons found to be homeless), in paragraph (c) for “or 2” substitute “, 2 or 2A”.

9 Grant of short Scottish secure tenancy: homeowners
In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy), after paragraph 7 insert—
“Temporary letting where other property owned
7A(1) The house is to be let expressly on a temporary basis to a person pending the making of arrangements in relation to a property mentioned in sub-paragraph (2) which will allow the person’s housing needs to be met.
(2) The property is heritable property owned by the person or a person who it is proposed will reside with that person.”.

10 Short Scottish secure tenancy: term
(1) In section 34 of the 2001 Act (short Scottish secure tenancies)—
(a) after subsection (5), insert—
“(5A) Subsection (5) does not apply to a tenancy mentioned in subsection (6A).”,
(b) after subsection (6) insert—
“(6A) A tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 has a term of 12 months from the day on which the tenancy is granted.”.

(2) In section 35 of the 2001 Act (conversion to short Scottish secure tenancy)—
(a) after subsection (3) insert—
“(3A) A short Scottish secure tenancy created by virtue of this section has a term of 12 months from the day on which the landlord serves a notice under subsection (3),”.

(b) for subsection (4), substitute—

“(4) Where a tenancy becomes a short Scottish secure tenancy by virtue of this section—

(a) subsection (5) of section 34 does not apply to the tenancy, but

(b) otherwise subsection (6) of that section does apply to the tenancy.”.

(3) In section 37 of the 2001 Act (conversion to Scottish secure tenancy), after subsection (4) insert—

“(5) Subsection (6) applies to a tenancy which—

(a) became a short Scottish secure tenancy by virtue of section 35, and

(b) becomes a Scottish secure tenancy by virtue of this section.

(6) The term of the tenancy is the term which applied immediately before the tenancy became a short Scottish secure tenancy.”.

11 Short Scottish secure tenancy: extension of term

(1) After section 35 of the 2001 Act, insert—

“35A Extension of term of short Scottish secure tenancy

(1) The landlord under a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 may extend the term of that tenancy by 6 months from the day which would otherwise be the day of expiry of the tenancy.

(2) Such an extension may not be made unless—

(a) the tenant is in receipt of housing support services, and

(b) the landlord has, on or before the day which is 2 months before the day which would otherwise be the day of expiry of the tenancy, served on the tenant a notice informing the tenant of—

(i) the extension, and

(ii) the reasons for the extension.

(3) A landlord may not give a notice if the landlord has previously given a notice under subsection (2) in relation to that short Scottish secure tenancy.”.

(2) In section 37 of the 2001 Act (conversion to Scottish secure tenancy)—

(a) in subsection (1)—

(i) the words “, in the period of 12 months following the creation of the tenancy,” are repealed,

(ii) after “36(2)” insert “before the expiry of the relevant period”, and

(iii) for “that” substitute “the relevant”,

(b) after subsection (1), insert—

“(1A) In this section, the “relevant period” is—
(a) the period of 12 months following the creation of the tenancy, or
(b) if an extension notice has been served under section 35A, the period of
18 months following the creation of the tenancy.”.

(c) in subsection (2)—

(i) for “period of 12 months following the creation of the tenancy” substitute
“relevant period”, and
(ii) for “that period of 12 months”, in both places where it occurs, substitute
“the relevant period”.

12 Short Scottish secure tenancy: recovery of possession

In section 36 of the 2001 Act (recovery of possession)—

(a) in subsection (2), after paragraph (a) insert—

“(aa) in the case of a short Scottish secure tenancy created by virtue of section
35 or paragraph 1, 2 or 2A of schedule 6, the landlord considers that any
obligation of the tenancy has been broken,”,

(b) in subsection (3), after paragraph (a) insert—

“(aa) state the reason why the landlord is seeking recovery of possession
(including, in a case where subsection (2)(aa) applies, the obligations
which the landlord considers to have been broken),”,

(c) after subsection (4), insert—

“(4A) A tenant may, before the end of the period of 14 days beginning with the day
of service of a notice under subsection (2), apply to the landlord for a review of
a decision to seek recovery of possession of the house which is the subject of
the tenancy.

(4B) If an application for a review under subsection (4A) is made, the landlord must,
before the day specified in the notice by virtue of subsection (3)(b)—

(a) confirm its decision to seek recovery of possession or withdraw its notice
under subsection (2),
(b) notify the tenant of its decision on the review, and
(c) where its decision on the review is to confirm the decision to seek
recovery of possession, notify the tenant of the reasons.

(4C) The Scottish Ministers may by regulations make further provision about the
procedure to be followed in connection with a review following an application
under subsection (4A).”,

(ca) in subsection (5)(a), after “34(5)” insert “or, in a case where subsection (2)(aa)
applies, the end of the term applicable to the tenancy in accordance with section
34(6A), 35(3A) or 35A(1)”,

(d) in subsection (7), after “16” insert “, but subject to the modification mentioned in
subsection (8)”, and

(e) after subsection (7), insert—
“(8) In relation to the recovery of possession of the house which is the subject of a short Scottish secure tenancy, section 14(4) is to be read as if for paragraph (b) there were substituted—

“(b) a date, not earlier than 4 weeks from the date of service of the notice on or after which the landlord may raise proceedings for recovery of possession,”.

13 Assignation, sublet and joint tenancy of Scottish secure tenancy

(1) In section 11 of the 2001 Act (Scottish secure tenancy)—

(a) in subsection (6), the words “, or is intended to be,” are repealed, and

(b) after subsection (6) insert

“(6A) An application under subsection (5) may be made only where the house in question has been the only or principal home of the person falling within subsection (6) throughout the period of 12 months ending with the date of the application.

(6B) For the purposes of subsection (6A) a period may be considered in relation to a person only if, at any time before that period began, the landlord was notified by—

(a) the person, or

(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person’s only or principal home.”.

(2) In section 32 of the 2001 Act (assignation, subletting, etc.)—

(a) in subsection (1)—

(i) the word “and” immediately preceding paragraph (b) is repealed,

(ii) in paragraph (b), after “been” insert “the tenant’s and”,

(iii) in paragraph (b), for “6” substitute “12”, and

(iv) after paragraph (b), insert “

“(c) in the case of a sublet, only where the house has been the tenant’s only or principal home throughout the period of 12 months ending with the date of the application for the landlord’s consent to the sublet under paragraph 9 of schedule 5.”,

(b) after subsection (1), insert—

“(1A) For the purposes of an assignation mentioned in subsection (1)(b), a period may be considered in relation to a person only if—

(a) the person was the tenant of the house throughout that period, or

(b) at any time before that period began, the landlord was notified by—

(i) the person, or

(ii) any other person who was the tenant of the house in question when the notice was given,
that the house in question was the person’s only or principal home.

(1B) For the purposes of a sublet mentioned in subsection (1)(c), a period may be considered in relation to a tenant only if—

(a) the tenant was the tenant of the house throughout that period, or

(b) at any time before that period began, the landlord was notified by—

(a) the tenant, or

(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the tenant’s only or principal home.”, and

(c) in subsection (3)—

(i) the word “or” immediately preceding paragraph (e) is repealed, and

(ii) after paragraph (e), insert—

“(f) in the case of consent to an assignation by a local authority or a registered social landlord, if the proposed assignee is not a person to whom that local authority or registered social landlord would give a reasonable preference when selecting tenants under section 20(1) of the 1987 Act, or

(g) in the case of consent to an assignation, if the assignation would in the opinion of the landlord, result in the house being under-occupied.”.

14 Succession to Scottish secure tenancy

In schedule 3 to the 2001 Act (succession to Scottish secure tenancy: qualified persons)—

(a) in paragraph 2(2), for “6” insert “12”,

(b) in paragraph 3, for “at the time of” substitute “throughout the period of 12 months ending with”,

(c) in paragraph 4(b), for “at the time of” substitute “throughout the period of 12 months ending with”, and

(d) after paragraph 4, insert—

“Only or principal home

4A For the purposes of paragraph 2, 3 or 4 a period may be considered in relation to a person only if, at any time before that period began, the landlord was notified by—

(a) the person, or

(b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person’s only or principal home.”.

15 Grounds for eviction: antisocial behaviour

(1) In section 14 of the 2001 Act (proceedings for possession), after subsection (2A) insert—
“(2B) Where such proceedings are to include a ground for recovery of possession set out in paragraph 2 of schedule 2, the landlord must have regard to any guidance published by the Scottish Ministers before raising such proceedings in relation to recovering possession of the house.

(2C) Before publishing any guidance mentioned in subsection (2B), the Scottish Ministers must consult such persons as they consider appropriate.”.

(2) In section 16 of the 2001 Act (powers of court in possession proceedings)—

(a) in subsection (2), after paragraph (a) insert—

“(aa) whether or not paragraph (a) applies, that—

(i) the landlord has a ground for recovery of possession set out in paragraph 2 of that schedule and so specified, and

(ii) the landlord served the notice under section 14(2) before the day which is 12 months after—

(A) the day on which the person was convicted of the offence forming the ground for recovery of possession, or

(B) where that conviction was appealed, the day on which the appeal is dismissed or abandoned,”; and

(b) after subsection (3), insert—

“(3A) Subsection (2) does not affect any other rights that the tenant may have by virtue of any other enactment or rule of law.”.

16 Recovery of possession of properties designed for special needs

In schedule 2 to the 2001 Act (grounds for recovery of possession of house)—

(a) in paragraph 11(a), the words “longer a” are repealed, and

(b) in paragraph 12(a), the words “longer a” are repealed.

PART 3

PRIVATE RENTED HOUSING

Transfer of sheriff’s jurisdiction to First-tier Tribunal

17 Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.
(3) Part 1 of schedule 1 makes minor and consequential amendments.

18 Repairing standard

(1) The 2006 Act is amended as follows.

(2) In section 18—

(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,

(b) in subsection (2)(b), for “sheriff” substitute “Tribunal”.

(3) The title of section 18 becomes “Contracting out with consent of First-tier Tribunal”.

(4) In section 57—

(a) in subsection (2), for “sheriff” substitute “relevant authority”,

(b) after subsection (2) insert—

“(2A) In subsection (2), the relevant authority is—

(a) where the requirement or thing which the person is authorised or entitled to do relates to the repairing standard, the First-tier Tribunal,

(b) in any other case, the sheriff.”.

(5) Part 2 of schedule 1 makes minor and consequential amendments.

19 Right to adapt rented houses

(1) After section 66 of the 2006 Act insert—

“66A Appeals in relation to section 52

(1) A tenant aggrieved by a decision by a landlord—

(a) to impose any condition on a consent to carry out work in pursuance of section 52(2), or

(b) to refuse to consent to the carrying out of any such work,

may appeal to the First-tier Tribunal within 6 months of being notified of that decision.

(2) The First-tier Tribunal may, on cause shown, hear an appeal after the deadline set by subsection (1).

(3) The First-tier Tribunal must, unless the Tribunal considers the condition or, as the case may be, refusal appealed against to be reasonable, determine an appeal under subsection (1) by quashing the decision and directing the landlord to withdraw the condition (or to vary it in such manner as the Tribunal may specify) or, as the case may be, to consent to the application (with or without such conditions as the Tribunal may specify).

(4) In determining whether a condition or refusal appealed against under subsection (1) is reasonable, the First-tier Tribunal must, where the appeal relates to an application made for the purposes of section 52(2)(a), have regard to any code of practice issued by the Commission for Equality and Human Rights which relates to section 52 or 53.
(5) The First-tier Tribunal’s determination on an appeal under subsection (1) is final.”.

(2) Part 3 of schedule 1 makes minor and consequential amendments.

20 **Landlord registration**

(1) The 2004 Act is amended as follows.

(2) In section 92(2), for “sheriff” substitute “First-tier Tribunal”.

(3) In section 97—

(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,

(b) in subsection (2), for “sheriff” substitute “First-tier Tribunal”.

(4) Part 4 of schedule 1 makes minor and consequential amendments.

21 **Houses in multiple occupation**

(1) The Scottish Ministers may by regulations—

(a) provide that the First-tier Tribunal may make an order of the kind mentioned in section 153(2) of the 2006 Act instead of the sheriff,

(b) provide that the following may be made to the First-tier Tribunal instead of the sheriff—

(i) appeals against decisions of local authorities to which section 158 of that Act applies,

(ii) applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act,

(iii) applications for a warrant for the ejection of the occupant from land or premises where the occupant has not complied with a requirement under paragraph 2 of schedule 5 to that Act in relation to the land or premises.

(2) Regulations under subsection (1) may—

(a) disapply the following provisions of the 2006 Act—

(i) section 153(2),

(ii) section 159(1),

(iii) paragraph 9(2) of schedule 4,

(iv) paragraph 3(1) of schedule 5,

(b) make such other consequential modifications to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

**Landlord registration: time limit for determining application**

22 **Landlord registration: time limit for determining application**

(1) After section 85A of the 2004 Act, insert—

“85B Time limit for determining application

(1) This section applies where a relevant person makes an application to a local authority in accordance with section 83.
(2) The local authority must determine the application under section 84 within 12 months of receiving the application.

(3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the local authority, by such period as the Tribunal thinks fit.

(4) The First-tier Tribunal may not extend a period unless the local authority applies for the extension before the period expires.

(5) The relevant person is entitled to be a party to any proceedings on such an application.

(6) The decision of the First-tier Tribunal on such an application is final.

(7) If the local authority does not determine the application within the period required by this section—

(a) the authority is to be treated as having entered, on the day by which the authority was required to determine the application, the relevant person in the register maintained by the authority under section 82(1), and

(b) unless otherwise removed from the register in accordance with this Part, that person is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day.

(8) Where subsection (7) applies the authority must—

(a) enter the name of the relevant person in the register maintained by the authority under section 82(1), and

(b) state in the register a registration number in relation to that person (which is to be treated as having been given under section 84(5A)).

(9) Subject to the modifications in subsection (10), the relevant person is for all purposes to be treated as having been registered by virtue of section 84(2)(a).

(10) The modifications are—

(a) in the case of an application to which section 84(3)(a) and (b) applies, the relevant person is to be treated as having been registered by virtue of section 84(3), and

(b) in the case of an application to which section 84(4)(a) and (b) applies, the relevant person is to be treated as having been registered by virtue of section 84(4),

(c) section 84(6) does not apply, and

(d) section 89(2)(b), (3)(b) and (3A)(b) are to be read as if for the words “no longer applies” there were inserted “does not apply”.

(2) In section 86(1)(a) of the 2004 Act (entry in the register), after “section 84(2)” insert “or section 85B(8)(a)”.

Repairing standard

22A Carbon monoxide alarms

In section 13 of the 2006 Act—

(a) the word “and” after paragraph (e) of subsection (1) is repealed,
(b) after paragraph (f) of subsection (1) insert “, and

(g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”;

(c) after subsection (5) insert—

“(6) In determining whether a house meets the standard of repair mentioned in subsection (1)(g), regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”.

22B Electrical safety inspections

(1) In section 13 of the 2006 Act (the repairing standard), after subsection (4) insert—

“(4A) In determining whether a house meets the standard of repair mentioned in subsection (1)(c) and (d) in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances, regard is to be had to any guidance issued by the Scottish Ministers on electrical safety standards.”.

(2) After section 19 of the 2006 Act insert—

“19A Duty to ensure regular electrical safety inspections

(1) The landlord must ensure that regular inspections are carried out for the purpose of identifying any work which—

(a) relates to installations for the supply of electricity and electrical fixtures, fittings and appliances, and

(b) is necessary to ensure that the house meets the repairing standard.

