

PRIVATE RENTED HOUSING (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Private Rented Housing (Scotland) Bill introduced in the Scottish Parliament on 4 October 2010:

- 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 54–PM.

EXPLANATORY NOTES

INTRODUCTION

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.

3. 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.

THE BILL

4. The purpose of the Private Rented Housing (Scotland) Bill is to support responsible landlords and address more effectively the problems caused by landlords who act unlawfully, by strengthening the regulation of the private rented sector. This involves changes to the operation of the systems for registration of private landlords and licensing of houses in multiple occupation. The Bill also includes provisions intended to deal with problems caused by overcrowding in the private rented sector and to improve the working of the private sector tenancy regime.

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.

STRUCTURE AND SUMMARY OF THE BILL

6. The Bill is in 5 parts:

Part 1 Registration of Private Landlords amends legislation concerning the registration of private landlords contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. This is in relation to:

- expanding the criteria of the fit and proper person test;
- allowing a local authority to require a criminal record certificate from a landlord in order to verify information;
- fees for certain agents;
- public access to information on applications not yet determined and persons found not to be fit and proper to act as landlords;
- requiring landlord registration numbers in advertisements of properties to let;
- an increase in the maximum fine for offences and the ability of a court to impose a ban of up to five years on a convicted landlord;

These documents relate to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 4 October 2010

- powers for a local authority to obtain information to enable or assist it to carry out its landlord registration functions, including requiring a letting agent to provide information on properties managed for a landlord;
- a requirement for a local authority to take account of guidance on the use of its enforcement powers issued by the Scottish Ministers; and,
- requiring the Private Rented Housing Panel to pass information on landlords to local authorities so that their registration status can be checked.

Part 2 Amendment of Part 5 of the Housing (Scotland) Act 2006 makes changes to the legislation concerning HMO licensing in Part 5 of the Housing (Scotland) Act 2006 to:

- give Ministers a power to bring by order additional types of multi-occupancy property within the scope of HMO licensing;
- give a local authority a power to refuse to consider an application for an HMO licence if it considers that there would be a breach of planning control;
- increase the maximum fine for offences;
- remove a requirement for a local authority to issue a statement of reasons for every HMO licensing decision; and,
- require a local authority to take account of guidance issued by the Scottish Ministers on the use of its information gathering powers.

Part 3 Overcrowding Statutory Notices gives a local authority a power to serve an overcrowding statutory notice on the landlord of a house which is overcrowded; where the local authority considers that the overcrowding is contributing to or connected with adverse effects on health or wellbeing, or on amenity.

Part 4 Miscellaneous makes changes to the tenancy regime in the Housing (Scotland) Act 2006, the Rent (Scotland) Act 1984 and the Housing (Scotland) Act 1988 in order to:

- clarify the right to make tenancy charges and the level of such charges;
- require a private landlord to issue specified information to a new tenant;
- clarify the notices to be served when a landlord seeks possession of a house after a short assured tenancy has reached its contractual end; and,
- allow a private landlord to seek the assistance of the Private Rented Housing Panel in gaining access to a house for purposes related to the Repairing Standard.

Part 5 General sets out general provisions, such as for the making of orders. It also contains definitions, the short title and provisions for commencement of the Act.

PART 1 – REGISTRATION OF PRIVATE LANDLORDS

7. The provisions in this Part make amendments to the landlord registration provisions contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 ('the 2004 Act').

Sections 1 and 2 – Fit and proper person

8. Section 85 of the 2004 Act describes the material that local authorities must have regard to when considering if a landlord is a fit and proper person (or if a person appointed to act for a landlord is a fit and proper person so to act). To improve protection for private tenants, section 1 of the Bill expands the list of offences that have to be considered, to include firearms and sexual offences. Regulations will require these to be declared by an applicant for landlord registration, and section 2 of the Bill makes provision for a local authority to require a criminal record certificate to be produced to it, on application or subsequently.

9. Sections 85(3) and (4) of the 2004 Act require a local authority to take into account any information that it deems relevant to the question of whether the landlord or agent is a fit and proper person. To assist local authorities in determining what is relevant, the Bill specifies certain information that should be considered when applying this test, specifically:

- previous convictions under legislation relating to landlord registration or HMO licensing;
- breaches of the Repairing Standard;
- complaints and information which come to the local authority's attention (for example from tenants, neighbours and others) where landlords have not paid their share of the cost of communal repairs or payments to property factors;
- antisocial behaviour by the landlord, the tenant, or at the property;
- concerns and other information which come to a local authority's attention in relation to a property, through its other functions; for example when investigating noise complaints or carrying out environmental health inspections; and,
- failure to produce a criminal record certificate where the local authority requires it.

10. Section 1 also gives Ministers the power to add, amend or remove offences or other unlawful acts that must be taken into account by a local authority in applying the fit and proper test.

11. Section 2 of the Bill adds a new subsection 85A to the 2004 Act which gives a local authority the power to require a criminal record certificate if it deems this is necessary when applying the fit and proper person test. If an applicant for registration fails to provide this he or she will not be placed on the register. A registered landlord who fails to provide it may be removed from the register.

Section 3 – Landlord registration number

12. Landlord Registration numbers are currently provided for administrative reasons when landlords are registered but have no legal status. Section 3 therefore amends section 84 of the 2004 Act to put landlord registration numbers on a statutory footing and outlines that local authorities must provide landlords with their registration number when advising them that their registration has been completed.

Section 4 – Appointment of agents

13. Section 4 introduces a new subsection (2A) to section 88 of the 2004 Act to allow a local authority to charge a registered landlord a fee when the landlord notifies the local authority of the appointment of an agent. There is currently no power for the local authority to charge a fee for such an addition to the landlord's register entry, although assessing whether the agent is a fit and proper person will involve expense to the local authority. Setting a fee will enable local authorities to recover costs and will be fairer for those landlords and agents who pay fees, because they register at an earlier stage. New subsection (2B) ensures that no fee is payable if the fit and proper test has already been carried out on the agent. New subsection (2C) gives Ministers powers to prescribe by regulations the fees, how fees are to be arrived at, and circumstances in which no fee is payable. The Bill further amends section 88 to make it an offence if landlords do not notify local authorities that they have appointed an agent or provide false information. The penalty is a fine on summary conviction not exceeding level 3 on the standard scale.

Section 5 – Access to register: additional information

14. Information on registered private landlords and their properties is held on a register maintained by the local authority for the area where each property is located. Public access to the register is restricted to prevent misuse. To help protect tenants section 5 of the Bill provides two additional categories of information to be made available to the public. Subsection (1) amends section 88A(1) of the 2004 Act to make available information on whether a registration application has been made but not yet determined; and whether a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord or because the person's agent was found to be not fit and proper. Subsection (2) inserts a new section 92ZA into the 2004 Act. This requires a local authority to note in its register the fact that a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord, or because the person's agent was found to be not fit and proper. This note must be made when the appeal procedure has been exhausted and must be removed after 12 months or sooner if the person is subsequently registered.

