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.
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(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
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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.
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 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.

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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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
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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
Schedule 1 to the 1983 Act. The section sets out what must be included in such a notice (subsection (2)), and the relevant appeal procedures (subsection (6)).

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.
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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 repossession 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 repossession 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 power to permit diligence in respect of houses let on assured 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).
FINANCIAL MEMORANDUM

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 the Bill are less than £1,000,000 respectively and 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</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(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</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(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 <em>(£2,300,000)</em> 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>RSLs Annual outsourced legal costs associated with a new right of appeal <em>(£22,000)</em></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.

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.

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
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

<table>
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<tr>
<th>Topic</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Secure Scottish tenancy</td>
<td>88-101</td>
<td>Negligible - 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>Negligible – 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>

The Scottish Government expects there to be a small increase in appeals about landlords’ decisions to refuse requests to assign or sublet a tenancy or add a joint tenant to the tenancy agreement. The Scottish Court Service have indicated that the impact of this number of appeals 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>
<th>Topic</th>
<th>Fin Memo paragraphs</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>absorbed within existing court budgets.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part 3</strong></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Private rented housing</strong></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><strong>Negligible</strong> - 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 - <strong>Loss of up to (£49,000)</strong> 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>
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<tbody>
<tr>
<td>repairing standard</td>
<td></td>
<td>option taken.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>First year set-up costs of between (£90,000) and (£125,000), inc. staff salaries, accommodation, members’ fees and expenses.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>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*</td>
<td>175-181</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>(*intended to be introduced as a stage 2 amendment)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 4 Letting agents</td>
<td>182-219</td>
<td>Annual operating costs between (£321,000) and (£484,000) depending on option taken.</td>
<td><strong>Nil</strong></td>
<td>£250 registration fee per letting agent business on a three year basis.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>First year set-up costs of between (£75,000) and (£116,000) inc. staff salaries, accommodation, members’ fees and expenses.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 5</td>
<td>220-250</td>
<td><strong>Nil</strong></td>
<td>For local</td>
<td>Site owners</td>
</tr>
</tbody>
</table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Mobile homes sites with permanent residents</td>
<td></td>
<td></td>
<td>authorities, 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>
<td>would be charged around <strong>£600</strong> for a site licence. (For current sites, £56,511 every three years, across the sector).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 6</th>
<th>Private housing conditions</th>
<th>251-271</th>
<th>NIl</th>
<th>NIl</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>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</td>
<td></td>
</tr>
</tbody>
</table>
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<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>
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<tr>
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</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>
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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 or 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>Scenario</th>
<th>Rent</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)
41. 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><strong>Scenario A</strong></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><strong>Scenario B</strong></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><strong>Scenario C</strong></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>

42. 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...
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 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. 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, 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,

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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\(^5\). 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\(^6\). 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.

\(^5\) 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).

\(^6\) 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%29%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%29%20website%20version%201.0%29.pdf)
- **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 Scotland\(^7\), this will be partly offset by around 60 fewer eviction cases per year\(^8\). 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.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