(2) The duty in subsection (1) is complied with if—

(a) an inspection has been carried out before the tenancy starts (but not earlier than 5 years before the start of the tenancy), and

(b) inspections are carried out during the tenancy at such intervals to ensure that there is a period of no more than 5 years between each inspection.

(3) The landlord must—

(a) before the start of the tenancy, provide the tenant with a copy of the record of the most recent inspection carried out, and

(b) provide the tenant with a copy of the record of any inspection carried out during the tenancy.

(4) For the purposes of sections 16(4), 17, 22 and 24 and schedule 2, references to a duty under section 14(1) include the duties under this section.

19B Electrical safety inspections

(1) An inspection carried out in pursuance of section 19A must be carried out by a competent person.

(2) The person carrying out the inspection must prepare a record of the inspection including the following information—

(a) the date on which the inspection was carried out,

(b) the address of the house inspected,
(c) the name and address of the landlord or the landlord’s agent,
(d) the name, address and relevant qualifications of the person who carried out the inspection,
(e) a description, and the location, of each installation, fixture, fitting and appliance inspected,
(f) any defect identified,
(g) any action taken to remedy a defect.

(3) A copy of the record must be—
(a) given to the landlord, and
(b) retained by the landlord for a period of 6 years.

(4) The Scottish Ministers must publish guidance on the carrying out of inspections.

(5) In determining who is competent to carry out an inspection, the landlord must have regard to the guidance.”.

22C Power to modify repairing standard etc.

(1) After section 20 of the 2006 Act insert—

“20A Power to modify repairing standard etc.

(1) The Scottish Ministers may by regulations vary or extend the repairing standard and a landlord’s duty to ensure a house meets that standard.

(2) Regulations under subsection (1) may, in particular, make provision about—
(a) the tenancies to which this Chapter applies,
(b) determining whether a house meets the repairing standard,
(c) carrying out inspections in relation to the repairing standard.

(3) Regulations under subsection (1) may modify sections 12 to 14 and any other provision of this Chapter.”.

(2) In section 191(5) of the 2006 Act, after “section” insert “20A,”.

Enforcement of repairing standard

23 Third party application in respect of the repairing standard

(1) In section 22 of the 2006 Act (tenant application to private rented housing panel)—

(a) after subsection (1), insert—

“(1A) A person mentioned in subsection (1B) may apply to the private rented housing panel for determination of whether a landlord has failed to comply with the duty imposed by section 14(1)(b) (a person who makes such an application being referred to as a “third party applicant”).

(1B) The persons are—
(a) a local authority,
(b) a person specified by order made by the Scottish Ministers.”,
(b) in subsection (2), for “(1) must set out the tenant’s” substitute “(1) or (1A) must set out the tenant’s, or as the case may be, the third party applicant’s”,

c) in subsection (3), for “such application may be made unless the tenant” substitute “application under this section may be made unless the person making the application”,

(d) in subsection (4), for “such application” substitute “application under this section”, and

e) after subsection (4), insert—

“(4A) The tenant of the house concerned is entitled to be a party in the determination of any application made under subsection (1A).”.

(2) The title of section 22 of the 2006 Act becomes “Application in respect of the repairing standard”.

(3) In section 22A(1) of the 2006 Act (information to be given to a local authority), after “22(1)” insert “, or under section 22(1A) where the applicant is not a local authority”.

(4) In section 23 of the 2006 Act (referral to private rented housing committee)—

(a) in subsection (1), after “22(1)” insert “or 22(1A)”,

(b) in subsection (2)(b), after “tenant” insert “or third party applicant”,

c) in subsection (4), after “application”, where it first occurs, insert “under section 22(1)”,

(d) after subsection (4) insert—

“(4A) The president must, as soon as practicable after rejecting an application under section 22(1A) give notice of the rejection to—

(a) the third party applicant, and

(b) the tenant.”, and

e) in subsection (5), for “Such a notice” substitute “A notice under subsection (4) or (4A)”. 

(5) In section 24(1) of the 2006 Act (determination by private rented housing committee) for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”. 

(6A) In section 181 of the 2006 Act (rights of entry: general)—

(a) after subsection (1) insert—

“(1A) Any person authorised by a third party applicant is entitled to enter any house in respect of which an application under section 22 may be made for the purposes of enabling or assisting the third party applicant to decide whether to make an application under section 22(1A).”, and

(b) in subsection (2), for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”. 

(6B) In section 182 of the 2006 Act (warrants authorising entry)—

(a) in subsection (1), after “subsection (1)” insert “, (1A)”, and

(b) after subsection (3) insert—
“(3A) In relation to an application for a warrant under section 181(1A), the reference to the occupier in subsection (3) is to be read as including the tenant, the landlord and any known agent of the landlord.”.

(6C) In section 184 of the 2006 Act (rights of entry: supplemental), after subsection (4) insert—

“(4A) In relation to the exercise of the right conferred by section 181(1A), the reference to occupants in subsection (4) is to be read as including the tenant, the landlord and any known agent of the landlord.”.

(6D) In section 187 of the 2006 Act (formal communications), in subsection (3)(b), for “the recorded delivery service” substitute “a service which provides for the delivery of the communication to be recorded”.

(7) In section 194(1) of the 2006 Act (interpretation), after the definition of “tenant” insert—

“third party applicant” has the meaning given by section 22(1A),”.

(8) Section 35(3) of the Private Rented Housing (Scotland) Act 2011 (asp 14) is repealed.

24 Procedure for third party applications

(1) In paragraph 1 of schedule 2 to the 2006 Act (notification)—

(a) in sub-paragraph (1), for “a tenant’s application” substitute “an application”,

(b) in sub-paragraph (2), for “either party” substitute “the landlord or the tenant”,

(c) in sub-paragraph (3), for “both parties” substitute “the landlord and the tenant”, and

(d) after sub-paragraph (3), insert—

“(4) In the case of an application under section 22(1A), the committee must, in addition to carrying out the matters mentioned in sub-paragraphs (1) to (3)—

(a) serve on the third party applicant a notice containing the matters mentioned in sub-paragraph (1)(a) to (c),

(b) if the committee thinks fit following a request of the third party applicant, change the day specified for the purposes of sub-paragraph (1)(c),

(c) notify—

(i) the third party applicant of any change under sub-paragraph (2)(b),

(ii) the landlord and the tenant of any change under paragraph (b).”.

(2) In paragraph 2 of schedule 2 to the 2006 Act (inquiries)—

(a) in sub-paragraph (3)(a), for “or tenant” substitute “, the tenant or, as the case may be, third party applicant”,

(b) in sub-paragraph (3)(b), for “or tenant” substitute “, tenant or, as the case may be, third party applicant”,

(c) in sub-paragraph (4)(a), for “in the notice served under” substitute “in accordance with”, and

(d) in sub-paragraph (4)(b), for “in a notice served under paragraph 1(2)(b)” substitute “in accordance with paragraph 1(2)(b) or (4)(b)”.
(3) In paragraph 3(1) of schedule 2 to the 2006 Act (evidence), after “tenant” insert “, third party applicant”.

(4) In paragraph 5 of schedule 2 to the 2006 Act (expenses)—
   (a) after sub-paragraph (2)(b), insert—
   “(ba) the third party applicant,”, and
   (b) in sub-paragraph (2)(c), for “or tenant” substitute “, tenant or third party applicant”.

(5) In paragraph 6 of schedule 2 to the 2006 Act (recording and notification of decisions)—
   (a) in sub-paragraph (1)(a), for “a tenant’s” substitute “an”,
   (b) the word “and” at the end of sub-paragraph (3)(c) is repealed, and
   (c) for sub-paragraph (3)(d), substitute—
   “(d) in the case of an application under section 22(1A), the third party applicant, and
   (e) the local authority (unless the local authority is the third party applicant in relation to the decision).”.

(6) After paragraph 7(1) of schedule 2 to the 2006 Act (withdrawal of application), insert—
   “(1A) A third party applicant may withdraw an application under section 22(1A) at any time.”.

(7) In paragraph 8(1) of schedule 2 to the 2006 Act (further provision on procedure), after “22(1)” insert “and 22(1A)”.

25 Appeals in relation to third party applications

(1) In section 64 of the 2006 Act (Part 1 appeals)—
   (a) in subsection (4)(a), for “a tenant’s” substitute “an”,
   (b) after subsection (4), insert—
   “(4A) A third party applicant aggrieved by a decision by a private rented housing committee which—
   (a) is mentioned in subsection (4)(a) to (f),
   (b) was made following an application by the applicant under section 22(1A),
   may appeal to the sheriff within 21 days of being notified of that decision.”, and
   (c) in subsection (5), after “tenant” insert “or a third party applicant”.

(2) In section 65(2) of the 2006 Act (determination of appeals), after “64(4)” insert “, (4A)”.

(3) After section 66(3) of the 2006 Act (appeals procedure), insert—
   “(3A) In an appeal by a landlord under section 64(4) which relates to a decision following an application under section 22(1A)—
   (a) the third party applicant is to be a party to the proceedings,
   (b) the tenant is entitled to be a party to the proceedings.”
(3B) In an appeal by a tenant under section 64(4) which relates to a decision following an application under section 22(1A), the landlord and the third party applicant are to be parties to the proceedings.

(3C) In an appeal by a third party applicant under section 64(4A)—

(a) the landlord is to be a party to the proceedings,

(b) the tenant is entitled to be a party to the proceedings.”.

Private rented housing: Enhanced Enforcement Areas

25A Private rented housing: Enhanced Enforcement Areas

(1) The Scottish Ministers must by regulations provide a scheme whereby a local authority may apply to the Scottish Ministers for additional discretionary powers to enable it to target enforcement action at an area characterised by poor conditions in houses subject to tenancies and occupancy agreements of the type mentioned in section 17(1) (“private rented housing”).

(2) The scheme under subsection (1) must provide—

(a) that a local authority may apply to the Scottish Ministers for an area to be designated as an Enhanced Enforcement Area where it considers that the area is characterised by—

(i) an overprovision or a concentration of private rented housing that appears to the local authority to be—

(A) of a poor environmental standard,

(B) overcrowded, and

(ii) a prevalence of antisocial behaviour, as defined by section 81(4) of the 2004 Act,

(b) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that the local authority will acquire such additional discretionary powers as the Scottish Ministers consider necessary or expedient, to be exercised for prescribed purposes, including in relation to—

(i) the checks it may carry out before entering a relevant person on the register of landlords that it maintains under Part 8 of the 2004 Act,

(ii) authority to inspect dwellings let by a landlord who is entered on that register,

(c) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that—

(i) the local authority must take steps to advertise the fact that the designation has been granted,

(ii) the designation will apply for a period of five years commencing from the date on which the Scottish Ministers notify a local authority of its decision,

(iii) the local authority may make a further application for the area to be designated as an Enhanced Enforcement Area before the expiry of its first designation.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—
(a) local authorities,

(b) persons or bodies who appear to them to represent the interests of—

(i) landlords,

(ii) tenants,

(c) such other persons or bodies as they consider appropriate.

(4) The Scottish Ministers must lay before the Scottish Parliament a draft Scottish statutory instrument containing regulations under subsection (1) by 1 April 2015.

(5) Regulations under subsection (1) may modify, or disapply any provision of, any enactment (including this Act) for the purposes of this section.

PART 4

LETTING AGENTS

Inclusion in the register

26 Register of letting agents

(1) The Scottish Ministers must establish and maintain a register of letting agents (the “register”).

(2) The register must contain an entry for each person entered in the register setting out—

(a) the name and address of the person entered in the register, and

(b) such information relating to that person as the Scottish Ministers may by regulations prescribe.

(3) The Scottish Ministers must make the information contained in the register publicly available by such means as they consider appropriate.

27 Application for registration

(1) A person may apply to the Scottish Ministers—

(a) to be entered in the register, or

(b) to renew that person’s existing entry in the register.

(2) The application must—

(a) state the name and address of the applicant,

(b) state whether the applicant is—

(i) trading as a sole trader,

(ii) a partnership,

(iii) a company, or

(iv) a body with some other legal status,

(c) in the case where the applicant is a company registered under the Companies Act 2006 (c.46), state the company’s registered number,
in the case where the applicant is not a natural person, state the name and address of the individual who holds the most senior position within the management structure of the relevant partnership, company or body,

(e) state the name and address of any other person who—

(i) owns 25% or more of an applicant which is not a natural person, or

(ii) otherwise is (or is to be) directly concerned with the control or governance of the applicant’s letting agency work (whether or not the applicant is a natural person), and

(f) include such other information as the Scottish Ministers may by regulations prescribe.

(3) The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

28 Offence of providing false information in an application

(1) It is an offence for a person, in an application under section 27, to—

(a) provide information which the person knows is false in a material particular, or

(b) knowingly fail to specify information required by section 27(2).

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

29 Decision on application

(1) The Scottish Ministers must determine an application under section 27 in accordance with this section.

(2) The Scottish Ministers must enter the applicant in the register or renew an existing entry if they are satisfied that—

(a) the applicant is a fit and proper person to carry out letting agency work,

(b) any other person who is required to be identified in an application by virtue of section 27 is a fit and proper person in relation to letting agency work, and

(c) the applicant meets such training requirements as the Scottish Ministers may by regulations prescribe.

(2A) Regulations under subsection (2)(c) may, in particular, prescribe—

(a) the matters on which training must have been undertaken,

(b) the persons who must have undertaken training,

(c) qualifications which must be held by the applicant or other persons,

(d) the period within which training must have taken place.

(3) An applicant who is entered in the register, or whose entry is renewed, is to be known as a “registered letting agent”.

(4) The Scottish Ministers must refuse to enter the applicant in the register or to renew an existing entry if they are not satisfied in accordance with subsection (2).

(5) Before refusing to enter the applicant in the register or to renew an existing entry, the Scottish Ministers must give to the applicant a notice stating that—
(a) they are considering refusing the application and their reasons for doing so, and
(b) the applicant has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(6) In making their decision under this section the Scottish Ministers must consider the application and any representations made in accordance with subsection (5)(b).

(7) The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the applicant of—
(a) their decision,
(b) in the case of a decision to enter the applicant in the register, the date of entry in the register,
(c) in the case of a decision to renew an existing entry, the date of renewal, and
(d) in the case of a refusal to enter the applicant in the register or to renew an existing entry, their reasons for the refusal and the date of that refusal.

(8) If the Scottish Ministers refuse to renew an existing entry they must remove the registered letting agent from the register on the date of final refusal.

(9) For the purposes of subsection (8) the date of final refusal is the date on which—
(a) the period mentioned in section 36(2) expires without an appeal being made,
(b) where such an appeal is made, the appeal is finally determined or abandoned.

29A Time limit for determining application

(1) This section applies where a person (referred to in this section as the “applicant”) makes an application in accordance with section 27.

(2) The Scottish Ministers must determine the application under section 29 within 12 months of receiving the application.

(3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the Scottish Ministers, by such period as the Tribunal thinks fit.

(4) The Tribunal may not extend a period unless the Scottish Ministers apply for the extension before the period expires.

(5) The applicant is entitled to be a party to any proceedings on an application under subsection (3).

(6) The decision of the Tribunal on such an application is final.