Section 6 – Duty to include certain information in advertisements

15. To prevent unregistered landlords from advertising their properties, section 6 of the Bill inserts a new section 92B into the 2004 Act which requires all adverts for properties for let to include the landlord registration number or, in the case of landlords whose application is yet to be determined, the phrase "landlord registration pending". Reusable 'To Let' boards are exempt from this due to costs for landlords. For a registered landlord the sanction for failing to include a registration number is that they may be removed from the register. For an applicant for registration the sanction is that the application may be refused.

Sections 7 and 8 – Penalties for unregistered landlords

16. Sections 7 and 8 give powers to the Courts to impose tougher penalties on the most severe cases of bad landlord practice. To reflect the seriousness of the behaviour of some landlords, the Bill increases the maximum fine level in section 93(7) of the 2004 Act, for offences relating to acting as an unregistered landlord, from level 5 on the standard scale to

£50,000 and introduces a new section 93A to allow the court to disqualify a person operating as an unregistered landlord from being registered as a landlord by any local authority in Scotland, for up to five years. These provisions bring landlord registration in line with HMO licensing. The Bill outlines the landlord's right of appeal and makes provision for revocation of any disqualification order, though no revocation can occur unless there has been a change of circumstances, and even then not within the first year of the order taking effect.

Section 9 – Power to obtain information

17. Section 9 inserts new section 97A into the 2004 Act. Section 97A details powers for a local authority to obtain information to enable or assist it to carry out its functions under Part 8. This information can be obtained from various specified persons. The local authority can serve a notice requiring such a person to provide information on the nature of their interest in the house; specified information about other people with an interest in the house or who act in relation to a lease or occupancy arrangement; and such other information about the house or such a person as can be reasonably requested. To help local authorities identify unregistered landlords, the Bill contains a power for local authorities to require a letting agent to provide information in relation to any house in the area in relation to which the agent acts, including the address of the house and the name and address of the owner.

18. Section 9 also outlines the methods a local authority must use to advise the person that they are required to provide information, which may include electronic service. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale.

Section 10 - Guidance

19. Section 10 of the Bill makes an amendment to the 2004 Act by introducing a new section 99A which requires local authorities to have regard to any guidance issued by Scottish Ministers when carrying out their functions in respect of landlord registration. Ministers are required to consult local authorities and, if they think fit, others before issuing any such guidance.

Section 11 – PRHP: information to be given to a local authority

20. To further help local authorities identify unregistered landlords, section 11 of the Bill amends the 2006 Act by inserting new section 22A which requires the Private Rented Housing Panel to pass onto the local authority details about the landlord and property, which must include the landlord registration number if known and details of any agent the panel knows is acting on the landlord's behalf. This requirement arises where an application is made to the panel by a tenant relating to the repairing standard.

PART 2 - LICENSING OF HOUSES IN MULTIPLE OCCUPATION

21. The provisions in this Part make amendments to the legislation concerning the licensing of houses in multiple occupation under the Housing (Scotland) Act 2006 (the "2006 Act").

Section 13 – Amendment of HMO licensing regime

22. Section 125 of the Housing (Scotland) Act 2006 defines a house in multiple occupation (HMO). Section 13 inserts into section 125(1) a new paragraph (b), which allows Ministers to define in secondary legislation additional categories of multi-occupancy accommodation, specified by type or manner of occupation, as licensable HMOs. Any such category must meet the usual requirement of a licensable HMO that there are three or more occupants being members of more than two families. However, it does not necessarily have to be a house or premises in terms of the 2006 Act, nor does it have to be the only or main residence of the occupants. Before making such an order, the Scottish Ministers must consult relevant persons.

23. Section 13 also inserts new section 129A into the 2006 Act to give a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. If the applicant subsequently obtains planning permission or a certificate of lawful use or development and makes a further application for a licence within 28 days, no fee may be charged in relation to that application. If an application is refused before an existing licence for the HMO has expired, the existing licence will expire either on its normal expiry date or on a later date that the local authority considers reasonable, given the circumstances.

Section 14 - Penalties for certain HMO offences

24. In line with the provision outlined above for landlord registration offences, section 14 of the Bill gives powers to the Courts to impose tougher penalties for HMO offences by increasing the maximum fine in section 156(1)(a) of the 2006 Act to £50,000.

Section 15 – Statement of reasons for decisions

25. Under the HMO licensing regime a local authority must provide a statement of reasons for an HMO decision. Local authorities have raised concerns that this may cause significant costs, and be unnecessary in many cases. For example, where a licence is granted without any concerns having been raised or identified, an applicant may neither need nor wish reasons. Section 15 therefore amends Part 5 of the 2006 Act at section 158(12)(a) so that a statement of reasons need only be provided when this is requested by any person who receives the decision. The Bill outlines the time periods for local authorities to issue the statement of reasons and for the person to request that they be provided. Where such a request is made, reasons must be provided.

Section 16 - Guidance

26. Section 186 of the 2006 Act allows a local authority to require certain people to provide information relating to the land or premises to help it carry out its functions under HMO licensing. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale. Section 16 of the Bill amends section 163(1) of the 2006 Act to enable the Scottish Ministers to give guidance over the use of the information gathering powers contained in section 186. Such guidance may be used to

inform local authorities how best to deal with vulnerable persons who are reluctant or unwilling to provide information for fear of reprisals.

PART 3 – OVERCROWDING IN THE PRIVATE RENTED SECTOR

27. This part introduces powers to enable local authorities to deal with overcrowding in the private rented sector.

Section 17 – Overcrowding statutory notice

28. Section 17 gives a local authority the power to serve an overcrowding statutory notice on the landlord of a house which is overcrowded, where the local authority considers that the overcrowding is having an adverse effect on the health or wellbeing of any person or on the amenity of the house or its locality. This will allow enforcement action to be taken in the worst cases of overcrowding in the sector, where it is creating adverse effects for occupants, neighbours and others in the locality. The notice will set out the steps to be taken by the landlord to rectify the situation (that is, to reduce the occupancy level to the maximum permitted by the Housing (Scotland) Act 1987), the period within which the steps must be taken, and any other conditions considered appropriate by the local authority. Section 17(7) allows the Scottish Ministers to prescribe by order the form of an overcrowding statutory notice and such other information to be included in the notice as they see fit, plus the persons who must be given a copy of the notice. Local authorities must have regard to any guidance issued by Ministers relating to notices.

Section 18 – Tenant information and advice

29. Section 18 enables the local authority to provide such advice and assistance to the occupants of a house in relation to which an overcrowding statutory notice has been served as it considers appropriate.

Sections 19 to 26 – Overcrowding: further provisions

30. Sections 19 to 26 of the Bill make further provision about the content and duration of notices and the procedure for making them, outline the appeals procedure and provide that failure by a landlord to comply with a notice will be an offence attracting a fine not exceeding level 3 on the standard scale. They also make provision for variation of notices, though not so as to shorten their duration. A local authority may revoke a notice at any time.

