LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

23rd Meeting, 2018 (Session 5)

Wednesday 5 September 2018

The Committee will meet at 10.00 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private**: The Committee will decide whether to take item 6 in private.

2. **Building regulations and fire safety in Scotland**: The Committee will take evidence from—

   Kevin Stewart, Minister for Local Government, Housing and Planning, Dr Stephen Garvin, Head of Building Standards, and Jessica McPherson, Programme Manager, Building Standards Division, Scottish Government;

   Dame Judith Hackitt, Chair, Independent Review of Building Regulations and Fire Safety;

   Professor John Cole CBE, Chair, Building Standards (Compliance and Enforcement) Review Panel;

   Dr Paul Stollard, Chair, Building Standards (Fire Safety) Review Panel.

3. **Subordinate legislation**: The Committee will take evidence on the Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018 [draft] from—

   Kevin Stewart, Minister for Local Government, Housing and Planning, and Simon Roberts, Policy Manager, Housing Standards and Quality, Scottish Government.

4. **Subordinate legislation**: Kevin Stewart (Minister for Local Government, Housing and Planning) to move—S5M-12905—That the Local Government and Communities Committee recommends that the Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018 [draft] be approved.
5. **Building regulations and fire safety in Scotland (in private):** The Committee will consider the evidence received at Agenda Item 2.

6. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

**Agenda Item 2**

Note by the Clerk  
PRIVATE PAPER

**Agenda Items 3 and 4**

Affirmative SSI - Note from the Clerk

**Agenda Item 6**

PRIVATE PAPER
Local Government and Communities Committee

23rd Meeting 2018 (Session 5), Wednesday 5 September 2018

Building regulations and fire safety in Scotland: note by the Clerk

Background
1. This paper provides background information on the Committee’s evidence session on building regulations and fire safety in Scotland, following up on its 2017 inquiry.

Launch of building standards verification inquiry
2. In February 2017, the Committee launched an inquiry into the building standards verification process, following the Scottish Government’s decision to appoint Local Authorities as sole verifiers under section 7 of the Building (Scotland) Act 2003. This was also in part-response to an independent report (link here) into the circumstances that had led to the closure of 17 Edinburgh schools for precautionary reasons. The Committee issued a call for written views (33 responses received) and an online survey (1072 responses received). The Committee then held an informal meeting with individuals who had experienced the building warrants process and had two evidence sessions, hearing from organisations including representatives of the building and surveying industries, the legal profession, and local authority building standards regulators.

3. More information on the evidence gathered during this period, including relevant correspondence with the Scottish Government, can be found via this link.

Grenfell fire
4. Following the Grenfell Tower fire, the Committee agreed in June 2017 to extend the inquiry, with an increased focus on fire safety aspects of building regulations. At around the same time, the Scottish Government set up a Ministerial Working Group (link here) to oversee “a review of building and fire safety regulatory frameworks, and any other relevant matters, to help ensure that people are safe in Scotland’s buildings, and make any recommendations for improvement as required.”

5. Three further evidence sessions were held during September 2017, with the Committee hearing from representatives of housing associations, the fire and rescue service and local authorities, amongst others, as well as from the Minister for Local Government and Housing.

6. More information on the evidence gathered during this phase of the inquiry, including an exchange of correspondence on cladding on high-rise buildings with the Scottish Government and Glasgow Council can be accessed via this link.
Committee report

7. The Committee published its report on building regulations and fire safety in Scotland on 30 October 2017: link here. The report was a mixture of key questions for further Parliamentary consideration alongside conclusions and recommendations on some matters. These included that:

- control over building permissions (“verification”) should continue to be held by council building standards departments rather than being extended to private interests. However, there was a need to increase the consistency of councils’ performance as verifiers and reduce the amount of delay;
- the current system is letting down new-build home-buyers who often find that there is no effective remedy when a new home has defects.

8. In relation to fire safety concerns raised by the Grenfell tragedy, the Committee considered it important to allow the review groups established in response by the Scottish Government to get on with their work but, given the high level of public interest in this matter, also undertook to keep the issue under review and to take further evidence periodically during the rest of this Parliamentary session.

9. The Scottish Government’s detailed response to the Committee report is available via this link. The report was debated in the Parliament Chamber on 23 November: Official Report here.

Evidence session on 5 September

10. The Committee agreed in January 2018 to take evidence from the Chairs of two panels set up by the Ministerial Working Group:

- Professor John Cole, Chair of the Building Standards (Compliance and Enforcement) Review Panel; and
- Dr Paul Stollard, Chair of the Building Standards (Fire Safety) Review Panel,

once both groups had reported. Both groups reported to the Scottish Government in June 2018: links to reports here and here.

11. The Committee also agreed to seek evidence from the Minister for Local Government, Housing and Planning on his response to the work of the groups and on outcomes of the Ministerial Working Group.