(7) If the Scottish Ministers do not determine the application within the period required by this section—
(a) on the day by which they were required to determine the application, they are to be treated as having entered the applicant in the register or, as the case may be, having renewed the applicant’s existing entry in the register, and
(b) the applicant is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day unless—
(i) before the expiry of the period, the applicant made a subsequent application in accordance with section 27 to renew the applicant’s entry in the register, or
(ii) the applicant is otherwise removed from the register in accordance with this Part.

(8) Where subsection (7) applies the Scottish Ministers must—

(a) notify the applicant—

(i) that subsection (7) applies, and

(ii) of the day on which, in accordance with subsection (7)(a), they are treated as having entered the applicant in the register or, as the case may be, having renewed the applicant’s existing entry in the register, and

(b) enter the name of the applicant in the register or, as the case may be, renew the applicant’s existing entry in the register.

(9) Subject to the modifications in subsection (10), the applicant is for all purposes to be treated as a registered letting agent entered in the register or, as the case may be, whose entry has been renewed by virtue of section 29(2).

(10) The modifications are—

(a) section 34 does not apply,

(b) paragraphs (a) and (b) of section 35(1) are to be read as if for the words “no longer” there were substituted “not”, and

(c) subsections (1)(b) and (4)(b) of section 38 are to be read as if after the word “under” there were inserted “section 29A(7)(b) or”.

30 Fit and proper person considerations

(1) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers must have regard to all of the circumstances of the case, including any material falling within subsections (2) and (3).

(2) Material falls within this subsection if it shows that the person has—

(a) been convicted of an offence—

(i) involving fraud or other dishonesty,

(ii) involving violence,

(iii) involving drugs,

(iv) involving firearms,

(v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46),

(b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15),

(c) contravened any provision of—

(i) the law relating to housing,

(ii) landlord and tenant law,

(iii) the law relating to debt.

(2A) Material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 (c.53) does not fall within subsection (2).
(3) Material falls within this subsection if it shows the extent to which any person mentioned in subsection (1) has—
   (a) complied with any Letting Agent Code of Practice made under section 41,
   (b) complied with any Letting Code issued under section 92A of the 2004 Act,
   (c) failed to comply with a duty applying to that person in accordance with section 32 to use a letting agent registration number,
   (d) contravened any provision of any letting agent enforcement order issued under section 43,
   (e) failed to pay any costs for which the person is liable under this Part arising from an application to the First-tier Tribunal under section 43,
   (f) failed to provide information in accordance with section 46A or 46B(2)(d)(i),
   (g) obstructed a person acting in the proper exercise of the persons’ functions under sections 46B to 46D,
   (h) failed to comply with a requirement made by a person who is so acting.

(4) The Scottish Ministers may by order modify this section by adding to, removing or varying any material in subsections (2) and (3).

31A Fit and proper person: criminal record information

(1) This section applies where the Scottish Ministers have reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 30(2) is, or has become, inaccurate.

(2) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers may have regard to the information which would be included in a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)) in relation to that person.

Duties of registered letting agents

32 Letting agent registration number

(1) The Scottish Ministers must allocate a number to each registered letting agent (the “letting agent registration number”).

(2) A registered letting agent must take all reasonable steps to ensure that the agent’s letting agent registration number is included in—
   (a) any document sent to a landlord, tenant, prospective landlord or prospective tenant in the course of the agent’s letting agency work,
   (b) any property advertisement or communication in relation to the agent’s letting agency work, and
   (c) any other document or communication of a type specified by the Scottish Ministers by order.

(3) For the purposes of this section—
   (a) “advertisement” includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons, and
(b) “communication” includes electronic communications sent or placed on a web page on a website operated by or on behalf of the registered letting agent.

33 Duty to inform: change of circumstances

(1) This section applies if, in consequence of a change in circumstances, any information provided by a registered letting agent to the Scottish Ministers by virtue of section 27 or, as the case may be, this section, becomes inaccurate.

(2) The registered letting agent must notify the Scottish Ministers in writing, as soon as practicable after the inaccuracy arises, of the change that has occurred.

(3) The notice must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

(4) It is an offence for a person to fail to comply with subsection (2) without reasonable excuse.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal from the register

34 Duration of registration

(1) The Scottish Ministers must remove a registered letting agent from the register if, on the expiry of the registration period, the registered letting agent has not made an application in accordance with section 27.

(2) The registration period is—

(a) in the case of a letting agent whose registration has not previously been renewed, the period of 3 years beginning with the date on which the entry was made,

(b) in any other case, the period of 3 years beginning the day after the end of the previous registration period.

35 Revocation of registration

(1) The Scottish Ministers may remove a registered letting agent from the register if they are satisfied that—

(a) the agent is not, or is no longer a fit and proper person to carry out letting agency work,

(b) any other person who is required to be identified in an application by virtue of section 27 or in accordance with the duty in section 33, is not, or is no longer a fit and proper person in relation to letting agency work or,

(c) the agent does not meet the training requirements prescribed under section 29(2)(c).

(2) Before removing a registered letting agent from the register under this section the Scottish Ministers must give to the agent a notice stating that—

(a) they are considering removing the agent from the register and their reasons for doing so, and
(b) the agent has the right to make written representations to the Scottish Ministers
before the date which is specified in the notice (such date to be at least 28 days
after the date on which the notice is given).

(3) In making their decision under this section the Scottish Ministers must consider any
representations made in accordance with subsection (2)(b).

(4) The Scottish Ministers must, as soon as practicable after making a decision to remove a
registered letting agent from the register, notify the agent of—

(a) their decision and their reasons for that decision,

(b) the date of removal from the register.

35A Removal from register on application

(1) A registered letting agent may apply to the Scottish Ministers to be removed from the
register.

(2) The application must be accompanied by a fee of such amount (if any) as the Scottish
Ministers may determine.

(3) The Scottish Ministers must remove a registered letting agent from the register if,
having considered an application under this section, they are satisfied that—

(a) the registered letting agent is no longer carrying out letting agency work, and

(b) it is otherwise appropriate to remove that agent from the register.

(4) The Scottish Ministers must, as soon as practicable after making their decision under
this section, notify the agent who made the application of—

(a) their decision,

(b) in the case of a decision to remove the agent from the register, the date of removal
from the register, and

(c) in the case of a decision not to remove the agent from the register, their reasons
for that decision.

Appeals

36 Appeals

(1) A person may appeal to the First-tier Tribunal against a decision by the Scottish
Ministers—

(a) under section 29 to refuse to enter that person in the register or to renew that
person’s existing entry in the register,

(b) under section 35 to remove that person from the register.

(2) An appeal must be made before the end of the period of 21 days beginning with the date
of notification of the decision.

(3) In determining an appeal the Tribunal may make an order requiring the Scottish
Ministers to enter the person in the register.
37 Note on register where refusal or removal

(1) Where the Scottish Ministers refuse to enter a person in the register or to renew a person’s existing entry in the register under section 29, they must, after the date of final refusal, note that fact in the register.

(2) Where the Scottish Ministers remove a person from the register under section 35 they must, after the date of final refusal, note that fact in the register.

(3) For the purposes of this section the date of final refusal is the later of the date on which—

(a) the period mentioned in section 36(2) expires without an appeal being made,

(b) where such an appeal has been made, the appeal is finally determined or abandoned.

(4) Where a fact is noted by virtue of subsection (1) or (2) it must—

(a) remain on the register for the period of 12 months beginning with the date on which the Scottish Ministers are required to note it in the register, and

(b) be removed from the register at the end of that period.

(5) But where a person in respect of whom the Scottish Ministers note a fact by virtue of subsection (1) or (2) is subsequently entered in the register before the end of the period mentioned in subsection (4)(a), the Scottish Ministers must remove the fact from the register.

38 No payment for letting agency work where refusal or removal

(1) This section applies where the Scottish Ministers—

(a) refuse to enter a person in the register or to renew the person’s existing entry in the register under section 29,

(b) remove a person from the register under section 34,

(c) remove a person from the register under section 35,

(d) remove a person from the register under section 35A.

(2) After the relevant date—

(a) no costs incurred by the person in respect of letting agency work are recoverable,

(b) no charge imposed by the person which relates to letting agency work in a period after the relevant date is recoverable.

(2A) Subsection (2)(a) does not apply in relation to costs incurred before the relevant date in a case where the person is removed from the register under section 34 or 35A.

(3) The Scottish Ministers must, as soon as practicable after the relevant date, publish in such manner as they think fit a notice of—

(a) the refusal or removal mentioned in subsection (1),

(b) the relevant date, and

(c) the effect of subsection (2).

(4) For the purposes of this section, the relevant date—
(a) in the case of a refusal or removal mentioned in subsection (1)(a) or (c), is the later of the date on which—

(i) the period mentioned in section 36(2) expires without an appeal being made,

(ii) where such an appeal has been made, the appeal is finally determined or abandoned, and

(b) in the case of a removal mentioned in subsection (1)(b) or (d), is the day after the day on which the person is removed from the register.

Offences where no registration

39 Offence of operating as a letting agent without registration

(1) It is an offence for a person who is not a registered letting agent to carry out letting agency work, unless subsection (2) applies to that person.

(2) This subsection applies to a person from the day on which the person is removed from the register under section 35 until—

(a) where the period mentioned in section 36(2) expires without an appeal being made, the expiry of that period,

(b) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for acting in the way charged.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding £50,000, or to both.

40 Offence of using a registration number where no registration

(1) It is an offence for a person who is not entered in the register, without reasonable excuse, to use a number purporting to be a letting agent registration number in any document or communication.

(2) Subsection (1) does not apply to a person who is removed from the register under section 35 until—

(a) where the period mentioned in section 36(2) expires without an appeal being made, the expiry of that period,

(b) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Code of practice

41 Letting Agent Code of Practice

(1) The Scottish Ministers may, by regulations, set out a code of practice which makes provision about—
(a) the standards of practice of persons who carry out letting agency work,
(b) the handling of tenants’ and landlords’ money by those persons, and
(c) the professional indemnity arrangements to be kept in place by those persons.

(2) The code of practice is to be known as the Letting Agent Code of Practice.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate on a draft of the code of practice.

### 42 Prohibition on contracting out

(1) The terms of any agreement of a kind mentioned in subsection (2) are of no effect in so far as they purport to—

(a) exclude or limit any duty a letting agent has under the Letting Agent Code of Practice, or
(b) impose any penalty, disability or obligation in the event of a person enforcing compliance by the letting agent with such a duty.

(2) The agreements are—

(a) an agreement between a landlord and a letting agent,
(b) an agreement between a tenant and a letting agent,
(c) an agreement (including a lease) between a landlord and a tenant.

### Letting agent enforcement orders

### 43 Applications to First-tier Tribunal to enforce code of practice

(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is—

(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
(b) in relation to an application by a landlord, a letting agent appointed by the landlord,
(c) in relation to an application by the Scottish Ministers, any letting agent.

(3) An application under subsection (1) must set out the applicant’s reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.
(7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.

(8) A letting agent enforcement order—

(a) must specify the period within which each step must be taken,

(b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.

(9) References in this section to—

(a) a tenant include—

(i) a person who has entered into an agreement to let a house, and

(ii) a former tenant,

(b) a landlord include a former landlord.

44 Variation and revocation of enforcement orders

(1) The First-tier Tribunal may, at any time—

(a) vary a letting agent enforcement order, or

(b) where it considers that the steps required by the order are no longer necessary, revoke it.

(2) References in this Part (including this section) to a letting agent enforcement order are to be treated as references to the order as so varied.

45 Failure to comply with enforcement order

(1) The First-tier Tribunal may, after the period within which a letting agent enforcement order requires steps to be taken, review whether the letting agent has complied with the order.

(2) If the Tribunal decides that the letting agent has failed to comply with the letting agent enforcement order it must notify the Scottish Ministers of that failure.

(3) But the Tribunal may not make such a decision if it is satisfied that the letting agent has a reasonable excuse for failing to comply.

46 Enforcement orders: offence

(1) A letting agent who, without reasonable excuse, fails to comply with a letting agent enforcement order commits an offence.

(2) A letting agent cannot be guilty of an offence under subsection (1) unless the First-tier Tribunal has decided that the letting agent has failed to comply with the order (but such a decision does not establish a presumption that the letting agent has committed an offence under subsection (1)).

(3) A letting agent who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
46A  Power to obtain information

(1) The Scottish Ministers may, for the purpose of monitoring compliance with the provisions of this Part, serve a notice on a person who appears to be a letting agent requiring the person to provide them with information specified in the notice.

(2) The Scottish Ministers may by regulations make further provision about the requiring of information under subsection (1) and, in particular, may make provision about—

(a) the form of the notice and manner of service,

(b) the time within which information must be provided.

(3) Nothing in this section authorises the Scottish Ministers to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.

46B  Power to carry out inspections

(1) For the purpose of monitoring compliance with the provisions of this Part, an authorised person may carry out an inspection of premises which appear to be being used for the purpose of carrying out letting agency work.

(2) For the purposes of carrying out the inspection, the authorised person may—

(a) enter and inspect the premises,

(b) require the production of any book, document, data or record (in whatever form it is held) and inspect it, and take copies of or extracts from it,

(c) take possession of any book, document, data or record (in whatever form it is held) which is on the premises and retain it for as long as the authorised person considers necessary,

(d) require any person to—

(i) give the authorised person such information as the authorised person considers necessary,

(ii) afford the authorised person such facilities and assistance as the authorised person considers necessary.

(3) Nothing in this section authorises the authorised person to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.

(4) In this section—

"authorised person" means a person authorised by the Scottish Ministers,

"premises" includes any place and any vehicle, vessel, or moveable structure.

Warrants for entry

(1) A sheriff, justice of the peace or stipendiary magistrate may by warrant authorise a person to enter premises (if necessary using reasonable force) for the purpose of carrying out an inspection under section 46B.

(2) A warrant may be granted under subsection (1) only if the sheriff, justice or magistrate is satisfied by evidence on oath—
(a) that there are reasonable grounds for entering the premises in question, and
(b) that—
   (i) entry to the premises has been or is likely to be refused and that notice of the intention to apply for a warrant under this section has been given to the occupier,
   (ii) a request for entry, or the giving of such notice, would defeat the object of the proposed entry,
   (iii) the premises are unoccupied, or
   (iv) the occupier is temporarily absent and it might defeat the object of the entry to await the occupier’s return.

46D Inspections: supplemental
(1) A person entering any premises under section 46B(2)(a) or in accordance with a warrant granted under section 46C may take on to the premises such other persons and such equipment as the person considers necessary.
(2) A right to enter any premises conferred by section 46B(2)(a) may be exercised only at a reasonable time.
(3) The occupier of the premises concerned must be given at least 24 hours’ notice before a person carries out an inspection under section 46B unless the person carrying out the inspection considers that giving such notice would defeat the object of the proposed inspection.
(4) A person carrying out an inspection under section 46B must, if required to do so, produce written evidence of the person’s authorisation to carry out the inspection.
(5) On leaving any premises which a person is authorised to enter by a warrant granted under section 46C, the person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the person found them.
(6) A person who takes possession of any item under section 46B(2)(c) must leave a statement on the premises from which the item was removed—
   (a) giving particulars of what has been taken, and
   (b) stating that the person has taken possession of it.