PART 4 – MISCELLANEOUS

31. Part 4 makes a number of miscellaneous amendments to legislation relating to the private sector tenancy regime.

Section 28 - Premiums

32. Section 82 of the Rent (Scotland) Act 1984 makes it an offence to charge or receive any premium or make any loan, in addition to the rent, a condition of the grant, renewal or continuance of a protected tenancy. Despite this, there is evidence that some confusion exists

about what it means in practice and a variety of charges are made to tenants. Section 28 of the Bill clarifies that all charges in connection with the grant, renewal or continuance of a tenancy are illegal apart from certain specified, reasonable charges. It inserts a new section 89A into the 1984 Act, giving Ministers powers to outline in secondary legislation charges that will be allowed in connection with the grant, renewal or continuance of a protected tenancy. The regulations will be able to specify categories of payment that are not to be treated as premiums in terms of section 82 and to set a maximum limit to the amount of any such payment that could be charged. Ministers must, before making regulations, consult representatives of tenants, private landlords and landlords' agents, as well as such other persons (including tenants, private landlords and landlords' agents) as they consider appropriate.

33. Any such regulations may also apply to assured tenancies (including short assured tenancies) because new section 89A will constitute part of the sequence of sections 86 to 90 of the 1984 Act referred to in section 27 of the Housing (Scotland) Act 1988.

Section 29 - Tenant information packs

34. To improve knowledge about housing legislation and regulation among private tenants and landlords, section 29 of the Bill places a duty on private landlords to provide new tenants with specified documents by inserting new section 30A into the Housing (Scotland) Act 1988. Failure to do so (without reasonable excuse) is an offence attracting a fine not exceeding level 2.

35. New section 30B gives Ministers the power to specify the documents that must be provided, through secondary legislation. For example, this might include documents containing information about the tenancy (such as a tenancy agreement), about the house (such as the permitted level of occupancy), about the landlord (such as his or her landlord registration number), and about the rights and responsibilities of tenants, landlords and agents. They may include documents that the landlord is already required to provide under other sections of the 1988 Act. An order may make further provision, including about the form of the documents and the information to be included in (or expressly excluded from) any of them. It may provide that supply of a document in accordance with such an order will satisfy another statutory obligation to give a document, the intention of this provision being to remove duplication. It may provide for documents to be provided separately or at the same time.

36. Section 30B(2) requires the Scottish Ministers, before using the order-making power, to consult representatives of tenants, private landlords and landlords' agents, as well as such other persons (including tenants, private landlords and landlords' agents) as they consider appropriate.

Section 30 - Notices required for termination of a short assured tenancy

37. Section 19 of the Housing (Scotland) Act 1988 states that a sheriff will not consider proceedings to gain possession of a house let as an assured tenancy (which includes a short assured tenancy) unless the landlord has served a notice of proceedings. There is evidence of some uncertainty as to whether this requirement also applies to section 33 of the Act; section 33 relates to recovery of possession in respect of short assured tenancies which have come to the end of their normal contractual agreement. Section 30 of the Bill is intended to clarify that in such cases a notice of proceedings is not required by explicitly stating that sections 18 and 19 of the 1988 Act do not apply to proceedings under section 33.

Section 31 - Landlord applications to the private rented housing panel

38. Section 14 of the Housing (Scotland) Act 2006 places a duty on a landlord in certain tenancies to ensure that the house meets the Repairing Standard (set out in section 13 of the Act) and allows a tenant who considers that the landlord has failed to comply with this duty to apply to the Private Rented Housing Panel for assistance.

39. The Act also gives a landlord, or a person authorised by the landlord, the right to enter the house in respect of carrying out this duty; i.e., to inspect the premises or carry out works. Section 31 of the Bill amends the 2006 Act by introducing a new section 28A to enable a landlord to apply to the Private Rented Housing Panel for assistance in exercising these entry rights in order to comply with the Repairing Standard where the tenant has been uncooperative, without the need for court action or waiting until the end of the tenancy. Such an application will be considered by a single member of the Panel.

40. New section 28B gives Ministers power to make by regulations further provision about applications made under section 28A. Such provision may relate to the form and content of applications, the prescription of a fee to accompany applications, the procedure to be followed by applicants and the Panel, the time limits for making decisions and the determination of applications and action following determination, amongst other things.

41. New section 28C outlines the arrangements that the panel member must make and the procedure that must be followed for a suitable time for access. This procedure commences where the panel member decides to offer assistance, at which point a notice is served under section 28A(5) and the member liaises with the landlord and tenant with a view to agreeing a date and time for access (section 28C(2)). If the tenant makes representations to the panel member that entry is inappropriate or unnecessary (for example, when the panel member calls to try to agree a date for access) the member has to decide whether to continue to assist the landlord, and may contact the landlord before reaching that decision (section 28A(7)). If the tenant fails to respond, or refuses to agree a date and time, the panel member may fix them (section 28C(4)). Either the landlord or tenant can request that the panel member attend at the property at the time fixed. Section 31(5) of the Bill amends section 29 of the 2006 Act to provide for the recording and reporting of instances where landlord applications are made, houses attended to by a member following a request for attendance, and instances where a warrant for entry is sought.

PART 5 – GENERAL

Section 32 - Interpretation

42. Section 32 defines various expressions used in the Bill.

Section 33 - Ancillary provision

43. Section 33 confers on Ministers a power to make by order such consequential supplementary, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for the purposes of giving full effect to, any provision of the Bill. Such an order may modify any enactment.

Section 34 - Orders

44. Section 34 provides procedural requirements for orders and regulations made under the Bill.

Section 35 - Short title and Commencement

45. Section 35 gives the short title of the Bill and provides that the provisions of the Bill (except sections 32 to 35, which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on a date or dates determined by order, made by Ministers.

FINANCIAL MEMORANDUM

INTRODUCTION

46. The purpose of the Private Rented Housing (Scotland) Bill is to improve the quality of service experienced by all consumers in the private rented sector by making improvements to the operation of the systems for registration of private landlords and licensing of houses in multiple occupation (HMOs). The Bill also includes provisions to deal with problems caused by overcrowding in the private rented sector and makes improvements to the private sector tenancy regime and related matters. This Memorandum only comments on those provisions that involve financial costs or savings.

BILL CONTENT

47. This Financial Memorandum sets out the costs and savings associated with the Bill under the following headings:

- landlord registration;
- licensing of houses in multiple occupation (HMOs);
- overcrowding; and
- miscellaneous (the private sector tenancy regime and related matters).

Landlord registration

48. Changes to the landlord registration system have been introduced with a view to supporting and assisting local authorities in exercising their landlord registration functions under the Antisocial Behaviour etc. (Scotland) Act 2004. The landlord registration provisions in the Bill will, in particular, offer additional support to local authorities to help them deal with landlords who are not committed to the highest standards of service for tenants, are unregistered or are providing sub-standard accommodation.