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’s 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.scottish.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.scottish.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 £\textbf{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 £\textbf{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>
<thead>
<tr>
<th>Statistic</th>
<th>Source / Calculation</th>
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<tr>
<td>with by the police annually</td>
<td><a href="http://acpos.police.uk/Documents/Policies/sppf/ACPOS_PSS_Performance%20Report_Q4_April11_March12_v.2.0.pdf">http://acpos.police.uk/Documents/Policies/sppf/ACPOS_PSS_Performance%20Report_Q4_April11_March12_v.2.0.pdf</a></td>
</tr>
<tr>
<td>37% of social tenants who had experienced at</td>
<td>Household Survey data estimate of the percentage of total antisocial behaviour cases</td>
</tr>
<tr>
<td>least one form of antisocial behaviour in 2011</td>
<td>that come from the social rented sector.</td>
</tr>
<tr>
<td>had reported it to someone</td>
<td></td>
</tr>
<tr>
<td>58,693 incidents dealt with by social landlords</td>
<td>37% of 158,630 incidents reported to the police</td>
</tr>
<tr>
<td>(local authorities and RSLs)</td>
<td></td>
</tr>
<tr>
<td>Average of 6 antisocial behaviour incidents</td>
<td>Social Landlord’s Crime and Nuisance Group estimates</td>
</tr>
<tr>
<td>per antisocial case (household)</td>
<td>(<a href="http://www.insidehousing.co.uk/tenancies/landlords-spend-%C2%A3300m-a-year-on-anti-social-behaviour/6523076.article?MsgId=58452">http://www.insidehousing.co.uk/tenancies/landlords-spend-%C2%A3300m-a-year-on-anti-social-behaviour/6523076.article?MsgId=58452</a>)</td>
</tr>
<tr>
<td>9,782 estimated antisocial behaviour cases</td>
<td>58,693 incidents in the social sector divided by average of 6 incidents per case</td>
</tr>
<tr>
<td>(households) in social sector</td>
<td>(household)</td>
</tr>
<tr>
<td>5,282 estimated antisocial behaviour cases</td>
<td>54% of social housing is managed by local authorities</td>
</tr>
<tr>
<td>managed by local authorities</td>
<td>(<a href="http://www.scotland.gov.uk/Resource/0040/00409265.xls">http://www.scotland.gov.uk/Resource/0040/00409265.xls</a> total number of dwellings 2011/12). 54% of 9,782</td>
</tr>
<tr>
<td></td>
<td>estimated antisocial behaviour cases in the social sector.</td>
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\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

<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>0.764</td>
<td>1.527</td>
<td>3.055</td>
</tr>
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</table>

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.

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\(^\text{23}\). Around 27% of RSL lets are to homeless applicants\(^\text{24}\), 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 \((1/3\) 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\(^\text{26}\), 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 \((1/3\) of 2,250 tenancies) x £2,970) across 162 RSLs (0.22% of total rental income for RSLs\(^\text{27}\)).

- 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\(^\text{28}\)) 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\(^\text{25}\)).

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).

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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.

\(^{33}\) 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>Par-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>graph</td>
</tr>
<tr>
<td>Short tenancy</td>
<td>to offer short tenancy</td>
<td>78</td>
</tr>
<tr>
<td>20 fewer evictions</td>
<td></td>
<td>79</td>
</tr>
<tr>
<td>270 simpler evictions</td>
<td></td>
<td>74</td>
</tr>
<tr>
<td>9. short SST for homeowners</td>
<td></td>
<td>72</td>
</tr>
<tr>
<td>10. 12 month short tenancies</td>
<td></td>
<td>70-72</td>
</tr>
<tr>
<td>11. 6 month extension for short SSTs</td>
<td></td>
<td>75</td>
</tr>
<tr>
<td>12. Short Tenants rights on eviction</td>
<td></td>
<td>91-92</td>
</tr>
<tr>
<td>13. Assignation, sublet &amp; joint tenancy</td>
<td></td>
<td>90</td>
</tr>
<tr>
<td>14. Succession</td>
<td></td>
<td>93</td>
</tr>
<tr>
<td>15. Simpler evictions</td>
<td></td>
<td>94</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>763,000</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.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

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 development</td>
<td>27,000</td>
<td>27,000</td>
<td>27,000</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(^{35})</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(^{36})</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>

\(^{35}\) 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.

\(^{36}\) 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><strong>Total</strong></td>
<td><strong>880,243</strong></td>
<td><strong>626,955</strong></td>
<td><strong>584,306</strong></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.

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37 Members training has been estimated using the projected number of members required multiplied by daily fees for two days training per year per member.
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 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
Table 10: PRS Tribunal - Summary of costs