46E Information and inspection: offence
(1) It is an offence for a person who has been required to provide information in accordance with section 46A or section 46B(2)(d)(i)—
   (a) without reasonable excuse, to fail or refuse to provide the information,
   (b) to knowingly or recklessly make any statement in respect of that information which is false or misleading in a material particular.
(2) It is an offence for a person—
   (a) to intentionally obstruct a person acting in the proper exercise of the persons’ functions under sections 46B to 46D.
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(b) without reasonable excuse, to fail to comply with any requirement made under section 46B(2)(b) or (d)(ii) by a person who is so acting.

(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

5

47 Transfer of jurisdiction of actions involving letting agents

(1) The Scottish Ministers may by regulations provide that the functions and jurisdiction of the sheriff in relation to the actions between the following persons relating to the carrying out of letting agency work are transferred to the First-tier Tribunal—

(a) a tenant and a relevant letting agent,

(b) a landlord and a relevant letting agent.

(2) A relevant letting agent is—

(a) in relation to a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,

(b) in relation to a landlord, a letting agent appointed by the landlord.

(3) References in this section to—

(a) a tenant include—

(i) a person who has entered into an agreement to let a house, and

(ii) a former tenant,

(b) a landlord include a former landlord.

48 Offences by bodies corporate etc.

(1) Where—

(a) an offence under this Part has been committed by a body corporate or a Scottish partnership or other unincorporated association, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual,

the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.
Delegation of functions relating to the register

(1) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than a function relating to the making of an order or regulations) to such person as they may determine.

(2) A delegation under subsection (1) may be varied or revoked at any time.

Landlord registration where agent is a registered letting agent

(1) In section 84(4) of the 2004 Act (registration), for paragraph (d) substitute—

“(d) either—

(i) the person is a registered letting agent, or

(ii) in the case of a person who is not a registered letting agent, the person is a fit and proper person to act for the landlord such as is mentioned in subsection (3)(c) in relation to the lease or, as the case may be, arrangement.”.

(2) In section 88 of the 2004 Act (registered person: appointment of agent)—

(a) in subsection (2B)—

(i) the word “or” at the end of paragraph (a) is repealed, and

(ii) after subsection (b), insert “,or

(c) the person appointed is a registered letting agent.”,

(b) for subsection (4), substitute—

“(4) The condition is that either—

(a) the person is a registered letting agent, or

(b) in the case of a person who is not a registered letting agent, the person is a fit and proper person to act for the registered person in relation to a lease or occupancy arrangement such as is mentioned in subsection (1)(b).”,

(c) in subsection (5), for “(4)” substitute “(4)(b)”.

(3) In section 89 of the 2004 Act (removal from the register)—

(a) in subsection (3)(b) for “(d)” substitute “(d)(ii)”,

(b) after subsection (3), insert—

“(3A) Where—

(a) a person is registered by the local authority by virtue of section 84(4), and

(b) paragraph (d)(i) of that section no longer applies,

the authority may remove the person from the register.”.

(4) In section 90(1) of the 2004 Act (notification of removal from register: registered person), after “89(1)” insert “,(3A)”.

(5) In section 91(1) of the 2004 Act (notification of removal from register: other persons), after “89(1)” insert “,(3A)”.

(6) In section 92(1)(b) of the 2004 Act (appeal), after “89(1)” insert “,(3A)”.
(7) In section 92ZA(1)(a)(ii) of the 2004 Act (duty to note refusals and removals), after “89(1)” insert “, (3A)”. 

(8) In section 92A(1)(b) of the 2004 Act (the Letting Code), after “person” where it first occurs insert “(other than a registered letting agent)”. 

(9) In section 101 of the 2004 Act (interpretation of Part 8), after the definition of “registered” insert—

“‘registered letting agent’ has the meaning given by section 29(3) of the Housing (Scotland) Act 2014 (asp 00),”.

51 Meaning of letting agency work

(1) For the purposes of this Part, “letting agency work” means things done by a person in the course of that person’s business in response to relevant instructions which are—

(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord’s house as a dwelling, or

(b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a). 

(2) In subsection (1)—

(a) “relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and

(b) “occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the 2004 Act. 

(3) The Scottish Ministers may by order—

(a) provide that “letting agency work” does not include things done—

(i) on behalf of a specified body, or

(ii) for the purpose of a scheme of a specified description, or

(b) otherwise modify the meaning of “letting agency work” for the time being in this section.

(4) A scheme falling within a description specified by the Scottish Ministers under subsection (3)(a)(ii) must be—

(a) operated by a body which does not carry on the scheme for profit, and

(b) for the purpose of assisting persons to enter into leases or occupancy agreements.

52 Interpretation of Part 4

In this Part—

“house” is to be construed in accordance with section 101 of the 2004 Act,

“landlord” is to be construed in accordance with section 101 of the 2004 Act,

“letting agent registration number” has the meaning given by section 32(1),
“letting agent” means a person who carries out letting agency work,
“letting agent enforcement order” has the meaning given by section 43(7),
“register” has the meaning given by section 26(1),
“registered letting agent” has the meaning given by section 29(3),
“tenant”, in relation to an occupancy arrangement, means the person who under
the arrangement is permitted to occupy the house.

PART 5
MOBILE HOME SITES WITH PERMANENT RESIDENTS

General application

53 Licensing of sites for permanent residents

(1) In section 32(1) of the 1960 Act (application of Part 1 to Scotland), after paragraph (l)
insert—

“(m) the modifications in Part 1A.”.

(2) After section 32 of the 1960 Act, insert—

“PART 1A

LICENSING OF RELEVANT PERMANENT SITES IN SCOTLAND

General application

32A Licences under Part 1A

(1) Subject to the modifications mentioned in subsection (2), Part 1 applies in
relation to—

(a) a relevant permanent site as it applies to a caravan site within the
meaning of section 1(4),

(b) a relevant permanent site application as it applies in relation to an
application for a site licence under Part 1, and

(c) a site licence issued or renewed under this Part (a “Part 1A site licence”) as it applies to a site licence within the meaning of section 1(1).

(2) The modifications are—

(a) the offence in section 1 does not apply to the holder of a Part 1A site licence in relation to that person’s use of the relevant permanent site which is the subject of the licence,

(b) sections 3 and 6 do not apply in relation to a relevant permanent site application,

(c) sections 4 and 9 do not apply in relation to a Part 1A site licence, and

(d) the further modifications in this Part.”.

54 Relevant permanent site application

After section 32A of the 1960 Act (inserted by section 53(2)), insert—
Part 5—Mobile home sites with permanent residents

“Part 1A site licence

32B Relevant permanent site application
(1) A relevant permanent site application may be made by the occupier of land to the local authority in whose area the land is situated.

(2) A relevant permanent site application must—
(a) be in writing and in such format as is determined by the local authority,
(b) specify the land in respect of which the application is made,
(c) include information specified in regulations made under section 32N,
(d) include any information relevant to the material falling within section 32O(2) in relation to—
(i) the applicant,
(ii) any person to be appointed by the applicant to manage the site, and
(iii) any other person whom the local authority is required to be satisfied is a fit and proper person in accordance with section 32D(1)(b) or (2)(b).

(3) An applicant must, either at the time of making the application or subsequently, give to the local authority such other information as the authority may reasonably require.

32C Fee for relevant permanent site application
(1) A relevant permanent site application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.

(2) An authority may fix different fees for different applications or types of application.

(3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding a relevant permanent site application.

(4) The Scottish Ministers may by regulations subject to the negative procedure make provision about the charging of fees under subsection (1).

(5) Regulations made under subsection (4) may in particular—
(a) provide for the fee not to exceed such amount as may be prescribed by the regulations,
(b) specify matters to be taken into account by an authority when fixing a fee.”.

Issue, renewal, transfer and transmission of a Part 1A site licence

After section 32C of the 1960 Act (inserted by section 54), insert—

“32D Issue and renewal of a Part 1A site licence
(1) A local authority may issue a Part 1A site licence if—
Part 5—Mobile home sites with permanent residents

(a) the applicant is, when the Part 1A site licence is issued, entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order, and

(b) the authority is satisfied—

(i) that the applicant is a fit and proper person to hold a site licence,

(ii) in the case where an applicant is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

(iii) that any person to be appointed by the applicant to manage the site is a fit and proper person to do so, and

(iv) in the case where a person to be appointed by the applicant to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.

(2) A local authority must renew a Part 1A site licence if—

(a) the applicant is, when the Part 1A site licence is renewed, entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order, and

(b) the authority is satisfied—

(i) that the applicant is a fit and proper person to hold a site licence,

(ii) in the case where an applicant is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

(iii) that any person appointed, or to be appointed, by the applicant to manage the site is a fit and proper person to do so, and

(iv) in the case where a person appointed, or to be appointed, by the applicant to manage the site is not a natural person, that any individual who is, or is to be, directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.

(3) The local authority must not issue a Part 1A site licence to a person whom the local authority knows has held a site licence which has been revoked under this Act less than 3 years before that time.

(4) Before refusing to issue or renew a Part 1A site licence, the authority must give to the applicant a notice stating that—

(a) it is considering refusing the application and its reasons for doing so, and

(b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(5) In making its decision under this section the local authority must consider the application and any representations made in accordance with subsection (4)(b).
32E Application to transfer a Part 1 A site licence

(1) This section applies where, under section 10(1), the holder of a Part 1A site licence seeks the consent of the local authority for the transfer of the licence to a person who is to become the occupier of the relevant permanent site (in this section the “transferee”).

(2) The local authority may refuse consent to the transfer on the ground that the authority is not satisfied—

(a) that the transferee is a fit and proper person to hold a site licence,

(b) in the case where the transferee is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

(c) that any person to be appointed by the transferee to manage the site is a fit and proper person to do so, and

(d) in the case where a person to be appointed by the transferee to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.

(3) The applicant and the transferee must, either at the time of making the application or subsequently, give to the local authority such information as the authority may reasonably require in order to determine if the persons mentioned in subsection (2) are fit and proper persons.

(4) Before refusing to consent to the transfer under subsection (2), the authority must give to the applicant a notice stating that—

(a) it is considering refusing the application and its reasons for doing so, and

(b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(5) In making its decision under this section the local authority must consider the application and any representations made in accordance with subsection (4)(b).

32F Time limit for determining application

(1) This section applies where a person—

(a) makes a relevant permanent site application to a local authority in accordance with section 32B, or

(b) makes an application for consent to transfer a licence mentioned in section 32E.

(2) The local authority must determine the application under section 32D or, as the case may be, sections 10 and 32E before the time limit specified under subsection (2A).

(2A) The Scottish Ministers must, by regulations subject to the negative procedure, specify a time limit for the purposes of each application to which this section applies (and in doing so may specify different limits for different applications or types of application).
(3) The period mentioned in subsection (2) may be extended by the sheriff, on summary application by the local authority, by such period as the sheriff thinks fit.

(4) The sheriff may not extend a period unless the local authority applies for the extension before the period expires.

(5) The applicant is entitled to be a party to any proceedings on such summary application.

(6) The sheriff’s decision on such summary application is final.

(7) If the local authority does not determine a relevant permanent site application within the period required by this section—

(a) the authority is to be treated as having issued a Part 1A site licence, on the day by which the authority was required to determine the application, and

(b) the relevant person is for all purposes to be treated as having been issued a Part 1A site licence by the local authority under section 32D.

(8) If the local authority does not determine an application for consent to transfer a licence mentioned in section 32E within the period required by this section, the authority is to be treated as having given its consent to the transfer on the day on which the application was made.

### 32G Local authority power to transfer licence where no application

(1) This section applies where—

(a) the holder of a Part 1A site licence does not seek the consent of the local authority for the transfer of the licence under section 10(1), and

(b) it appears to the authority that the licence holder is no longer the occupier of the relevant permanent site.

(2) The local authority may transfer the licence to a person whom the authority considers to be the occupier of the relevant permanent site (in this section the “transferee”).

(3) Before deciding to transfer the licence under subsection (2), the authority must give to the licence holder and the transferee a notice stating that—

(a) it is considering transferring the licence to the transferee under this section and its reasons for doing so, and

(b) the licence holder and the transferee each have the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(4) In making its decision under this section the local authority must consider any representations made in accordance with subsection (3)(b).

(5) The licence holder and the transferee must give to the local authority such information as the authority may reasonably require in order to make a decision under this section.
(6) It is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with a request under subsection (5).

(7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

32H Transfer of Part 1A site licences on death: relevant permanent sites
Where a Part 1A site licence is transferred to a person in accordance with section 10(4), that person must give to the local authority such information as the authority may reasonably require in order to make a determination under section 32L.

32I Notification of decision on Part 1A site licence
(1) A local authority must, as soon as practicable after making a decision mentioned in subsection (2), notify the persons mentioned in subsection (3) of—
   (a) the making of the decision, and
   (b) the right to appeal under section 32M.

(2) The decisions are—
   (a) the determination of a relevant permanent site application,
   (b) the determination of an application for consent to transfer a licence mentioned in section 32E,
   (c) the decision to transfer a licence mentioned in section 32G.

(3) The persons are—
   (a) in the case of a determination of a relevant permanent site application, the applicant,
   (b) in the case of a determination of an application for consent to transfer a licence mentioned in section 32E, the applicant and the transferee,
   (c) in the case of a decision of the local authority to transfer a licence under section 32G, the previous holder of the Part 1A site licence and the transferee.

(4) A local authority must give to the persons mentioned in subsection (3) its reasons for making a decision mentioned in subsection (2).”.

56 Duration of a Part 1A site licence
After section 32I of the 1960 Act (inserted by section 55), insert—

“32J Duration of a Part 1A site licence
(1) A Part 1A site licence—
   (a) comes into operation at the time specified in or determined under the licence, and
   (b) unless terminated by its revocation, continues in force until—
57 Duty to inform local authority where change

After section 32J of the 1960 Act (inserted by section 56), insert—

“32K Duty to inform local authority where change

(1) The holder of a Part 1A site licence must notify the local authority which issued the licence—

(a) of the appointment of any new person to manage the site, and

(b) if, in consequence of a change of circumstances, any information provided by the licence holder to the local authority by virtue of this Part becomes inaccurate.

(2) The notification must be made—

(a) in the case of an appointment mentioned in subsection (1)(a), no later than the day on which the appointment takes effect, and

(b) in any other case, before the end of the period of 28 days beginning with the day on which the inaccuracy arises.

(3) The licence holder must, either at the time of notifying the local authority or subsequently, give to the authority such other information in relation to the appointment as the authority may reasonably require.

(4) Where a local authority requests information under subsection (3), the licence holder must provide the information before the end of the period of 28 days beginning with the day on which the request is made.”.

58 Revocation of a Part 1A site licence: fit and proper person

After section 32K of the 1960 Act (inserted by section 57), insert—

“32L Revocation of a Part 1A site licence: fit and proper person

(1) A local authority which issued a Part 1A site licence may revoke the licence if the authority is satisfied—

(a) that the licence holder is not, or is no longer, a fit and proper person to hold a site licence,

(b) in the case where the licence holder is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is not, or is no longer, a fit and proper person in relation to a site licence,
(c) that any person appointed by the licence holder to manage the site is not, or is no longer, a fit and proper person to do so, or

(d) in the case where a person appointed by the licence holder to manage the site is not a natural person, that any individual who is directly concerned with the management of the site on behalf of that manager is not, or is no longer, a fit and proper person to do so.

(2) Where a local authority proposes to revoke a Part 1A site licence under this section, the authority must serve on the licence holder a notice stating that—

(a) it is considering revoking the licence under this section and its reasons for doing so, and

(b) the licence holder has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

(3) In making its decision under this section the local authority must consider any representations made in accordance with subsection (2)(b).