Licensing of houses in multiple occupation (HMOs)

49. The Bill improves the effectiveness of HMO licensing by increasing maximum fines and improving local authority capacity by removing the need for an automatic statement of reasons for HMO licensing decisions. The Bill will also give Scottish Ministers a power to designate by order specified categories of accommodation as licensable HMOs and give local authorities a discretionary power to refuse to consider an application for an HMO licence if they considered that use as an HMO would be a breach of planning control.

Overcrowding and miscellaneous (the private sector tenancy regime and related matters)

50. The Bill will give a local authority power to address problems of overcrowding in the private rented sector by serving an overcrowding statutory notice on the landlord of a privately rented house where overcrowding is linked to an adverse effect on the health or wellbeing of the occupants, neighbours or others or on the amenity of the locality. The Bill clarifies rights and responsibilities for tenants, landlords and agents in the private rented housing sector. It allows landlords to seek from the Private Rented Housing Panel (PRHP) assistance to exercise the right of entry in relation to the Repairing Standard.

COSTS ON THE SCOTTISH ADMINISTRATION

Guidance in all Parts of the Bill

51. The production of guidance on aspects of the Bill (such as local authorities' use of the power to issue overcrowding statutory notices or the application of section 186 of the Housing Act (Scotland) 2006) would be met from within existing budgets.

Landlord registration

Changes to the landlord register

52. Changes to the declaration of offences will impact on the landlord registration IT system which is controlled by the Scottish Government. An IT upgrade to include the additional offences will be required. Although these costs cannot be quantified exactly until the IT company is clear on the detail and time involved, based on previous experience they would be expected to be a one-off amount in the region of £3,000 to £5,000. This could be met from within the current budget as the current contractual arrangements with the IT provider includes a budget for system changes.

53. The landlord registration database does not currently offer a search option based on the input of the landlord registration number. As elements within the Bill will require increased search activity to be undertaken by local authorities (such as checking registration numbers from advertisements), the Scottish Government will add this facility to the registration database to support local authorities and to avoid imposing an additional burden on them. These costs are expected to be in the region of £2,000 and could be met from within the current budget as outlined above.

Providing public access to more information on the landlord registration database

54. Changes to the landlord register would require minor alterations to the landlord registration IT system. Until it is seen how this would work in practice, it is not possible to quantify exactly any such costs, which would be met from within the existing budget, but, based on previous experience, they would be expected to be in the region of £3,000 to £5,000.

Miscellaneous (Private Sector Tenancy Regime and related matters)

55. The Scottish Government funds the Private Rented Housing Panel. Additional costs on the Panel related to the proposals in the Bill are addressed in later paragraphs. These costs would be borne by the Scottish Government.

Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy

56. The Scottish Government will be responsible for designing the form that the information and documents should take, making it available to landlords and agents (which is expected to be done online) and updating it. The costs will therefore fall on the Scottish Government. It is estimated that initial set-up costs would be less than £20,000. In addition, there would be minimal costs (less than £5,000) for updating, which would seldom occur (for example, when there were relevant legislative changes). A more detailed Business and Regulatory Impact Assessment (BRIA) will be produced before the order-making power specifying the details of the information and documents is used.

COSTS ON LOCAL AUTHORITIES

Landlord registration

Expanding the list of offences to be declared by an applicant for landlord registration as part of the fit and proper test

57. In relation to the “fit and proper” criteria for landlord registration, the legislation will require landlords to make additional declarations to include firearms and sexual offences. The Scottish Government asked a sample of local authorities for views on the financial implications of the provision. They stated that consideration of the additional factors for declaration (sexual offences and firearms convictions) was already normal working practice and would therefore not incur any additional cost.

58. Additionally, to assist local authorities in determining what is relevant to the question of whether the landlord is a fit and proper person, the Bill specifies certain information that should be considered when applying this test such as breaches of the Repairing Standard and antisocial behaviour by the landlord, the tenant or at the property. However, instead of imposing a duty on local authorities to carry out additional checks, the Bill offers additional elements for consideration as good practice or examples that they should have regard to if they come to the attention of the local authority as part of their landlord registration functions. This will support local authorities in targeting the very worst elements of the sector.

59. The Scottish Government obtained information from a number of local authorities in relation to the possible additional costs to expanding the list of offences. Some local authorities had varying thoughts on cost implications depending on the element for policing and increased enforcement activity required, with larger authorities relating costs to the volume of applications they process and therefore anticipating relatively higher additional costs than smaller authorities. For example, increasing the convictions which must be declared could increase the number of disclosure checks requested by the local authority (which could impact on staff processing time if further action is required, especially in dealing with a refused application). However, even

estimating an additional 10 refused applications, as estimated by a large authority, and the related staff costs in compiling reports and obtaining extracts from court, this would amount to no more than £500 per case.

60. From the local authorities who provided them, the figures for additional annual costs ranged from an estimated upper bound of £8,000 to suggestions that the additional work was so minimal as to have no impact on costs. It was highlighted that where intensive enforcement activity is required with complex cases, there is an impact on resource costs. Although the expansion of convictions to be declared is unlikely to create more complex cases, for some larger local authorities there could be an increase in the numbers as outlined in paragraph 59. Due to the variation in figures provided by local authorities, it is difficult to estimate the overall numbers of cases and therefore costs to all local authorities per annum.

61. Landlord registration is financed by fees. Therefore if changes to the system involved substantial additional costs for local authorities, it would be possible to adjust the level of fees accordingly. An evaluation of landlord registration will be carried out this year, one of the aims being to review the impact of the policy and legislative framework. An element of this will be the suitability of the fee structure to support the self-funding ambitions for the regime.

Ability of the local authority to require a criminal record certificate to verify information

62. Costs associated with sourcing a criminal record certificate will be the responsibility of the party seeking registration. There are also negligible to low administration costs for local authorities. One of the largest local authorities provided an estimate of these costs as a local authority who already conducts disclosure checks on landlords believed to have undeclared convictions (and also those who have declared relevant convictions and whose application therefore requires further scrutiny). Overall, the local authority thought the costs to be not significant and highlighted the benefits of identifying landlords who are not 'fit and proper' who could be removed from the market by this process. Estimates were provided of the time taken to request the disclosure, receive and process it and deal with the response. In a majority of cases, it was thought that this would not lead to refusal of the landlord's application but would cost around £50 in staff time to deal with each case. In the minority of cases (perhaps one or two a year for this large local authority) which may lead to a report recommending refusal, there was thought to be an increased cost due to extra staff work which includes obtaining extracts from court which generally cost £35 per item. Overall, in these minority of cases, the costs were thought to be between £300 - £500 per case. In terms of overall cost per annum for all local authorities, the Scottish Government would not expect each local authority to process the same numbers of cases as this large local authority (estimated at 25 – 30 cases per annum). Consequently, the cases for all local authorities per annum are estimated to be in the region of 150 cases of which perhaps only 10 would lead to a refusal (leading an overall estimated cost for all local authorities of £12,000 per annum).