12. Finally, the Committee also agreed to invite to give evidence Dame Judith Hackitt. Following the Grenfell fire, the UK Government asked Dame Judith to conduct an Independent Review of Building Regulations and Fire Safety with a focus on high-rise residential buildings in England and Wales: link to that work here. This was with a view to considering lessons to be learned across the UK from the fire, as well as to note areas of significant divergence between the different regulatory regimes. The Committee will hear from all four witnesses, as well as Scottish Government officials assisting the Minister, as a single panel.
Overview of instruments

1. The following instrument, subject to affirmative procedure, is being considered at today’s meeting:

   - The Registered Social Landlords (Repayment Charges) (Scotland) Regulations 2018 (SSI 2018/draft)

Background

2. These Regulations enable a registered social landlord (“RSL”) to make a repayment charge in favour of itself to recover a sum which the RSL has paid on behalf of an owner when enforcing a scheme decision under the Tenements (Scotland) Act 2004. The policy note for the instrument is attached at Annexe A.

3. The Committee needs to report by 26 September 2018.

Delegated Powers and Law Reform Committee consideration

4. The Delegated Powers and Law Reform Committee (DPLRC) considered this instrument at its meeting on 19 June 2018 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure

5. Under Rule 10.6.1 (a), the instrument is subject to affirmative resolution before it can be made. It is for the Local Government and Communities Committee to recommend to the Parliament whether these draft instruments should be approved.

6. The Minister for Parliamentary Business has, by motion S5M-12905 (set out in the agenda) proposed that the Committee should recommend the approval of this statutory instrument. The Minister will attend in order to speak to and move the motion. Ahead of the formal debate (as part of an earlier agenda item), there will be an opportunity for members to ask questions of the Minister and his officials on the background to and purpose of this instrument.

7. At the end of the debate, the Committee must decide whether or not to agree the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendations.
POLICY NOTE

THE REGISTERED SOCIAL LANDLORDS (REPAYMENT CHARGES) (SCOTLAND) REGULATIONS 2018

The above instrument was made in exercise of the powers conferred by section 174A(1) of the Housing (Scotland) Act 2006 ("the 2006 Act") and all other powers enabling them to do so. The instrument is subject to affirmative parliamentary procedure.

Background

The Housing (Scotland) Act 2014 ("the 2014 Act") received Royal Assent on 1 August 2014. Section 85(3) of the 2014 Act inserted a new section 174A in the 2006 Act from 20 November 2014 (SSI 2014/264). Section 85(4) of the 2014 Act amended section 191(5) of the 2006 to provide that regulations made under section 174A are subject to affirmative procedure.

Policy Objectives

The policy intention is that people should live in good quality homes. The policy objective is to address a barrier to carrying out repair and maintenance work to common parts of residential buildings which are part-owned by registered social landlords. The Tenement Management Scheme set out in schedule 1 of the Tenements (Scotland) Act 2004 allows work to be carried out if there is a decision in favour by a majority of owners. A majority decision can be enforced by any owner, but this may be difficult in practice if an owner is unwilling or unable to contribute to their share of the cost of the work ("a missing share").

Section 174A of the 2006 Act allows Scottish Ministers to make regulations which allow registered social landlords to create a repayment charge to recover a missing share. Repayment charges allow registered social landlords to create a security for costs arising in connection with liabilities arising under the Tenement Management Scheme set out in schedule 1 of the Tenements (Scotland) Act 2004. A repayment charge is repayable in annual or monthly installments over a period of 5 to 30 years.

These powers are similar to the existing powers of local authorities to recover missing shares under sections 172-174 of the 2006 Act, as amended by section 91 of the 2014 Act.

The Scottish Government will prepare guidance for registered social landlords which will be published before these provisions come into force.

Appointed Day
These Regulations come into force on 27 October 2018.

Consultation

Section 174A(3) of the 2006 Act provides that before Scottish Ministers make regulations under section 174A they must have consulted with bodies representing local authorities, registered social landlords and such other persons as they think fit. The Scottish Government carried out a consultation on this issue, and a copy of the consultation report is published online at https://beta.gov.scot/publications/registered-social-landlord-missing-share-consultation/.

Impact Assessments

An Equality Impact Assessment (EQIA) and was carried out on the provisions in the 2014 Act. It is not considered that any additional EQIA need be done for this Order. For the EQIA that was undertaken for the Act, please see http://www.gov.scot/Publications/2013/11/5195/1.

Financial Effects

Because the enabling provisions for this measure were introduced as a non-government amendment to the 2014 Act, it is not covered by any of the Business and Regulatory Impact Assessments (BRIAs) prepared to accompany the Act. The consultation responses indicate although registered social landlords consider it to be useful to have this additional power, the use of repayment charges is likely to be limited in practice.

Scottish Government
Housing and Social Justice Directorate

June 2018