(4) Where a local authority revokes a licence under this section, the authority must serve on the person who held the licence a notice which—

(a) states that the authority has revoked the licence,

(b) explains the right of appeal conferred by section 32M.

(5) Where a local authority revokes a licence under this section, the authority must give to the person who held the licence its reasons for doing so.”.

59 Appeals relating to a Part 1A site licence

After section 32L of the 1960 Act (inserted by section 58), insert—

“32M Appeals relating to a Part 1A site licence

(1) A person mentioned in subsection (2) may by summary application appeal to the sheriff against—

(a) the refusal by the local authority to issue or renew a Part 1A site licence following a relevant permanent site application,

(b) the determination by the local authority of an application for consent to transfer a licence mentioned in section 32E,

(c) the decision by the local authority to transfer a licence mentioned in section 32G,

(d) the decision by the local authority to revoke a Part 1A site licence under section 32L.

(2) The persons are—

(a) in the case of a determination of a relevant permanent site application, the applicant,

(b) in the case of a determination of an application for consent to transfer a licence mentioned in section 32E—

(i) the applicant,

(ii) the transferee,
(c) in the case of a decision by the local authority to transfer a licence mentioned in section 32G—
   (i) the previous holder of the Part 1A site licence,
   (ii) the transferee,

(d) in the case of a decision of the local authority to revoke a Part 1A site licence under section 32L, the person who held the licence.”.

60 Power to make provision in relation to procedure and appeals

After section 32M of the 1960 Act (inserted by section 59), insert—

“32N Power to make provision in relation to procedure and appeals

(1) The Scottish Ministers may, by regulations subject to the negative procedure, make provision in relation to—

   (aa) the procedure to be followed in relation to—

      (i) the issue, renewal, transfer, transmission and revocation of a Part 1A site licence,

      (ii) appeals under section 32M,

   (ab) the determination and consequences of an appeal under section 32M.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

   (a) the procedure to be followed by the person making an application for—

      (i) a new Part 1A site licence,

      (ii) the renewal of an existing Part 1A site licence which is due to expire,

      (iii) consent to transfer a Part 1A site licence,

   (b) the procedure to be followed by a person following the transfer of a licence,

   (c) the information to be provided in relation to an application mentioned in paragraph (a) or a transfer mentioned in section 32G or 32H,

   (d) the procedure to be followed in determining an application mentioned in paragraph (a) or in considering a transfer mentioned in section 32G or 32H,

   (e) the procedure to be followed after an application mentioned in paragraph (a) is determined or a transfer mentioned in section 32G or 32H is considered,

   (ea) the time limits for the giving of reasons under section 32I(4) and 32L(5),

   (g) the time limits applying in relation to appeals,

   (h) the procedure to be followed by the person making an appeal.”.
Fit and proper persons

61 Fit and proper person considerations

After section 32N of the 1960 Act (inserted by section 60), insert—

“Fit and proper persons

32O Fit and proper person considerations

(1) In deciding under this Part if a person is a fit and proper person, the local authority must have regard to all of the circumstances of the case, including any material falling within subsections (2) to (5).

(2) Material falls within this subsection if it shows that the person has—

(a) been convicted of an offence—

(i) involving fraud or other dishonesty,

(ii) involving violence,

(iii) involving drugs,

(iv) involving firearms,

(v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46),

(b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15),

(c) contravened any provision of—

(i) the law relating to caravans,

(ii) the law relating to housing,

(iii) landlord and tenant law,

(ca) committed a breach of an agreement to which the Mobile Homes Act 1983 applies,

(cb) contravened a direction made under section 37 of the Gas Act 1986 (c.44) (maximum prices for reselling gas),

(cc) contravened a direction made under section 44 of the Electricity Act 1989 (c.29) (maximum prices for reselling electricity),

(cd) contravened a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002 (asp 3) (charges schemes) as it applied to the person by virtue of section 30(1) of that Act (maximum charges for services provided with help of Scottish Water),

(d) engaged in antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

(e) breached the conditions of a site licence issued under Part 1 or Part 1A of this Act.

(2A) Material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 (c.53) does not fall within subsection (2).
(3) Material falls within this subsection if it relates to the failure by a person to provide information which that person is required to give to the local authority in accordance with this Part.

(4) Material falls within this subsection if it relates to a complaint made by a person of which the local authority is aware about antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) on the relevant permanent site.

(5) Material falls within this subsection if it is material of which the local authority is aware as a result of any other function carried out by the authority and it appears to the authority to be relevant to the question of whether the person is a fit and proper person.

(6) The Scottish Ministers may, by order subject to the affirmative procedure, modify this section by adding to, removing or varying any material in subsections (2) to (5).”.

62 Fit and proper person: criminal conviction certificate

After section 32O of the 1960 Act (inserted by section 61), insert—

“32P Fit and proper person: criminal conviction certificate

(1) A local authority may, in deciding under this Part if a person is a fit and proper person, require the person in respect of whom the decision is being made to provide the local authority with a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)).

(2) A local authority may require a criminal conviction certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 32O(2) is, or has become, inaccurate.”.

62A Fit and proper person: information sharing

After section 32P of the 1960 Act (inserted by section 62), insert—

“32PA Fit and proper person: information sharing

(1) A local authority may, for the purpose of another local authority deciding under this Part if a person is a fit and proper person, provide to that other authority information which falls within subsection (2).

(2) Information falls within this subsection if the local authority holding the information considers that—

(a) it is likely to be relevant to the other authority’s decision under this Part as to whether a person is a fit and proper person, and

(b) it ought to be provided for that purpose.

(3) Subsections (1) and (2) apply despite any duty of confidentiality owed to any person in respect of the information by the authority disclosing the information.”.
Offences relating to relevant permanent sites

63 Offences relating to relevant permanent sites

After section 32P of the 1960 Act (inserted by section 62), insert—

“Offences relating to relevant permanent sites

32Q Offences in connection with information requirements

(1) It is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with—

(a) a requirement under section 32B,
(b) a requirement under section 32E(3),
(c) a requirement under section 32H,
(d) a requirement under section 32K.

(1A) It is an offence for a person, without reasonable excuse—

(a) to fail to notify a local authority in accordance with 32K(1) and (2), or
(b) to fail to provide information in accordance with section 32K(3) and (4).

(2) A person who commits an offence under subsection (1) or (1A) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

32R Relevant permanent sites: use without a licence

(1) It is an offence for the occupier of land to cause or permit that land to be used as a relevant permanent site unless—

(a) the occupier is the holder of a Part 1A site licence in relation to the site, or
(b) subsection (2) or (3) applies to that person.

(2) This subsection applies to a person from the day on which the person makes a relevant permanent site application to a local authority in accordance with section 32B until—

(a) that application is determined under section 32D,
(b) in the case of a refusal by the authority to issue or renew a Part 1A site licence under that section, the day on which the period during which the applicant may make an appeal under section 32M(1)(a) expires without an appeal being made, or
(c) where such an appeal is made, the day on which it is finally determined or abandoned.

(3) This subsection applies to a person from the day on which the person’s Part 1A site licence is revoked under section 32L until—

(a) the day on which the period during which the person can make an appeal under section 32M(1)(d) expires without an appeal being made, or
(b) where such an appeal is made, the day on which it is finally determined or abandoned.
(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £50,000.

32S Relevant permanent sites: breach of licence conditions

(1) It is an offence for the holder of a Part 1A site licence to fail to comply with any condition of a Part 1A site licence issued in relation to the site.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.”.

Local authority enforcement at relevant permanent sites

64 Improvement notices

After section 32T of the 1960 Act (inserted by section 63), insert—

“Local authority enforcement at relevant permanent sites

32U Breach of licence condition: improvement notice

(1) If it appears to a local authority which issued a Part 1A site licence that the licence holder is failing or has failed to comply with a condition of the Part 1A site licence, the authority may serve an improvement notice on the licence holder.

(2) An improvement notice is a notice which—

(a) sets out the condition in question and details of the failure to comply with it,

(b) requires the licence holder to take such steps as the local authority considers appropriate and as are specified in the notice in order to ensure that that condition is complied with,

(c) specifies the period within which those steps must be taken,

(d) explains the right of appeal conferred by subsection (3).

(3) The holder of a Part 1A site licence who has been served with an improvement notice may by summary application appeal to the sheriff against—

(a) the issue of that notice,

(b) the terms of that notice.

(3A) The period specified in an improvement notice under subsection (2)(c) must begin on the later of—

(a) the day on which the period during which the person may make an appeal under subsection (3) expires, or

(b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.

(4) A local authority may—

(a) suspend an improvement notice,

(b) revoke an improvement notice,

(c) vary an improvement notice by extending the period specified in the notice under subsection (2)(c).
(5) The power to suspend, revoke or vary an improvement notice is exercisable by the local authority—
   (a) on an application made by the licence holder, or
   (b) on the authority's own initiative.

(6) Where a local authority suspends, revokes or varies an improvement notice, the authority must notify the licence holder to whom the notice relates of the decision as soon as is reasonably practicable.

### 32V Improvement notice: offence

(1) It an offence for a licence holder who has been served with an improvement notice to fail to take the steps specified in the notice within the period so specified.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.

(4) In proceedings against a licence holder for an offence under subsection (1), it is a defence that the licence holder had a reasonable excuse for failing to take the steps referred to in subsection (1) within the period referred to in that subsection.

### 32W Local authority power to carry out steps in an improvement notice

(1) This section applies where—
   (a) an improvement notice has been served in relation to a relevant permanent site, and
   (b) the licence holder fails to take the steps specified in the notice within the period so specified.

(2) The local authority which issued the improvement notice may—
   (a) take any steps required by the improvement notice to be taken by the occupier, but which have not been so taken, and
   (b) take such further action as the authority considers appropriate for ensuring that the condition specified in the improvement notice is complied with.

(3) Where a local authority proposes to take action under subsection (2), the authority must serve on the occupier of the relevant permanent site a notice which—
   (a) identifies the land and the improvement notice to which it relates,
   (b) states that the authority intends to enter onto the land,
   (c) describes the action the authority intends to take on the land,
   (d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and
   (e) sets out the dates and times on which it is intended that the action will be taken (in particular, when the authority intends to start taking the action and when it expects the action to be completed).
(4) The notice must be served sufficiently in advance of when the local authority intends to enter onto the land as to give the occupier of the relevant permanent site reasonable notice of the intended entry.”.

65 **Penalty notices**

After section 32W of the 1960 Act (inserted by section 64), insert—

“32X **Penalty notice where no licence or breach of licence**

(1) A local authority may serve a penalty notice on the occupier of a relevant permanent site if it appears to the local authority that the occupier—

(a) has caused or permitted the relevant permanent site to be used as a caravan site without being the holder of a Part 1A site licence in relation to the site, or

(b) has been served with an improvement notice and has failed to take the steps specified in the notice within the period so specified.

(2) A penalty notice is a notice which—

(a) sets out the condition in question and details of the failure to comply with it,

(b) explains the effect of subsection (3),

(c) specifies the period within which the penalty applies,

(d) explains the right of appeal conferred by subsection (6).

(3) Where a penalty notice is served under this section—

(a) no amount which a person is required to pay to the occupier of the relevant permanent site in respect of—

(i) the right to station a caravan on the site,

(ii) rent for the occupation of a caravan on the site, or

(iii) the use of the common areas of the site and their maintenance,

is payable for the period specified in the notice under subsection (2)(c), and

(b) no commission on sale payable in accordance with paragraph 8 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (c.34) is payable to the occupier of the relevant permanent site in respect of a caravan on the site for the period specified in the notice under subsection (2)(c).

(3A) The period specified in a penalty notice under subsection (2)(c) must begin on the later of—

(a) the day on which the period during which the person may make an appeal under subsection (6) expires, or

(b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.

(4) The local authority must, as soon as practicable after serving a notice under this section and in such manner as it thinks fit, notify the occupiers of caravans on the site of the existence of the notice.
(5) The ways in which a notification under subsection (4) may be carried out include by fixing a notice in a prominent place at or near the main entrance to the relevant permanent site.

(6) The occupier of a relevant permanent site in respect of which a local authority has served a penalty notice may, within the period of 28 days beginning with the day on which the notice was served, by summary application appeal to the sheriff against the decision.”.

66 Appointment of interim manager

After section 32X of the 1960 Act (inserted by section 65), insert—

“32Y Power to appoint interim manager

(1) A local authority which has issued a Part 1A site licence may apply to the sheriff for an order appointing an interim manager of the site.

(2) An order may be granted by the sheriff if—

(a) the authority has refused to renew a Part 1A site licence under section 32D,

(b) the authority has revoked a Part 1A site licence under section 32L, or

(c) the sheriff is satisfied that—

(i) the licence holder is failing or has failed, either seriously or repeatedly, to comply with a condition of the Part 1A site licence,

(ii) the site is not being managed by a person who is a fit and proper person to manage the site, or

(iii) there is no one managing the site.

(3) The appointment of an interim manager is to be on terms (including as to remuneration and expenses) specified in, or determined in accordance with, the appointment.

(4) The interim manager has—

(a) any power specified in the appointment, and

(b) any other power in relation to the management of the site required by the interim manager for the purposes specified in the appointment (including the power to enter into agreements and take other action on behalf of the occupier of the site).

(5) The Scottish Ministers may by regulations subject to the negative procedure make further provision about the appointment of an interim manager.

(6) Regulations under subsection (5) may, in particular, make provision in relation to—

(a) the procedure to be followed in making an application,

(b) the powers of an interim manager,

(c) property which vests in the interim manager on the interim manager’s appointment,

(d) the qualifications that must be held by any person appointed as interim manager,
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(e) the actions that must be carried out by an interim manager during and after the manager’s appointment,

(f) the payment and recovery of the remuneration and expenses of the interim manager,

(g) the assistance to be provided to the interim manager by the licence holder and other persons,

(h) powers of entry to the relevant permanent site,

(i) criminal offences which are to apply to failures to comply with the regulations,

(j) the procedure for and consequences of the termination of the interim manager’s appointment.”.

67 Emergency action

After section 32Y of the 1960 Act (inserted by section 66), insert—

“32Z Power to take emergency action

(1) A local authority which has issued a Part 1A site licence may take emergency action in relation to the site concerned if it appears to the authority that—

(a) the licence holder is failing or has failed to comply with a condition for the time being attached to the Part 1A site licence, and

(b) as a result of that failure there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

(2) A local authority in whose area land is being used as a relevant permanent site may take emergency action in relation to the land concerned if it appears to the authority that—

(b) the occupier does not hold a Part 1A site licence in relation to the land, and

(c) there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

(3) The emergency action a local authority may take is such action as appears to the authority to be necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c).

(4) Where a local authority proposes to take emergency action, the authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action notice.

(5) An emergency action notice is a notice which—

(a) identifies the land to which it relates,

(b) states that the authority intends to enter onto the land,

(c) describes the emergency action the authority intends to take on the land,

(d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and
(e) specifies the powers under this section and section 26 as the powers under which the authority intends to enter onto the land.

(6) An emergency action notice may state that, if entry onto the land were to be refused, the authority would propose to apply for a warrant under section 26(2).

(7) The local authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action report within the period of 7 days beginning with the date when the authority starts taking the emergency action.