Requiring the Private Rented Housing Panel (PRHP) to pass details of landlords to local authorities so that their registration status can be checked

63. It is at the discretion of a local authority whether to check information supplied by the PRHP, so costs will only be incurred when and if local authorities choose to do this. Local authorities will carry out the additional checks against the landlord registration database. There might be some administrative costs to check the validity of the information supplied by the

PRHP. However, based on the current number of applications to the PRHP, the Scottish Government believes the numbers involved will be low so costs will be negligible.

64. The upgrade to the landlord registration database will help local authorities carry out the search where the PRHP have the landlord registration number. On this basis, the Scottish Government considers that the additional administration time undertaken by local authorities in carrying out checks against the database will be offset by the additional fee income generated in identifying and registering previously unregistered landlords.

Requiring landlord registration numbers in advertisements of properties to let

65. In a sample of local authorities, those who responded anticipated negligible additional costs. The fact that the registration number will be included in advertisements will make the task of trying to identify unregistered landlords easier and therefore less resource intensive as the checks required can be carried out against the landlord registration database. This will be further supported by the addition of the improved search facility on the database. As outlined above, there will be the additional benefit of the fee income generated from registering previously unregistered landlords. Therefore although it is recognised that on occasion there will be subsequent enforcement action required which may incur some additional costs, this would be offset by the increased income generated.

Provision of information to a local authority to enable it to carry out its landlord registration functions

66. The ability of a local authority to require persons connected to premises, such as owners, landlords, tenants and agents, to provide information in order to help it to carry out its landlord registration functions would alter the way in which it would be able to collect information. This should allow it to exercise its functions more efficiently and therefore may lead to savings, but it is not possible to quantify these because they will depend on the use that is made of the power.

Allowing a local authority to require an agent to provide a list of properties managed

67. In relation to local authorities, the negligible cost implications are similar to that of identifying unregistered landlords from advertisements and notification by the PRHP. Local authorities will carry out the same search on the landlord registration database to check that the properties managed belong to a registered landlord.

Giving Ministers a power to issue guidance on the standards of management in relation to local authorities exercising their registration and enforcement activities, to which local authorities must have regard

68. Before Ministers issue guidance, there will be a duty to consult with local authorities and other appropriate organisations. Coupled with the fact that the guidance will be drawn up following the evaluation of landlord registration, this will enable elements of the guidance to be devised based on areas of good practice evidenced as working effectively. The Scottish Government therefore believe that any additional enforcement costs would be offset by increased efficiency.

Inclusion of additional information in the landlord register and database

69. There may be a small amount of extra work for local authority officials as a result of the inclusion of additional information in the landlord register and database. This could arise from dealing with an increase in enquiries from the public about the additional information available.

70. The Scottish Government obtained information from a number of local authorities about these possible extra costs. One local authority estimated that there would be additional annual costs of a maximum of £5,000. The others thought that the additional work was so minimal that it would not add to staff costs. In fact, one stated that the costs of dealing with telephone calls from the public might decrease, since they would be able to obtain more information about applications, refusals and deregistrations online.

71. On the basis of this sample, the Scottish Government considers that any additional costs would be negligible. Landlord registration is financed by fees. Therefore, if changes to the system involved substantial additional costs for local authorities, it would be possible to adjust the level of fees accordingly if necessary. The evaluation of landlord registration to be carried out during 2010 - 2011 will examine the suitability of the fee structure to support the self funding ambitions for the regime as mentioned in paragraph 61.

Licensing of houses in multiple occupation (HMOs)

Power to designate a specific category of accommodation as a licensable HMO

72. If a category of accommodation that is not currently covered by the HMO licensing regime were deemed by order to be a licensable HMO, there would be additional costs for local authorities for processing applications and for enforcement, although local authorities would also receive additional fees from the owners of such properties. However, it is not known at the moment what types of property would be brought into HMO licensing by use of the order-making power, nor the numbers of such properties. Additional costs and income for local authorities would therefore depend on the use that was made of the order-making power. The Scottish Government is required to consult with stakeholders before using this power and a BRIA would be produced for any such order.

Linking planning permission and HMO licensing

73. This is a discretionary power which has been requested by local authorities who will have the flexibility to decide whether to use it. The discretionary nature of this provision means that it is difficult to estimate the number of cases per annum where it may be used and therefore the costs to local authorities. Empowering a local authority to refuse to consider an application for an HMO licence if it considers that use of the accommodation as an HMO would be a breach of planning control should not involve a local authority in significant additional work. Co-operation between licensing and planning sections should establish the planning position in any case. Local authorities would have to take into account any possible increase in the resources required when deciding whether to use the power, particularly as there is no legal mechanism for recovery of costs incurred in investigating whether or not a planning application would be required.

Replacing the requirement for a local authority to provide a statement of reasons for HMO licensing decisions

74. This amendment responds to local authorities' concerns that when the HMO licensing provisions in Part 5 of the Housing (Scotland) Act 2006 come into effect on 31 August 2011, there will be a new burden on local authorities to automatically provide a detailed statement of reasons for all of their decisions. The provision requires local authorities to provide reasons on request only, thus avoiding unnecessary future expenditure by local authorities.

75. Local authorities were concerned that complex statements of reasons could take a qualified solicitor several hours to prepare. One of the authorities estimated that the main impact would be when applications are granted in the face of neighbours raising objections. Information from local authorities suggested a wide difference in estimated savings with estimates of £11,000 and £20,000 being provided by two of the largest local authorities, and a third large authority estimating a larger sum of £200,000 per annum due to the perceived need for further solicitors. Although all local authorities will avoid unnecessary expenditure when Part 5 comes into effect, these three local authorities have the largest number of HMO decisions and consequently will make the largest savings. It is difficult to provide an overall estimate of these savings for all authorities due to the difference in estimations provided by local authorities.

Overcrowding

Overcrowding statutory notice

76. Whether to issue an overcrowding statutory notice will be at the discretion of a local authority. If a local authority chose to do so, it would incur some administrative costs. There would also be costs if information and advice were provided to occupants. However, it is likely that few notices would be required to be issued, since the overcrowding would have to be serious enough to be adversely affecting the health or wellbeing of the occupants, neighbours or others or the amenity of the house or its locality. Costs would therefore be very low. Ministers will be able to issue guidance in relation to notices, to which local authorities must have regard, and it is intended that this will include taking into account possible effects on homelessness from issuing a notice. In addition, dealing directly with a serious case of overcrowding could lead to savings in not having to deal with other problems that could develop as a result, such as noise and other nuisance.

Miscellaneous (Private sector tenancy regime and related matters)

Premiums

77. Local authorities currently have a role in reporting for prosecution breaches of the law on the charging of premiums in relation to private tenancies. Clarifying that all pre-tenancy charges are illegal, apart from reasonable charges that are exempted, should make it easier for prosecutions to take place where agents do not comply with the law, although the changes could also make it easier for some agents to work within the law. Additional costs for local authorities will depend on how many cases they decide to take forward. The costs associated with this measure will be considered in more detail when a Business and Regulatory Impact Assessment (BRIA) is prepared for the regulations on reasonable charges.

Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy

78. It is envisaged that local authorities would have a role in bringing the requirement to issue the information and documents to the attention of landlords. However, this should involve minimal costs since it should be part of the normal process of communicating with landlords registered in each local authority's area. The Scottish Government asked a sample of local authorities for their views on this provision and two of the largest authorities agreed that costs to local authorities would be minimal as the Scottish Government would take responsibility for the costs associated with design, availability and updates.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Landlord registration

Private landlords

Ability of the local authority to require a criminal record certificate to verify information

79. It is proposed that the landlord bear the cost of applying for a criminal record certificate. The cost of Standard Disclosure (termed as a "criminal record certificate" under Part V of the Police Act 1997) is £23 for each application. The Scottish Government recognises that this is an additional burden on landlords, but it is relatively modest compared to the average rent of £2,400 accrued from a six month tenancy in the private rented sector (especially as many landlords have more than one property). This is envisaged as a one-off cost and the local authority would need to have reasonable grounds for wanting the information relating to a particular landlord. This power could not be used to require a disclosure check for every applicant.

80. Some local authorities already request a Basic Disclosure from landlord applicants at the landlords' expense, and indeed the process as outlined in the Bill is already used on an ad hoc basis by some local authorities where there is evidence of undeclared conviction or to further scrutinise an application where the applicant has declared a conviction. The Scottish Government asked a sample of local authorities and COSLA what the anticipated numbers might be to calculate the number of cases expected nationally. As mentioned in paragraph 62, a response was received from one of the largest local authorities who already conducts such checks who stated that it would carry out 25 to 30 Disclosure Scotland checks on landlords in these circumstances per annum on average. The Scottish Government estimates a total of 150 cases per annum which would mean a total approximate cost of £3,500 spread amongst the relevant landlords.

Requiring landlord registration numbers in advertisements of properties to let

81. There would be modest additional costs incurred by landlords seeking to advertise their properties through the addition of the landlord registration number or the phrase "landlord registration pending". However the Scottish Government notes that only a small percentage of tenants find their property via newspapers (where the landlords may incur costs if they pay for their advertisements by the line or word) and expects this percentage to drop, because of the increasing use of the Internet. Feedback from one of the largest local authorities concurs with this view, stating that the majority of properties are advertised on line via an agent and that newspaper advertisements are in the minority. Other means of advertising properties for rent would be less likely to incur a significant additional expense as a result of an increased word-

count. The Scottish Government sought further information on expected costs from local authorities and the PRS Strategy Group. Stakeholders did not offer any information further to the Scottish Government's assumptions.

82. There is an exemption for reusable To Let signs from the requirement to include the landlord registration number or "landlord registration pending" phrase.

Allowing a local authority to charge a fee when a registered landlord subsequently nominates an unregistered agent

83. At the moment there is no charge for a landlord who subsequently adds an unregistered agent to the registration (unless the agent then registers, in which case the fee of £55 has to be paid). If a local authority exercised its new power to make a charge for carrying out the fit and proper test for an agent who declines to register, the landlord would have to pay a fee. For the purposes of these calculations, the Scottish Government assumes that this fee will also be £55.

84. Based on information from a sample of local authorities, the Scottish Government estimates that there may be about 100 cases per annum nationally in which a registered landlord nominates an unregistered agent. In many of these cases, the agent will register voluntarily, so the local authority will already receive the £55 fee. All of the local authorities that supplied the Scottish Government with information said that all such agents did register, but this may not be the case everywhere. Assuming that the maximum percentage of cases across Scotland in which the agent does not choose to register is 10%, there would be up to about 10 cases annually in which a local authority will be able to apply the new charge of £55 to a registered landlord for adding an unregistered agent to a registration. This suggests the total additional annual cost to landlords would be nil or negligible.

Provision of information to a local authority to enable it to carry out its landlord registration functions

85. The requirement to provide information to a local authority in order to help it to carry out its landlord registration functions would apply to persons connected to the relevant premises, such as owners, landlords, tenants and agents. Responsible landlords and agents already currently provide much of the information requested by local authorities. The Scottish Government considers that any additional costs of complying with this requirement, where this would otherwise not have been done voluntarily, would be negligible.

Allowing a local authority to require an agent to provide a list of properties managed

86. This specific power exists in addition to the general power above (Provision of information to a local authority to enable it to carry out its landlord registration functions). There would be negligible administrative costs to agents in supplying the details to local authorities as the information required by the local authority will already be held by the agent.

Private Rented Housing Panel

Requiring the Private Rented Housing Panel (PRHP) to pass details of landlords to local authorities so that their registration status can be checked

87. It is unlikely that there will be any additional administrative costs for the PRHP, which is funded by the Scottish Government, as they will be passing the details of landlords to the local authority to carry out the check that the landlord is registered. The negligible amount of time that this will take will easily be accommodated within existing budgets. The PRHP already passes on other information so the systems are in place and will not incur setting up costs. It is likely that the requirement to provide pre-tenancy information and documents to tenants will include the landlord's registration number so the tenant could provide it to the PRHP, which would reduce the administrative task even further.

Licensing of houses in multiple occupation (HMOs)

Private landlords and agents

Power to designate a specific category of accommodation as a licensable HMO

88. If a category of accommodation that is not currently covered by the HMO licensing regime were brought by order within the scope of licensing, there would be additional costs for owners of such properties, particularly the costs of obtaining a licence and possibly of carrying out any work required to meet licensing conditions.

89. It is very difficult to estimate either of these costs. Every local authority has a different level of application fees. Licences may last for one year or three years. There are often different rates for applications for new licences and for renewals and some local authorities charge a flat fee, while others use a sliding scale, depending on the number of occupants in the HMO. For example, the City of Edinburgh Council, which has the largest number of licensed HMOs, charges up to £585 for an application for a new one year licence and up to £410 for a renewal. The amount of work required for an HMO to meet licensing standards will also vary considerably, but could cost up to several thousands of pounds in some cases.

90. It is not known at the moment what types of property would be brought into HMO licensing by use of the order-making power, nor what their numbers would be. Additional costs for owners would depend on the use that was made of the power. As previously mentioned, the Scottish Government is required to consult with stakeholders before using this power and a BRIA would be produced for any such order.

Linking planning permission and HMO licensing

91. Where landlords are already legally required to obtain planning permission for an HMO, or where they are required to obtain certification that planning permission is no longer required because the premises have been in use for a sufficiently long period, the Scottish Government does not consider that it is an additional cost on them to comply with existing planning requirements in order to obtain an HMO licence.