<table>
<thead>
<tr>
<th>Paragraph reference</th>
<th>Additional costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scottish Administration</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Scottish Government</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Scenario A</strong></td>
<td>One-off set-up costs</td>
</tr>
<tr>
<td></td>
<td>Continuing annual running costs</td>
</tr>
<tr>
<td><strong>Scenario B</strong></td>
<td>One-off set-up Costs</td>
</tr>
<tr>
<td></td>
<td>Continuing annual running costs</td>
</tr>
<tr>
<td><strong>Scenario C</strong></td>
<td>One-off set-up Costs</td>
</tr>
<tr>
<td></td>
<td>Continuing annual running costs</td>
</tr>
<tr>
<td><strong>Scottish Court Service</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Judicial Appointments Board for Scotland</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Local authorities</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other bodies, individuals and businesses</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></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</td>
<td>135-138</td>
<td>£500 - £1,000 per application to</td>
</tr>
<tr>
<td>sheriff for an extension to the 12-month</td>
<td></td>
<td>a sheriff/estimate no more than</td>
</tr>
<tr>
<td>approval period</td>
<td></td>
<td>60 per year across all local</td>
</tr>
<tr>
<td></td>
<td></td>
<td>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)\(^\text{39}\), 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/slub 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,
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 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 only40), 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>
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<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>
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<tr>
<td>Postal costs</td>
<td>£9,143</td>
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<td>Other legal costs</td>
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<tr>
<td>General expenses</td>
<td>£15,620</td>
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<td>Members fees</td>
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<td>Venue hire</td>
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<td>Members expenses</td>
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<td>£22,495</td>
</tr>
<tr>
<td>Sub-total</td>
<td>£350,998 pa</td>
<td>£234,089 pa (rounded)</td>
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<td>Fixed costs</td>
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<tr>
<td>Staff costs (PRHP 1 x B3 and 3 x A3)</td>
<td>£203,847</td>
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</tr>
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<td>Training</td>
<td>£31,720</td>
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<td>Charges/web site costs</td>
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<td>Accommodation</td>
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</tr>
<tr>
<td>Staff expenses</td>
<td>£9,148</td>
<td>£6,101</td>
</tr>
<tr>
<td>Sub-total</td>
<td>£300,254 pa (rounded)</td>
<td>£197,842 pa</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£651,252 pa</td>
<td>£431,931 pa</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.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

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>paragraphs</th>
<th>Scottish Administration</th>
<th>Scottish Government</th>
<th>Year 1 set-up costs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scotti</td>
<td></td>
<td>scenario 1</td>
</tr>
<tr>
<td></td>
<td>sh Administration</td>
<td></td>
<td>162</td>
</tr>
<tr>
<td></td>
<td>Scottish G</td>
<td></td>
<td>£125,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>paragraphs</th>
<th>Variable costs (members’ fees, expenses etc.)</th>
<th>Scottish Court Service</th>
<th>Local authorities</th>
<th>Landlords</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scenario 1</td>
<td>165</td>
<td>£351,000</td>
<td>No additional costs</td>
</tr>
<tr>
<td></td>
<td>Scenario 2</td>
<td>165</td>
<td>£234,000</td>
<td>No additional costs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>paragraphs</th>
<th>Fixed costs (staff salaries, accommodation etc.)</th>
<th>Scottish Court Service</th>
<th>Local authorities</th>
<th>Landlords</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scenario 1</td>
<td>165</td>
<td>£300,000</td>
<td>No additional costs</td>
</tr>
<tr>
<td></td>
<td>Scenario 2</td>
<td>165</td>
<td>£198,000</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\textsuperscript{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.

\textsuperscript{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: 481/2 hearings per committee, per day = 241 hearing days required;
- scenario 2: 481/6 hearings per committee, per day = 80 hearing days required;
- scenario 3: 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:
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
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 15: Set-up cost estimates for a new letting agent panel