(8) An emergency action report is a notice which—

(a) describes the imminent risk of serious harm to the health or safety of persons who are or may be on the land,

(b) describes the emergency action which has been, and any emergency action which is to be, taken by the authority on the land,

(c) sets out when the authority started taking the emergency action and when the authority expects it to be completed,

(d) if the person whom the authority has authorised to take the action on its behalf is not an officer of the authority, states the name of that person, and

(e) explains the right of appeal conferred by subsection (10).

(9) The ways in which an emergency action notice and an emergency action report may be served include by fixing it in a prominent place at or near the main entrance to the relevant permanent site.

(10) A licence holder or, as the case may be, an occupier of land in respect of which a local authority has taken or is taking emergency action may by summary application appeal to the sheriff against the taking of the action by the authority.

(11) The grounds on which the appeal may be brought are—

(a) that there was no imminent risk of serious harm as mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c) (or, where the action is still being taken, that there is no such risk),

(b) that the action the authority has taken was not necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(c) (or, where the action is still being taken, that it is not necessary to remove the risk).”.

### Powers of entry

After section 32Z of the 1960 Act (inserted by section 67), insert—

“32Z1 **Powers of entry in relation to relevant permanent site**

(1) Section 26 (as modified by section 32) applies in relation to a relevant permanent site—

(a) as if after every reference to “this Part” there were inserted “or Part 1A”,

(b) as if after paragraph (a) of subsection (1) there were inserted—
“(aa) for the purpose of inspecting a relevant permanent site;”, and
(c) subject to the further modifications in this section.

(2) If, under an improvement notice or an emergency action notice, a local authority authorises a person other than an officer of the authority to take the action on its behalf, the reference in section 26(1) to an authorised officer of the local authority is to be read as including that person.

(3) In its application to an improvement notice, the requirement in section 26(1) to give 24 hours’ notice of the intended entry applies only in relation to the day on which the local authority intends to start taking the action on the relevant permanent site.

(4) In its application to an emergency action notice, section 26(1) has effect as if—
(a) the words “at all reasonable hours” were omitted, and
(b) the words from “Provided that” to the end were omitted.”.

69 Recovery of inspection and enforcement expenses

After section 32Z1 of the 1960 Act (inserted by section 68), insert—

“32Z2 Expenses of issuing notices

(1) This section applies where a local authority has served—
(a) an improvement notice,
(b) a penalty notice,
(c) an emergency action notice, or
(d) an emergency action report.

(2) The local authority may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—
(a) expenses incurred by the authority in deciding whether to serve the notice or report,
(b) expenses incurred by the authority in preparing and serving the notice or report, and
(c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(3) The expenses referred to in subsection (2) include in particular the costs of obtaining expert advice (including legal advice).

32Z3 Expenses of taking action under improvement notice or emergency action notice

(1) A local authority which has taken action in accordance with an improvement notice or an emergency action notice may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—
(a) expenses incurred by the authority in deciding whether to take the action,
(b) expenses incurred by the authority in taking the action, and
(c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

(2) The expenses referred to in subsection (1) include in particular the costs of obtaining expert advice (including legal advice).

32Z4 Expenses of local authority in relation to Part 1A licences

The local authority which issued a Part 1A site licence may require the licence holder to pay the amount of any expenses incurred by the authority in relation to—

(a) inspecting a relevant permanent site for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this Act,
(b) assessing or investigating compliance by the licence holder with the provisions of this Act following an inspection.”.

Miscellaneous

69A Offences by bodies corporate etc. under Part 1A of the 1960 Act

After section 32Z4 of the 1960 Act (inserted by section 69), insert—

“Miscellaneous

32Z4A Offences by bodies corporate etc.

(1) Where—

(a) an offence under this Part has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or
(ii) an individual purporting to act in the capacity of a relevant individual,

the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,
(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,
(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.”.

70 Part 1A of the 1960 Act: miscellaneous provision

After section 32Z4 of the 1960 Act (inserted by section 69), insert—

“32Z5 Interpretation of Part 1A

(1) In this Part—

“emergency action notice” has the meaning given by section 32Z(5),

“emergency action report” has the meaning given by section 32Z(8),

“excepted permission” means a permission (by virtue of planning permission or a site licence under Part 1) to station a caravan on the land for human habitation all year round, if the caravan is, or is to be, authorised to be occupied by—

(a) the occupier,

(b) a person employed by the occupier but who does not occupy the caravan under an agreement to which section 1(1) of the Mobile Homes Act 1983 (c.34) applies,

“improvement notice” has the meaning given by section 32U(2),

“licence holder” means the person holding the Part 1A site licence,

“Part 1A site licence” has the meaning given by section 32A(1)(c),

“penalty notice” has the meaning given by section 32X(2),

“planning permission” means planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997 (c.8),

“relevant permanent site” means land in respect of which a site licence is required under Part 1, other than land for which the relevant planning permission or the site licence—

(a) is expressed to be granted for holiday use only,

(b) is otherwise so expressed or subject to conditions that there are times of the year when no caravan may be stationed on the land for human habitation, or

(c) would meet the conditions in paragraph (a) or (b) if any excepted permission is disregarded,

“relevant permanent site application” means, irrespective of the conditions in the relevant planning permission, an application for the issue or renewal of a Part 1A site licence authorising the use of land as a caravan site, other than an application for a licence—

(a) to be expressed to be granted for holiday use only,

(b) to be otherwise so expressed or subject to conditions that there will be times of the year when no caravan may be stationed on the land for human habitation, or
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(c) which would meet the conditions in paragraph (a) or (b) if any part of the application for excepted permission were disregarded.

(2) Any reference in this Part to the sheriff is to the sheriff having jurisdiction in the place where the relevant permanent site is situated.

(3) Otherwise, words and expressions (as modified by section 32) have the same meaning in this Part as in Part 1.

32Z5A Guidance

(1) The Scottish Ministers may, after consulting such persons as they consider appropriate, publish guidance about the operation of this Part.

(2) A local authority must have regard to any guidance published when carrying out its functions under this Part.”.

71 Transitional provision for existing site licences

(1) This section applies to a site licence issued under the 1960 Act which—

(a) was issued before the day on which section 56 comes into force in respect of land which is a relevant permanent site,

(b) is in force on that day.

(2) The site licence continues in force until the earliest of—

(a) the end of the period of 2 years beginning with the day on which section 56 comes into force,

(b) the day on which the licence is revoked under, or expires in accordance with, the provisions of the 1960 Act, or

(c) the day on which a Part 1A site licence is issued in relation to the site.

(3) During the period for which a site licence continues in force under this section, the provisions of Part 1A of the 1960 Act do not apply to the site licence or in respect of the land which is a relevant permanent site.

(4) In this section, “Part 1A site licence” and “relevant permanent site” have the same meanings as in section 32Z5 of the 1960 Act (as inserted by section 70).

71A Agreements to which the Mobile Homes Act 1983 applies

In Schedule 1 to the Mobile Homes Act 1983 (c.34)—

(a) after paragraph 1, insert—

“1A (1) The right to station the mobile home under in paragraph 1 is not affected by—

(a) the expiry of a Part 1A site licence in accordance with section 32J(1)(b)(ii) of the 1960 Act,

(b) the refusal to issue or renew a Part 1A site licence under section 32D of the 1960 Act,

(c) the revocation of a Part 1A site licence under section 32L of the 1960 Act, or

(d) the expiry of a site licence in accordance with section 71(2) of the Housing (Scotland) Act 2014 (asp 00).
(2) Sub-paragraph (1) applies in relation to agreements that were made at any time before the day on which that sub-paragraph comes into force (as well as in relation to agreements made on or after that day).

(3) In this paragraph—

“the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62), and

“Part 1A site licence” has the same meaning as in section 32Z5 of the 1960 Act.”;

(b) in paragraph 23, after sub-paragraph (1)(a) insert—

“(aa) no regard may be had to any costs paid, or to be paid, by the owner in connection with expenses recovered by a local authority under—

(i) section 32Z2(2) of the Caravan Sites and Control of Development Act 1960,
(ii) subsection (1)(a) or (c) of section 32Z3 of that Act, or
(iii) section 32Z4 of that Act,

(ab) no regard may be had to any costs paid, or to be paid, by the owner in connection with the owner being convicted of an offence under Part 1A of the Caravan Sites and Control of Development Act 1960.”.

PART 6

PRIVATE HOUSING CONDITIONS

72 Tenement management scheme

(1) In the Tenements (Scotland) Act 2004 (asp 11)—

(a) in section 4(14) (defined terms), after “section” insert “and section 4A”,

(b) after section 4, insert—

“4A Power of local authority to pay share of scheme costs

(1) The local authority for the area in which a tenement is situated may pay a sum representing an owner’s share of scheme costs if that owner—

(a) is unable or unwilling to do so, or

(b) cannot, by reasonable inquiry, be identified or found.

(2) But a local authority may not pay a sum representing an owner’s share of scheme costs which are attributable to a scheme decision mentioned in rule 3.1(e) of the Tenement Management Scheme.

(3) For the purposes of this section an owner’s share of any scheme costs is to be determined in accordance with—

(a) the Tenement Management Scheme as it applies to the owner’s tenement, or

(b) where a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners, that burden.
(4) Before making a payment under this section, the local authority must give notice to the owner who has failed to pay a share of any scheme costs.

(5) The local authority may recover from the owner who failed to pay a share of any scheme costs any—
   (a) payments made under this section, and
   (b) administrative expenses incurred by it in connection with the making of the payment.

(6) This section is without prejudice to any entitlement to recover sums in accordance with section 11 or 12.”

(c) in section 13(1)(a) (persons who may register a notice of potential liability for costs), after paragraph (ii) insert—
   “(iiia) a local authority entitled to recover costs under section 4A(5),”

(d) in rule 5 of schedule 1 (redistribution of share of costs), after “then” insert “(unless that share has been paid by the local authority under section 4A),” and

(e) in rule 8.4 of schedule 1 (enforcement by third party), after “concerned” insert “and a local authority entitled to recover costs under section 4A(5)”.

(2) In section 172 of the 2006 Act (repayment charges)—
   (a) in subsection (1), for “or paragraph 6(1) of schedule 5” substitute “, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11),”

   (b) in subsection (2)(a), for “or paragraph 6(1) of schedule 5” substitute “, section 61(3A), subsection (6A) below, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004”, and

   (c) after subsection (6A), insert—
      “(6B) Subsection (6A)(c) does not apply where the recoverable amount relates to a sum the local authority is entitled to recover under section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11).”

(3) After section 174 of the 2006 Act, insert—

“174A Repayment charges: registered social landlords

(1) The Scottish Ministers may by regulations make provision allowing a registered social landlord to make in favour of itself a charge to recover a sum which—
   (a) the registered social landlord is entitled to recover from an owner of a flat in a tenement, and

   (b) represents the owner’s share of scheme costs as determined in accordance with section 4A(3) of the 2004 Act.

(2) Regulations under subsection (1) may, in particular—
   (a) apply (with or without modifications), or make provision similar to, any provision of or made under this Part,

   (b) prescribe conditions which must apply before a charge can be made in relation to a sum mentioned in subsection (1), including conditions relating to—
(i) the registered social landlord which may make a charge,
(ii) the circumstances leading to the sum becoming recoverable by the registered social landlord,
(c) modify the Tenement Management Scheme or its operation,
(d) make provision about rights of appeal which apply in relation to—
   (i) the decision to impose a charge,
   (ii) the terms of the charge.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—
   (a) such bodies representing local authorities,
   (b) such bodies representing registered social landlords,
   (c) such other persons,
as they think fit.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) In this section—
   “owner of a flat in a tenement” is to be construed in accordance with the definition of “owner” in section 28 of the 2004 Act,
   “registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),
   “Tenement Management Scheme” has the same meaning as in the 2004 Act, and
   “the 2004 Act” means the Tenements (Scotland) Act 2004 (asp 11).”.

(4) In section 191(5) of the 2006 Act (affirmative procedure for regulations), for “or 121(1)” substitute “, 121(1) or 174A(1)”.

72A Notice of potential liability for costs: notice of discharge

(1) In section 10A of the Title Conditions (Scotland) Act 2003 (asp 9) (notice of potential liability for costs: further provision), after subsection (3) insert—
   “(3A) The owner of a burdened property may apply to register a notice (a “notice of discharge”) if—
   (a) a notice of potential liability for costs in relation to the property has not expired,
   (b) the liability for costs under section 10(2) to which the notice of potential liability relates has, in relation to the property which is the subject of the application, been fully discharged, and
   (c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—
(a) must be in the form prescribed by order made by the Scottish Ministers, and

(b) on being registered, discharges the notice of potential liability for costs as it applies to the property which is the subject of the application.”.

(2) In the Tenements (Scotland) Act 2004—

(a) in section 13 (notice of potential liability for costs: further provision), after subsection (3) insert—

“(3A) The owner of a flat may apply to register a notice (a “notice of discharge”) if—

(a) a notice of potential liability for costs in relation to the flat has not expired,

(b) the liability for costs under section 12(2) to which the notice of potential liability relates has, in relation to the flat which is the subject of the application, been fully discharged, and

(c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—

(a) must be in the form prescribed by order made by the Scottish Ministers, and

(b) on being registered, discharges the notice of potential liability for costs as it applies to the flat which is the subject of the application.”, and

(b) in section 29(1) (interpretation), in the definition of “register” after “costs” insert “, a notice of discharge”.

73 Work notices

In section 30(1) of the 2006 Act (work which may be required under a work notice)—

(a) the word “or” at the end of paragraph (a) is repealed, and

(b) at the end of paragraph (b), insert “, or

(c) otherwise improving the security or safety of any house (whether or not situated in an HRA).”.

74 Maintenance orders

In section 42(2) of the 2006 Act (circumstances in which a maintenance order may be made)—

(a) the words “the local authority considers” are repealed,

(b) before paragraph (a), insert—

“(za) a work notice has been served in relation to the house and no certificate has been granted under section 60 in relation to the work required by that notice,”, and

(c) at the beginning of each of paragraphs (a) and (b), insert “the local authority considers”. 
75  **Maintenance plans**

(1) In section 24 of the Building (Scotland) Act 2003 (asp 8) (information in the building standards register)—

(a) in subsection (1)—

(i) the word “and” at the end of paragraph (c) is repealed, and

(ii) after paragraph (d), insert “, and

(c) decisions to approve, devise, vary or revoke maintenance plans under Part 1 of the Housing (Scotland) Act 2006.”;

(b) in subsection (2)(a), for “(d)” substitute “(e)”.

(2) In section 47 of the 2006 Act (variation and revocation of maintenance plans)—

(a) in subsection (3), after “if” insert “subsection (3A) applies or if”, and

(b) after subsection (3), insert—

“(3A) This subsection applies where the local authority is satisfied that a property factor (within the meaning of section 2(1) of the Property Factors (Scotland) Act 2011 (asp 8)) has been appointed to manage or maintain the premises to which the plan relates.”.

(3) In section 61(1) of the 2006 Act (registration in the appropriate land register), paragraphs (e) and (f) are repealed.

76  **Non-residential premises: repayment charges**

(1) In section 172 of the 2006 Act (repayment charges)—

(a) in subsection (1), for “living accommodation” in both places where it occurs substitute “property”,

(b) in subsection (5), for “living accommodation” substitute “property”,

(c) in subsection (6A), for “living accommodation” substitute “property”,

(d) in subsection (7), for “living accommodation” substitute “property”,

(e) in subsection (8), for “living accommodation” in both places where it occurs substitute “property”,

(f) after subsection (8), insert—

“(9) In this section and in section 173, “property” means a place which is—

(a) living accommodation, or

(b) non-residential premises within the meaning of section 69(3).”.