Overcrowding

Private landlords and agents

Overcrowding statutory notice

92. Where an overcrowding statutory notice was issued, landlords would have to take steps to reduce the occupancy of the house. The local authority would set a timetable that would allow the occupants to leave in an orderly manner. In some cases the landlord would serve the usual notices on the occupants. There could be a very few cases in which it would be necessary for the landlord to take eviction action through the courts, which were estimated to be £700 to £800 per undefended case by landlord representatives. If the tenant chose to defend the case, the costs would be higher but would be very difficult to quantify as there are many factors affecting the nature of the case and how it might be considered in the courts. In cases where landlords were permitting or causing overcrowding any costs would equate to the cost of complying with the statutory occupation level and therefore would not be seen as additional. The Scottish Government consulted the Scottish PRS Strategy Group as to specific costs and savings that might arise from this provision. Landlord representatives raised the issue that a landlord could be unfairly financially penalised where overcrowding had occurred due to actions by the tenant of which the landlord did not have knowledge. However, reasonable excuse could be a defence for the landlord in cases where overcrowding is caused by the occupants and the landlord lacks legal powers to comply with the overcrowding notice as in this example.

Miscellaneous (Private Sector Tenancy Regime and related matters)

Private Rented Housing Panel

Allowing a private landlord to apply to the PRHP for assistance in exercising the right of access in relation to the repairing standard

93. There will be costs incurred by the PRHP in undertaking this additional work. Based on the number of cases brought by tenants that are heard by Private Rented Housing Committees, the Scottish Government estimates that there would be a maximum of about 150 cases brought by landlords each year.

94. The Scottish Government expects that a case of this type would be heard by a Housing Member of the PRHP. The minimum cost would be a half day's fee of £81.50. The Scottish Government assumes that, as with complaints by tenants to the PRHP, the making of an application will prompt the tenant in many cases to allow access so that there will be no further costs. Where the Member had to attend at the property (perhaps half of cases), the additional cost would probably be a day's fee of £163 plus travelling costs (estimated at an average of £50).

95. The Scottish Government estimates that only about 10 cases a year would require a warrant to be obtained. Although there is no fee paid to a sheriff, Justice of the Peace or court in order to obtain a warrant, an additional fee would be payable to the Member (estimated at £81.50). The cost of the initial notification and execution of service by the sheriff officer would be in the region of £60. The Scottish Government expects that perhaps one case every five years would require the execution of the warrant, with supervision by a sheriff officer and possibly a forced entry by a joiner. This would involve additional costs of approximately £100 for the sheriff officer to attend at a property with a view to executing a warrant (although this may be

less if there was a fee arrangement depending on the number of cases) and approximately £75 if a joiner is required to force the lock (up to £90 for replacing the lock if that is damaged). This estimation is based on the fact that the PRHP have not had to apply for a warrant in relation to any case brought by a tenant.

96. These figures give indicative maximum additional costs of about £30,000 per annum, or an average of £200 per case. It is expected that these costs will be passed onto landlords, the beneficiaries of the new procedure, in the form of application fees.

97. It is expected that additional administrative costs would be absorbed within the PRHP's existing budget. There would be additional training costs for the members of the PRHP who deal with these cases. Start up costs would be approximately £2,500 for an estimated 6 members initially in the first year, followed by negligible costs in the following years. There would be further new members in later years who would require similar training but it is difficult to estimate how many members and in what years the training would be required.

Private Landlords and Agents

Premiums

98. Some agents and landlords will be allowed to make only charges that are lower than their current charges, possibly leading to a loss of income. However, by definition the excess will be unreasonable and the whole of the current charge may not be legally justified at the moment. The clarification of pre-tenancy charges will help responsible agents and landlords to be in a better position to know what they can legally charge. A more detailed BRIA will be produced before the order-making power specifying permitted charges is used.

Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy

99. Landlords and agents will be able to obtain the additional elements of the information and documents for free from the Scottish Government. There may be a small additional cost of provision of this material to tenants, but this will be minimal given that landlords and agents already have to provide some of the documents that are likely to be included, such as the tenancy agreement, the Energy Performance Certificate and the Repairing Standard letter. In fact, bringing all of the documents together may make it easier for the landlord or agent. Also, given the widespread lack of awareness of housing law among landlords that was identified by the Scottish Government's "Review of the Private Rented Sector", this provision will assist to ensure that more landlords are aware of their legal responsibilities. The Scottish Government asked the Scottish PRS Strategy Group for more information on the costs associated with this provision. Group members did not highlight any costs beyond the minimal amounts already indicated. A more detailed BRIA will be produced before the order-making power specifying the details of the information and documents is used.

Allowing a private landlord to apply to the PRHP for assistance in exercising the right of access in relation to the repairing standard

100. It will be at the discretion of private landlords whether they choose to seek assistance in exercising the right of access to carry out work or inspections relating to the Repairing Standard through the PRHP. They will still be able to apply to the sheriff or simply to wait until the end

of the tenancy. As explained above, the Scottish Government estimates that up to 150 landlords each year would apply to the PRHP. It is estimated that this would cost an average of £200 per case, totalling up to £30,000 per annum. It is expected that these costs will be passed onto landlords, the beneficiaries of the new procedure, in the form of application fees.

101. Set against the cost of these fees would be possible savings on taking court action (which can cost hundreds of pounds) and the protection of the value of a landlord's property by possibly being able to carry out repair work faster than would otherwise be the case. The Scottish Government consulted the Scottish PRS Strategy Group regarding the costs for this provision. Group members did not specify any further cost implications than those already indicated.

Summary table of additional costs

	Paragraph reference	Additional costs
Scottish Government		
Changes to the landlord register.	Paragraphs 52 – 53	£3,000 - £5,000 from the current budget for an IT upgrade. £2,000 from the current budget for adding a search facility to the registration database.
Providing public access to more information on the landlord registration database	Paragraph 54	£3,000 - £5,000 from the current budget for an IT upgrade.
Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy	Paragraph 56	Estimated initial set-up costs would be less than £20,000. Additional occasional costs of less than £5,000 for updating (for example, when there were relevant legislative changes).
Local authorities		
Expanding the list of offences to be declared by an applicant for landlord registration as part of the fit and proper test	Paragraphs 57 – 61	In relation to making additional declarations to include firearms and sexual offences, local authorities stated that consideration of such additional factors for

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		<p>declaration was already normal working practice and would therefore not incur any additional cost.</p> <p>In relation to the additional elements that the Bill specifies for consideration as good practice or examples, the figures ranged from an estimated upper bound of £8,000 to suggestions that the additional work was so minimal as to have no impact on costs. Due to the variation in figures provided by local authorities, it is difficult to estimate the overall numbers of cases and therefore costs to all local authorities per annum.</p>
Ability of the local authority to require a criminal record certificate to verify information	Paragraph 62	Negligible to low administration costs. Estimation of £50 per case in staff time to deal with most cases. In a minority of cases, the estimated costs were between £300 - £500 per case. Estimated costs spread across all local authorities per annum are 150 cases at £12,000.
Requiring the Private Rented Housing Panel (PRHP) to pass details of landlords to local authorities so that their registration status can be checked	Paragraphs 63 - 64	This is a discretionary power and so the costs will only be incurred when and if local authorities choose to use them. There might be some administrative costs to check the validity of the information supplied by the PRHP; however the numbers involved will be low so costs will be negligible.
Requiring landlord registration numbers in advertisements of	Paragraph 65	A sample of local authorities anticipated negligible