<table>
<thead>
<tr>
<th>One-off set-up costs</th>
<th>Homeowner Housing Panel</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></td>
<td>Actual Cost (£)</td>
<td>Estimated set-up cost (£)</td>
<td>Actual Cost (£)</td>
<td>Estimated set-up cost (£)</td>
</tr>
<tr>
<td>Judicial training costs</td>
<td>45,000</td>
<td>43,994</td>
<td>14,665</td>
<td>8,602</td>
</tr>
<tr>
<td>Judicial recruitment</td>
<td>7,000</td>
<td>6,844</td>
<td>2,281</td>
<td>1,338</td>
</tr>
<tr>
<td>IT-case management system development</td>
<td>27,000</td>
<td>27,000</td>
<td>27,000</td>
<td>27,000</td>
</tr>
<tr>
<td>New website</td>
<td>3,100</td>
<td>3,100</td>
<td>3,100</td>
<td>3,100</td>
</tr>
<tr>
<td>General Office expenses</td>
<td>900</td>
<td>1,732</td>
<td>1,732</td>
<td>1,732</td>
</tr>
<tr>
<td>Staff salaries</td>
<td>7,900</td>
<td>15,200</td>
<td>15,200</td>
<td>15,200</td>
</tr>
<tr>
<td>President’s fees</td>
<td>10,600</td>
<td>10,600</td>
<td>10,600</td>
<td>10,600</td>
</tr>
<tr>
<td>President’s T&amp;S</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Publicity material</td>
<td>7,200</td>
<td>7,200</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>
<td><strong>81,977</strong></td>
<td><strong>74,972</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>Scottish Government</th>
<th>Additional costs (£)</th>
<th>Paragraph reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1 set-up and running costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Scenario 1</strong></td>
<td>£116,000</td>
<td>213</td>
</tr>
<tr>
<td><strong>Scenario 2</strong></td>
<td>£82,000</td>
<td>213</td>
</tr>
<tr>
<td><strong>Scenario 3</strong></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><strong>Scenario 1</strong></td>
<td>£238,000</td>
<td>Annex A</td>
</tr>
<tr>
<td><strong>Scenario 2</strong></td>
<td>£223,000</td>
<td>Annex A</td>
</tr>
<tr>
<td><strong>Scenario 3</strong></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><strong>Scenario 1</strong></td>
<td>£246,000</td>
<td>Annex A</td>
</tr>
<tr>
<td><strong>Scenario 2</strong></td>
<td>£126,000</td>
<td>Annex A</td>
</tr>
<tr>
<td><strong>Scenario 3</strong></td>
<td>£101,000</td>
<td>Annex A</td>
</tr>
<tr>
<td><strong>Scenario 1 Total</strong></td>
<td>£600,000</td>
<td></td>
</tr>
<tr>
<td><strong>Scenario 2 Total</strong></td>
<td>£431,000</td>
<td></td>
</tr>
<tr>
<td><strong>Scenario 3 Total</strong></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,

45 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.

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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.
• 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>£109.59</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>£123.29</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></td>
<td>£381.37</td>
</tr>
<tr>
<td>Visit x 2 officials</td>
<td>2</td>
<td>£35,000</td>
<td>£95.89</td>
<td>£191.78</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></td>
<td></td>
<td><strong>£614.25</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statutory minimum application criteria</td>
<td></td>
<td></td>
<td>£109.59</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fit and proper person test</td>
<td></td>
<td></td>
<td>£123.29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Visiting site</td>
<td></td>
<td></td>
<td>£381.37</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</td>
</tr>
<tr>
<td>Scottish Court Service</td>
<td>229-232</td>
</tr>
<tr>
<td><strong>Local Authorities</strong></td>
<td></td>
</tr>
<tr>
<td>Licence Administration</td>
<td>236-237</td>
</tr>
<tr>
<td>Enforcement Costs</td>
<td>238-241</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</td>
</tr>
<tr>
<td>Site owners – Enforcement costs</td>
<td>246-249</td>
</tr>
<tr>
<td>Site residents</td>
<td>250</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 sub-standard 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.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) 2002.51 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

http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/SoA
Scottish House Condition Survey 2002, page 116
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 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</td>
<td>254 No expected additional costs or savings</td>
</tr>
<tr>
<td>Registers of Scotland</td>
<td>255-257 No expected additional costs or savings</td>
</tr>
<tr>
<td>Local authorities</td>
<td>258-261 No expected additional cost but may allow existing powers to be used more effectively</td>
</tr>
<tr>
<td>Home owners</td>
<td>262-267 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</td>
<td>268 May encourage some private landlords to carry out work needed to ensure that homes meet the repairing standard</td>
</tr>
<tr>
<td>Local businesses</td>
<td>269 Would provide local authorities with a method to recover costs over a 30 year period</td>
</tr>
<tr>
<td>Construction sector</td>
<td>270-271 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, tranched 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 tranched 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 Cost 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>
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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>
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<td>15,583</td>
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<tr>
<td></td>
<td>Members’ Fees 3</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>
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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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<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>
</tr>
<tr>
<td>Fixed Costs</td>
<td>Staff Costs (PRHP 1 X B3 and 3 x A3) 4</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>
</tr>
<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>
</tr>
<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.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

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>SCJC</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.
These documents relate to the Housing (Scotland) Bill (SP Bill 41) as introduced in the Scottish Parliament on 21 November 2013

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.”
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)

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