(2) In section 173 of the 2006 Act (effect of registering repayment charges etc.)—

(a) in subsection (1), for “living accommodation” substitute “property”,

(b) in subsection (2), for “living accommodation” in each place where it occurs substitute “property”,

(c) in subsection (3), for “living accommodation” substitute “property”, and

(d) in subsection (4), for “living accommodation” substitute “property”.


76ZA Repayment charges: recovery of repayable amount

(1) In section 172 of the 2006 Act (repayment charges)—

(a) in subsection (1)—

(i) the word “and” immediately preceding paragraph (b) is repealed, and
(ii) after paragraph (b), insert—

“(c) providing that the repayable amount is payable in the number of equal annual instalments and on the date in each year determined under subsection (3)(a),

(d) providing that in default of such payment each instalment, together with any amount recoverable in respect of that instalment under subsection (6A), is to be separately recoverable as a debt, and

(e) providing that if immediately after the final instalment falls due any balance of the repayable amount remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.”,

(b) for subsection (3), substitute—

“(3) The local authority must—

(a) determine—

(i) the number of equal annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid, and

(ii) the date in each year on which the instalment becomes due, and

(b) notify the owner of its determination under paragraph (a).” , and

(c) after subsection (4), insert—

“(4A) The owner of a property who is liable for the repayable amount does not, by virtue only of ceasing to be such an owner, cease to be liable for the repayable amount.”.

(2) After section 172 of the 2006 Act, insert—

“172A Repayment charge: appeals to the sheriff

(1) A person aggrieved by a determination under section 172(3)(a)(i) may appeal to the sheriff.

(2) On an appeal under this section the sheriff may make such order relating to the number of annual instalments as the sheriff thinks fit.

(3) The decision of the sheriff on appeal under this section is final.”.

76A Charging orders

(1) In Schedule 9 to the 1987 Act (recovery of expenses by charging order)—

(a) in paragraph 2, the words “, and shall commence from the date of the order and be payable for a term of 30 years to the local authority” are repealed,

(b) after paragraph 2, insert—

“2A The local authority must—

(a) determine—
(i) the term of the charging order, being no fewer than 5 years and no more than 30 years, and

(ii) the date in each year on which the annuity is payable, and

(b) notify the owner of its determination under paragraph (a).

Section 187 of the Housing (Scotland) Act 2006 (asp 1) applies to a notification under paragraph 2A(b) as if the notification were a formal communication referred to in section 187(1) of that Act.”, and

(zc) after paragraph 3, insert—

“3A A charging order must provide—

(a) that the annuity is payable for the term and on the date in each year determined under paragraph 2A(a),

(b) that in default of payment of an annuity, the annuity is to be separately recoverable as a debt, and

(c) that if immediately after the final annuity falls due any balance of the expenses charged by the order remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.

3B(1) A person aggrieved by a determination under paragraph 2A(a)(i), may appeal to the sheriff.

(2) On an appeal under this paragraph the sheriff may make such order relating to the term of the charging order as the sheriff thinks fit.

(3) The decision of the sheriff on appeal under this paragraph is final.”,

(a) in paragraph 4, sub-paragraph (b)(i) is repealed,

(c) after paragraph 5, insert—

“5A The owner of the premises on which an annuity has been charged by a charging order does not, by virtue only of ceasing to be such an owner, cease to be liable for each annuity charged.”,

(d) paragraph 6 is repealed.

(2) In section 108(2) of the Civic Government (Scotland) Act 1982 (c.45) (recovery of expenses by charging order), for the words from “modifications” to “paragraph” in the last place where it appears substitute “modification, that is to say, in sub-paragraph (b)(ii) of paragraph 4 of that Schedule”.

(3) In section 19(3) of the Crofters (Scotland) Act 1993 (c.44) (priority of sums due), the words “heads (i), (ii) and (iii) of” are repealed.

**PART 7**

**MISCELLANEOUS**

**77** Right to redeem heritable security after 20 years: power to exempt

(1) In section 11 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling), after subsection (3C) insert—
“(3D) The right to redeem a heritable security conferred by this section does not apply to a heritable security which is in security of a debt of a description specified in an order made by the Scottish Ministers.

(3E) An order under subsection (3D) may—

(a) disapply the right to redeem conferred by this section subject to conditions or restrictions,

(b) restrict the disapplication of the right to redeem conferred by this section to—

(i) specified descriptions of debt,

(ii) specified creditors, or creditors of specified descriptions,

(ii) specified heritable securities, or heritable securities of specified descriptions,

(c) prescribe circumstances in which the disapplication of the right to redeem conferred by this section is to apply or cease to apply.

(3F) An order under subsection (3D) is subject to the negative procedure.”.

(2) In section 21 of the Land Tenure Reform (Scotland) Act 1974 (provisions for contracting out to be void), for “and 11(3A)” substitute “, 11(3A) and 11(3D)”.

77A First-tier Tribunal: disqualification of members from exercise of certain functions

(1) This section applies to the following functions and jurisdictions of the First-tier Tribunal—

(a) a function or jurisdiction of the sheriff transferred to the Tribunal under section 17 or by virtue of Part 1 of schedule 1,

(b) a function conferred on the Tribunal, by virtue of Part 3 and Parts 2 to 4 of schedule 1, by—

(i) the 2004 Act,

(ii) the 2006 Act,

(c) a function conferred on the Tribunal by or under Part 4.

(2) A member of the First-tier Tribunal is disqualified from exercising a function or jurisdiction to which this section applies if the member is—

(a) a member of the House of Commons,

(b) a member of the Scottish Parliament,

(c) a member of the European Parliament,

(d) a Minister of the Crown,

(e) a member of the Scottish Government.

(3) The Scottish Ministers may by order modify subsection (2) by—

(a) adding a disqualification to,

(b) varying the description of a disqualification for the time being mentioned in,

(c) removing a disqualification from,

that subsection.
77B Private rented housing panel: disqualification from membership

In Schedule 4 to the Rent (Scotland) Act 1984, after paragraph 1 insert—

“1A (1) A person is disqualified from appointment to, and from remaining a member of, the private rented housing panel if the person is or becomes—

(a) a member of the House of Commons,
(b) a member of the Scottish Parliament,
(c) a member of the European Parliament,
(d) a Minister of the Crown,
(e) a member of the Scottish Government.

(2) The Scottish Ministers may by order modify sub-paragraph (1) by—

(a) adding a disqualification to,
(b) varying the description of a disqualification for the time being mentioned in,
(c) removing a disqualification from,

that sub-paragraph.

(3) An order under sub-paragraph (2) is subject to the affirmative procedure.”.

78 Delegation of certain functions

(1) In section 21 of the 2006 Act (panel and committees), after subsection (8) insert—

“(8A) The president may delegate the president’s functions under section 23 to—

(a) the vice-president of the panel, or
(b) such other member of the panel as the president thinks fit.

(8B) A delegation under subsection (8A) does not affect the president’s—

(a) responsibility for the carrying out of delegated functions, or
(b) ability to carry out delegated functions.”.

(2) In section 16 of the Property Factors (Scotland) Act 2011 (asp 8) (panel and committees), after subsection (7) insert—

“(8) The president may delegate the president’s functions under section 18 to—

(a) the vice-president of the panel, or
(b) such other member of the panel as the president thinks fit.

(9) A delegation under subsection (8) does not affect the president’s—

(a) responsibility for the carrying out of delegated functions, or
(b) ability to carry out delegated functions.”.

79 Scottish Housing Regulator: transfer of assets following inquiries

In section 67 of the 2010 Act (transfer of assets following inquiries)—

(a) after subsection (4), insert—
“(4A) A duty on the Regulator to consult in accordance with paragraph (i) or (ii) of subsection (4)(a) does not apply where the Regulator considers that—

(a) the registered social landlord’s viability is in jeopardy for financial reasons,

(b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73,

(c) the direction would substantially reduce the likelihood of a person taking such a step, and

(d) there is insufficient time to comply with that duty and make a direction which would substantially reduce that likelihood.

(4B) The Regulator must—

(a) issue guidance on subsection (4A), such guidance to include—

(i) the circumstances in which it considers that subsection (4A) is likely to apply,

(ii) the actions it expects to take in those circumstances, and

(iii) how, in those circumstances, it intends to communicate with any of the persons mentioned in paragraph (b) who are affected by its actions, and

(b) before issuing or revising any guidance, consult—

(i) tenants of registered social landlords or their representatives,

(ii) registered social landlords or their representatives, and

(iii) secured creditors of registered social landlords or their representatives.

(4C) Where the Regulator proposes to direct a transfer of some (but not all) of a registered social landlord’s assets, the Regulator must—

(a) before making a direction, obtain an independent valuation of those assets, and

(b) when making a direction, have regard to that valuation.”

(b) in subsection (6), paragraph (a) and the word “and” immediately following it are repealed.

79A Registered social landlord becoming a subsidiary of another body

(1) After section 104 of the 2010 Act insert—

“Registered social landlord becoming a subsidiary of another body

104A Registered social landlord becoming a subsidiary of another body

(1) This section applies to a registered social landlord which is—

(a) a registered society, or

(b) a registered company.

(2) An arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary has effect only if the Regulator consents to that arrangement before it is completed.
(3) Chapter 3 of Part 10 makes provision for Regulator consent for the purpose of this section.”.

(2) After section 124 of the 2010 Act insert—

“CHAPTER 3

REGISTERED SOCIAL LANDLORD BECOMING A SUBSIDIARY OF ANOTHER BODY

124A Regulator’s consent

(1) The special procedure set out in sections 114 to 121 of Chapter 1 applies in relation to an arrangement to which the Regulator’s consent is required under section 104A as it applies in relation to a disposal to which Chapter 1 applies.

(2) The Regulator must determine that the special procedure is not to apply or is to cease to apply where the Regulator considers that—

(a) the registered social landlord’s viability is in jeopardy for financial reasons,

(b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73, and

(c) the determination under this subsection would substantially reduce the likelihood of a person taking such a step.

(3) Where the Regulator makes a determination under subsection (2), the Regulator may give or refuse consent to the arrangement.

124B Purchaser protection

Failure by the Regulator or by a registered social landlord to comply with any provision of sections 114 to 121 of Chapter 1 in relation to an arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary does not invalidate the Regulator’s consent to the arrangement.”.

(3) In section 164 of the 2010 Act (connected bodies), the definition of “subsidiary” is repealed.

(4) In section 165 of the 2010 Act (interpretation), after the definition of “social landlord” insert—

““subsidiary” has the same meaning as in the Companies Act 2006 (c.46) or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968 (c.55)”.

80 Repeal of defective designation provisions

(1) Part 14 of the 1987 Act (assistance for owners of defective housing) is repealed.

(2) Schedule 20 to the 1987 Act (assistance by way of repurchase) is repealed.

(3) Schedule 21 to the 1987 Act (dwellings included in more than one designation) is repealed.
PART 8

GENERAL

81 Interpretation

In this Act—

“the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62),
“the 1987 Act” means the Housing (Scotland) Act 1987 (c.26),
“the 2001 Act” means the Housing (Scotland) Act 2001 (asp 10),
“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
“the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1),
“the 2010 Act” means the Housing (Scotland) Act 2010 (asp 17),
“First-tier Tribunal” means the First-tier Tribunal for Scotland.

82 Subordinate legislation

(1) Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—

(a) different provision for different purposes or different areas,
(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) Orders or regulations—

(a) under section 21(1),
(aa) under section 25A(1),
(b) under section 30(4),
(ba) under section 41(1) which set out the first code of practice or replace the code of practice,
(c) under section 51(3)(b),
(ca) under section 77A(3),
(d) under section 83(1) containing provisions which add to, replace, or omit any part of the text of an Act,

are subject to the affirmative procedure.

(3) All other orders and regulations under this Act are subject to the negative procedure.

(3A) The Scottish Ministers must, before the end of the period of 18 months beginning with the day of Royal Assent, lay before the Scottish Parliament a draft Scottish statutory instrument containing regulations under section 41(1) setting out the first code of practice.

(4) This section does not apply to an order under section 85(3).
83 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

84 Minor and consequential amendments

Schedule 2 contains minor amendments and amendments consequential on the provisions of this Act.

85 Commencement

(1) This section and sections 81, 82, 83 and 86 come into force on the day of Royal Assent.

(2) Section 77 comes into force at the end of the period of 2 months beginning with the day of Royal Assent.

(3) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(4) The Scottish Ministers may not appoint a day for section 1(1) to come into force which is before the end of the period of 2 years beginning with the day of Royal Assent.

(5) An order under subsection (3) may include transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

86 Short title

The short title of this Act is the Housing (Scotland) Act 2014.
SCHEDULE 1
(introduced by sections 17 to 20)

TRANSFER OF JURISDICTION TO FIRST-TIER TRIBUNAL

PART 1

REGULATED TENANCIES, PART VII CONTRACTS AND ASSURED TENANCIES

Rent (Scotland) Act 1984 (c.58)

The Rent (Scotland) Act 1984 is amended as follows.

1 In section 7(2), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

2 In section 11—
   (a) in subsection (1)—
      (i) for “a court” substitute “the First-tier Tribunal”,
      (ii) for “the court”, in each place it occurs, substitute “the Tribunal”,
   (b) in subsection (2), for “court” substitute “First-tier Tribunal”.

3 In section 12—
   (a) in subsection (1), for “a court” substitute “the First-tier Tribunal”,
   (b) in subsection (2), for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
   (c) in subsection (3), for “court” substitute “First-tier Tribunal”,
   (d) in subsection (4), for “court” substitute “First-tier Tribunal”.

4 In section 19(1), for “a court” substitute “the First-tier Tribunal”.

5 In section 21, for “court”, where it first occurs substitute, “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

6 In section 23(1), for “court” substitute “First-tier Tribunal”.

7 In section 25(1), the definition of “the court” is repealed.
In section 26, for “court”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

Section 27 is repealed.

In section 31(2)—

(a) for “sheriff” substitute “First-tier Tribunal”;

(b) in paragraph (b), for “sheriff” substitute “First-tier Tribunal”.

In section 32—

(a) in subsection (4), for “sheriff”, in each place it occurs, substitute “First-tier Tribunal”;

(b) in subsection (5), for “sheriff” substitute “First-tier Tribunal”.

In section 35(12), after “court” insert “or tribunal”.

In section 39—

(a) for “a court” substitute “the First-tier Tribunal”;

(b) for “the court”, in both places it occurs, substitute “the Tribunal”;

(c) for “direct the clerk of court to correct” substitute “order the correction of”.

In section 43B(4)(b), after “court” insert “or tribunal”.

In section 45(3), after “court” insert “or tribunal”.

In section 60(3)—

(a) for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”;

(b) the words from “and” to the end are repealed.

In section 64(6)(b), for “sheriff, on a summary application” substitute “First-tier Tribunal, on an application”.

In section 75—

(a) for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, in each subsequent place it occurs, substitute “Tribunal”;

(b) the title becomes “Power of First-tier Tribunal, in action for possession, to reduce period of notice to quit”.

In section 76—

(a) in subsection (2), for “sheriff may, if he thinks fit,” substitute “First-tier Tribunal may”;

(b) in subsection (3), for “sheriff” substitute “Tribunal”.

In section 77, for “sheriff court” substitute “First-tier Tribunal”.