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properties to let		additional costs. The benefit of the fee income generated from identifying and registering previously unregistered landlords should assist in offsetting the possibility of increased enforcement activity.
Provision of information to a local authority to enable it to carry out its landlord registration functions	Paragraph 66	This provision will encourage greater efficiency and therefore may lead to savings, but it is not possible to quantify these because they will depend on the use that is made of the power.
Allowing a local authority to require an agent to provide a list of properties managed	Paragraph 67	Negligible costs for staff checking the landlord registration database. The income derived from this provision should offset the costs involved.
Giving Ministers a power to issue guidance on the standards of management in relation to local authorities exercising their registration and enforcement activities, to which local authorities must have regard	Paragraph 68	The Scottish Government believe that any additional enforcement costs would be offset by increased efficiency.
Inclusion of additional information in the landlord register and database	Paragraphs 69 – 71	Costs negligible based on the majority of the local authority views obtained.
Power to designate a specific category of accommodation as a licensable HMO	Paragraph 72	Costs depend on use made of order-making power which is difficult to estimate as it is not known what types of property would be licensed or in what numbers. Fees charged would be set against costs.
Linking planning permission and HMO licensing	Paragraph 73	Costs depend on use made of the power. It is difficult to estimate how many cases there

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		would be per annum due to the discretionary nature of the power.
Replacing the requirement for a local authority to provide a statement of reasons for HMO licensing decisions.	Paragraphs 74 – 75	An estimate from the three local authorities with the largest number of HMO licensing decisions on average suggested savings of either £11,000, £20,000 or £200,000 per annum per local authority. It is difficult to provide an overall estimate of savings for all authorities due to the difference in estimations provided by local authorities.
Overcrowding statutory notice	Paragraph 76	This is a discretionary power which would incur some administrative costs if a local authority chose to use it. There would also be costs if information and advice were provided to occupants. However, it is likely that few notices would be required to be issued, since the overcrowding would have to be serious enough to be adversely affecting the health or wellbeing of the occupants, neighbours or others or the amenity of the house or its locality. Costs are therefore likely to be very low.
Premiums	Paragraph 77	Costs for local authorities will depend on the number of cases they decide to take forward. Costs will be considered in more detail in a BRIA that will be prepared for the regulations on reasonable charges.
Making it a legal requirement that landlords provide tenants	Paragraph 78	A sample of local authorities agreed that this would cause

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with specified documents and information at the start of the tenancy		minimal costs for local authorities.
Private Rented Housing Panel – funded by the Scottish Government.		
Requiring the Private Rented Housing Panel (PRHP) to pass details of landlords to local authorities so that their registration status can be checked	Paragraph 87	Nil or negligible.
Allowing a private landlord to apply to the PRHP for assistance in exercising the right of access in relation to the repairing standard	Paragraphs 93 – 97	<p>£30,000 per annum or an average of £200 per case which the Scottish Government expects to be passed on to landlords as the beneficiaries of the new procedure.</p> <p>Negligible additional training costs for the members of the PRHP who deal with these cases. Start up costs would be approximately £2,500 for an estimated 6 members initially in the first year, followed by negligible costs in the following years. There would be further new members in later years who would require similar training but it is difficult to gauge how many members and in what years the training would be required.</p>
Private landlords and agents		
Ability of the local authority to require a criminal record certificate to verify information	Paragraphs 79 - 80	A one off cost of £23 to a landlord where local authority had reasonable grounds for wanting the information relating to that landlord. The Scottish Government estimates a total of 150 cases per annum which would mean a total approximate cost of

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		£3,500 spread amongst the relevant landlords.
Requiring landlord registration numbers in advertisements of properties to let	Paragraphs 81 – 82	There would be modest additional costs incurred by landlords. The Scottish Government notes that only a small percentage of tenants find their property via newspapers (where the landlords may incur costs if they pay for their advertisements by the line or word) and expects this percentage to drop, because of the increasing use of the Internet. Other means of advertising properties for rent would be less likely to incur a significant additional expense as a result of an increased word-count.
Allowing a local authority to charge a fee when a registered landlord subsequently nominates an unregistered agent	Paragraphs 83 - 84	Total additional annual cost to landlords would be nil or negligible.
Provision of information to a local authority to enable it to carry out its landlord registration functions	Paragraph 85	Negligible costs to landlords and agents.
Allowing a local authority to require an agent to provide a list of properties managed	Paragraph 86	Negligible administrative costs to agents.
Power to designate a specific category of accommodation as a licensable HMO	Paragraphs 88 – 90	Costs of obtaining licences and possibly of carrying out work depending on use made of order-making power.
Linking planning permission and HMO licensing	Paragraph 91	Costs of complying with existing law not seen as additional.

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Overcrowding statutory notice	Paragraph 92	There could be a very few cases in which it would be necessary for the landlord to take eviction action through the courts, which were estimated to be £700 – 800 per undefended case by landlord representatives. If the tenant chose to defend the case, the costs would be higher but would be very difficult to quantify as there are many factors affecting the nature of the case and how it might be considered in the courts. In cases where landlords were permitting or causing overcrowding any costs would equate to the cost of complying with the statutory occupation level and therefore would not be seen as additional.
Premiums	Paragraph 98	May lead to some agents and landlords making a lower charge and thus less income. However, by definition, higher charges that have been made previously are unreasonable and may not be legally justified.
Making it a legal requirement that landlords provide tenants with specified documents and information at the start of the tenancy	Paragraph 99	Landlords and agents will be able to obtain the additional elements of the information and documents for free from the Scottish Government. There may be a small additional cost of provision of this material to tenants, but this will be minimal given that landlords and agents already have to provide some of the documents that are likely to be included, such as the tenancy agreement, the Energy Performance Certificate and

		the Repairing Standard letter.
Allowing a private landlord to apply to the PRHP for assistance in exercising the right of access in relation to the repairing standard	Paragraphs 100 – 101	<p>The Scottish Government estimates that up to 150 landlords each year would apply to the PRHP. It is estimated that this would cost £200 per case, a total of up to £30,000 per annum. It is expected that these costs will be passed onto landlords, the beneficiaries of the new procedure, in the form of application fees.</p> <p>Set against the cost of these fees would be possible savings on taking court action and the protection of the value of a landlord’s property by possibly being able to carry out repair work faster than would otherwise be the case.</p>

**SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE
COMPETENCE**

102. On 4 October, the Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Private Rented Housing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

**PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE
COMPETENCE**

103. On 1 October, the Presiding Officer (Rt Hon Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Private Rented Housing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Private Rented Housing (Scotland) Bill (SP Bill 54) as introduced
in the Scottish Parliament on 4 October 2010*

PRIVATE RENTED HOUSING (SCOTLAND) BILL

EXPLANATORY NOTES

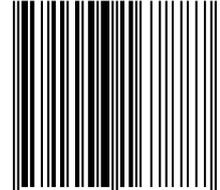
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