In section 97—

(a) in subsection (8), for “sheriff” in both places it occurs substitute “First-tier Tribunal”;

(b) in subsection (9), for “sheriff” substitute “First-tier tribunal”.

In section 102—
(a) before subsection (1) insert—

“(A1) The First-tier Tribunal has jurisdiction, either in the course of any proceedings relating to a dwelling-house or on an application made for the purpose by the landlord or the tenant, to determine any question as to the application of this Act (other than Part IX) or as to any matter which is or may become material for determining any such question.”,

(b) in subsection (1), before “this Act” insert “Part IX of”,

(c) subsection (2) is repealed,

(d) in subsection (3), for “sheriff” substitute “First-tier Tribunal”.

25 In section 103, leave out subsections (1) and (2) and insert—

“An application to the sheriff under section 93(1) is to be made by way of summary application.”.

26 In section 104, before “this Act” insert “Part IX of”.

27 In section 115(1), after the definition of “converted tenancy” insert—

“First-tier Tribunal” means the First-tier Tribunal for Scotland;”.

28 In Schedule 1—

(a) in paragraph 3, for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph 7, for “sheriff” substitute “First-tier Tribunal”.

29 In Schedule 1A—

(a) in paragraph 3, for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph 6, for “sheriff” substitute “First-tier Tribunal”.

30 In paragraph 3 of Schedule 1B, for “sheriff” substitute “First-tier Tribunal”.

31 In Schedule 2—

(a) in Cases 3, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20 and 21, for “court”, in each place it occurs, substitute “First-tier Tribunal”,

(b) in paragraph 1 of Part III—

(i) for “a court” substitute “the First-tier Tribunal”,

(ii) for “the court” substitute “the Tribunal”,

(c) in Part IV—

(i) in paragraph 2, for “court”, in the first place it occurs, substitute “First-tier Tribunal” and, in each subsequent place it occurs, substitute “Tribunal”,

(ii) in paragraph 3(1)(a), for “court” substitute “First-tier Tribunal”,

(d) the title to Part I becomes “Cases in which First-tier Tribunal may order possession”,

(e) the title to Part II becomes “Cases in which First-tier Tribunal must order possession where dwelling-house subject to regulated tenancy”. 
The Housing (Scotland) Act 1988 is amended as follows.

In section 16(2), for “sheriff” substitute “First-tier Tribunal”.

In section 17(8), for “sheriff” substitute “First-tier Tribunal”.

In section 18—
(a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”;
(b) in subsection (3)—
(i) for “sheriff” substitute “First-tier Tribunal”;
(ii) for “he” substitute “the Tribunal”,
(c) in subsection (3A)—
(i) for “sheriff” substitute “First-tier Tribunal”;
(ii) for “he” substitute “the Tribunal”,
(d) in subsection (4)—
(i) for “sheriff” substitute “First-tier Tribunal”;
(ii) for “he”, in both places it occurs, substitute “the Tribunal”,
(e) in subsection (4A), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
(f) in subsection (6), for “sheriff” substitute “First-tier Tribunal”,
(g) in subsection (6A), for “sheriff” substitute “First-tier Tribunal”,
(h) in subsection (7), for “sheriff” substitute “First-tier Tribunal”.

In section 19—
(a) in subsection (1)—
(i) for “sheriff” substitute “First-tier Tribunal”,
(ii) in paragraph (b), for “he” substitute “the Tribunal”,
(b) in subsection (2), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,
(c) in subsection (5), for “sheriff” substitute “First-tier Tribunal”.

In section 20—
(a) in subsection (1)—
(i) for “sheriff” substitute “First-tier Tribunal”,
(ii) for “he” substitute “the Tribunal”,
(b) in subsection (2)—
(i) for “sheriff” substitute “First-tier Tribunal”,
(ii) for “he” substitute “the Tribunal”,
(c) in subsection (3)—
(i) for “sheriff” substitute “First-tier Tribunal”,
(ii) for “he”, in both places it occurs, substitute “the Tribunal”,

(d) in subsection (4)—
   (i) for “sheriff” substitute “First-tier Tribunal”,
   (ii) for “he” substitute “the Tribunal”,

(e) in subsection (6), for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”,

(f) the title becomes “Extended discretion of First-tier Tribunal in possession claims”.

38 In section 21(3)—
   (a) for “sheriff” substitute “First-tier Tribunal”,
   (b) for “he” substitute “Tribunal”.

39 In section 22—
   (a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,
   (b) in subsection (2), for “sheriff” substitute “First-tier Tribunal”.

40 In section 25(7), for “sheriff” substitute “First-tier Tribunal”.

41 In section 28(1), for “sheriff” substitute “First-tier Tribunal”.

42 In section 29, for “sheriff”, where it first occurs, substitute “First-tier Tribunal” and, where it second occurs, substitute “Tribunal”.

43 In section 30(2)—
   (a) the word “summary” is repealed,
   (b) in the opening words, for “sheriff” substitute “First-tier Tribunal”,
   (c) in paragraph (a), for “him” substitute “the Tribunal”,
   (d) in paragraph (b), for “he” substitute “the Tribunal”,
   (e) in the closing words—
      (i) for “sheriff” substitute “Tribunal”,
      (ii) for “he” substitute “the Tribunal”.

44 In section 33—
   (a) in subsection (1)—
      (i) for “sheriff” substitute “First-tier Tribunal”,
      (ii) for “he” substitute “the Tribunal”,
   (b) in subsection (4), for “sheriff” substitute “First-tier Tribunal”.

45 In section 36—
   (a) after subsection (4) insert—
“(4A) Any action to enforce liability arising from this section must be raised in the First-tier Tribunal unless the residential occupant’s claim is founded on the premises in question being subject to a Scottish secure tenancy or to a short Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001 (asp 10)).”,

(b) in subsection (6)(b), after “sheriff” insert “or First-tier Tribunal”,

(c) in subsection (6B), after “court”, in both places it occurs, insert “or, as the case may be, the First-tier Tribunal”.

In section 42(1)(c)—

(a) in sub-paragraph (i), for “court”, where it first occurs substitute “First-tier Tribunal”,

(b) in sub-paragraph (ii), for “court”, where it first occurs, substitute “First-tier Tribunal”,

(c) in sub-paragraph (iii), after “possession” insert “the First-tier Tribunal or, as the case may be;”.

In section 55(1), after the definition of “council tax” insert—

“‘First-tier Tribunal’ means the First-tier Tribunal for Scotland;”.

In Schedule 5—

(a) in grounds 1, 2, 5 and 7, for “sheriff”, in each place it occurs, substitute “First-tier Tribunal”,

(b) the title of Part I becomes “Grounds on which First-tier Tribunal must order possession”,

(c) the title of Part II becomes “Grounds on which First-tier Tribunal may order possession”,

(d) in paragraph 2 of Part III—

(i) for “sheriff”, where it first occurs, substitute “First-tier Tribunal”,

(ii) in paragraph (b), for “sheriff” substitute “Tribunal”,

(iii) in the closing words, for “sheriff” substitute “Tribunal”,

(e) in paragraph 3(1)(a) of that Part, for “sheriff” substitute “First-tier Tribunal”.

PART 2

REPAIRING STANDARD

Housing (Scotland) Act 2006 (asp 1)

The 2006 Act is amended as follows.

In section 24(7)—

(a) for “sheriff” substitute “First-tier Tribunal”,

(b) in paragraph (a), for “sheriff’s” substitute “Tribunal’s”.

In section 194, after the definition of “disabled person” insert—

“‘First-tier Tribunal’ means the First-tier Tribunal for Scotland,”.
Housing (Scotland) Bill
Schedule 1—Transfer of jurisdiction to First-tier Tribunal
Part 3—Right to adapt rented houses

Housing (Scotland) Act 2006 (asp 1)

The 2006 Act is amended as follows.

In section 64—
(a) subsection (6) is repealed,
(b) in subsection (7), for “(5) or, as the case may be, (6)” substitute “or (5)”.

Subsections (3) and (4) of section 65 are repealed.
Section 67 is repealed.

Part 4

LANDLORD REGISTRATION

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

The 2004 Act is amended as follows.

In section 92—
(a) subsection (4) is repealed,
(b) in subsection (5)—
(i) for “sheriff”, where it first occurs, substitute “First-tier Tribunal”,
(iii) the words “shall be made to the sheriff principal and” are repealed,
(c) in subsection (6), for “sheriff principal” substitute “Upper Tribunal”.

In section 92ZA—
(a) in subsection (1)(b)—
(i) in sub-paragraph (i), for “sheriff” substitute “First-tier Tribunal”,
(ii) in sub-paragraph (ii), for “sheriff” substitute “First-tier Tribunal”,
(iii) in sub-paragraph (ii)(A), for “sheriff’s” substitute “First-tier Tribunal’s”,
(iv) in sub-paragraph (ii)(B), for “sheriff principal” substitute “Upper Tribunal”,
(b) in subsection (2)(b)—
(i) in sub-paragraph (i), for “sheriff” substitute “First-tier Tribunal”,
(ii) in sub-paragraph (ii), for “sheriff” substitute “First-tier Tribunal”,
(iii) in sub-paragraph (ii)(A), for “sheriff’s” substitute “First-tier Tribunal’s”,
(iv) in sub-paragraph (ii)(B), for “sheriff principal” substitute “Upper Tribunal”.

In section 97—
(a) in subsection (6), for “court” substitute “tribunal”,
(b) in subsection (7), for “court” substitute “tribunal”. 
In section 101(1)—
   (a) before the definition of “house”, insert—
       “First-tier Tribunal” means the First-tier Tribunal for Scotland,”,
   (b) after the definition of “unconnected person”, insert—
       “Upper Tribunal” means the Upper Tribunal for Scotland,”.

SCHEDULE 2
(introduced by section 84)

MINOR AND CONSEQUENTIAL AMENDMENTS

Local Government, Planning and Land Act 1980 (c.65)

1 Section 156(4) of the Local Government, Planning and Land Act 1980 is repealed.

Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)

2 Section 13(11) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 is repealed.

Rent (Scotland) Act 1984 (c.58)

3 In Case 7 of Part 1 of Schedule 2 to the Rent (Scotland) Act 1984—
   (a) the word “either” is repealed,
   (b) paragraph (b) and the word “or” immediately preceding it are repealed.

Housing (Scotland) Act 1987 (c.26)

4 (1) The 1987 Act is amended as follows.
   (2) In section 19 of the 1987 Act—
       (a) in subsection (1), for “local authority or a registered social landlord” substitute “social landlord”,
       (b) in subsection (2)—
           (i) for “housing provider” substitute “social landlord”,
           (ii) for “housing providers” substitute “social landlords”,
       (c) for subsection (3) substitute—
           “(3) In this Part, “social landlord” means any local authority or any registered social landlord.”.
   (3) In section 20(2)—
       (a) for “local authority and a registered social landlord” substitute “social landlord”,
       (b) in paragraph (b), after sub-paragraph (ii) insert—
           “(iia) that a dissolution of a civil partnership or a decree of separation of civil partners be obtained, or”.
(4) In section 21(3), paragraph (ia) and the word “and” at the end of that paragraph are repealed.

(4A) In section 24(5)(d), for “or 2” substitute “, 2 or 2A”.

(4B) In section 31(5)(c), for “or 2” substitute “, 2 or 2A”.

(5) In section 82—

(a) the words “this Part and in” are repealed, and

(b) the definitions of “application to purchase”, “heritable proprietor”, “housing co-operative”, “offer to sell”, “police authority” and “secure tenancy” are repealed.

(6) The title to section 82 becomes “Interpretation of sections 14, 19 and 20”.

(7) In section 338(1)—

(a) in the definition of “house”, the words “(except in relation to Part XIV)” are repealed,

(b) the definition of “secure tenancy” is repealed.

**Housing (Scotland) Act 1988 (c.43)**

5  (1) The Housing (Scotland) Act 1988 is amended as follows.

(2) In section 42(1)(d), the words “or in pursuance of section 282(3)(b) of that Act (grant of a tenancy upon acquisition by public sector authority of defective dwelling)” are repealed.

(3) Paragraph 7 of Schedule 2 is repealed.

(4) Paragraphs 19 to 26 of Schedule 17 are repealed.

**Local Government and Housing Act 1989 (c.42)**

6  Section 166(1) to (5) of the Local Government and Housing Act 1989 is repealed.

**Leasehold Reform, Housing and Urban Development Act 1993 (c.28)**

7  Section 156 of the Leasehold Reform, Housing and Urban Development Act 1993 is repealed.

**Local Government etc. (Scotland) Act 1994 (c.39)**

8  Paragraph 152(6) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 is repealed.

**Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)**

9  Paragraph 48(3) of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is repealed.

**Housing (Scotland) Act 2001 (asp 10)**

10 (1) The 2001 Act is amended as follows.

(1A) In section 5(4)(a), for “or 2” substitute “, 2 or 2A”.
(2) Section 23(6)(d) is repealed.
(3) Sections 42 to 51 are repealed.
(4) In schedule 10—
(a) paragraph 13(3)(c)(ii) is repealed,
(b) paragraph 13(6) to (20) is repealed,
(c) paragraph 13(36) to (40) is repealed.

Water Industry (Scotland) Act 2002 (asp 3)
11 Paragraph 18(5) of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.

Scottish Public Services Ombudsman Act 2002 (asp 11)
12 Paragraph 44 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 is repealed.

Freedom of Information (Scotland) Act 2002 (asp 13)
13 (1) The Freedom of Information (Scotland) Act 2002 is amended as follows.
(2) In schedule 1, after paragraph 18A insert—
“18B The Scottish Housing Regulator.”.
(3) Paragraph 85B of schedule 1 is repealed.

Land Reform (Scotland) Act 2003 (asp 2)
14 (1) The Land Reform (Scotland) Act 2003 is amended as follows.
(2) Section 40(4)(g)(v) is repealed.
(3) Section 65(2)(d) is repealed.
(4) Section 84(2)(c) is repealed.

Agricultural Holdings (Scotland) Act 2003 (asp 11)
15 Section 27(1)(g)(vi) of the Agricultural Holdings (Scotland) Act 2003 is repealed.

Fire (Scotland) Act 2005 (asp 5)
25 Paragraph 13 of schedule 3 to the Fire (Scotland) Act 2005 is repealed.

Housing (Scotland) Act 2006 (asp 1)
16A In section 22 of the 2006 Act—
(a) subsection (4)(c) is repealed, and
(b) subsection (6) is repealed.
Housing (Scotland) Act 2010 (asp 17)

17 (1) The 2010 Act is amended as follows.

(2) In section 58(1), for “the” where it secondly occurs substitute “a”.

(3) Section 108(1)(f) is repealed.

(4) In section 110(1), after paragraph (a) insert—

“(aa) the proposed disposal is not by way of granting security over the land or any interest in it,”.

(4A) In section 124, for “122” substitute “121”.

(5) Sections 140 to 144 are repealed.

(6) In schedule 2—

(a) paragraph 3(4) is repealed,

(b) paragraph 9 is repealed.

Police and Fire Reform (Scotland) Act 2012 (asp 8)

18 Paragraph 56 of schedule 7 to the Police and Fire Reform (Scotland) Act 2012 is repealed.
Housing (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about housing, including provision about the abolition of the right to buy, social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes.

Introduced by: Nicola Sturgeon
Supported by: Margaret Burgess
On: 21 November 2013
Bill type: Government Bill