

HOUSING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Housing (Scotland) Bill introduced in the Scottish Parliament on 13 January 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 36–EN.

OVERVIEW OF THE BILL

Policy objectives

2. The principal policy objectives of this Bill are to improve the value that social housing delivers for tenants and taxpayers, to safeguard the supply of that housing for the benefit of future generations of tenants and to improve conditions in private sector housing. Achieving these objectives will contribute towards achievement of the Scottish Government's Strategic Objective to create a Safer and Stronger Scotland – helping local communities to flourish, becoming stronger, safer places to live, offering improved opportunities and a better quality of life – and to delivery of the following among the Government's National Outcomes:

- We live in well designed sustainable places where we are able to access the amenities and services we need;
- We have strong resilient and supportive communities where people take responsibility for their own actions and how they affect others;
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

3. The Bill will achieve its policy objectives by:

- Modernising the regime for regulating social landlords (local authority landlords and registered social landlords – RSLs).
- Reforming the right to buy (RTB) social housing.
- Amending the law on registering private landlords, licensing houses in multiple occupation and dealing with disrepair in private housing.

The term “social landlord”

4. The Bill includes provisions for the performance of local authority landlords and RSLs to be regulated on a common basis. In doing so, it uses the generic term “social landlord” to describe local authority landlords, local authorities providing housing services and RSLs. This reflects the practice in many quarters of referring to council and RSL housing as “social housing”.

5. In the consultation on the draft Bill, the Scottish Government recognised that some stakeholders have concerns about the stigmatising effect of the term. It invited suggestions for an alternative term that might be used in the Bill and more generally. In the event, many consultation responses agreed with the Government. However, there was insufficient consensus on an alternative to warrant the Bill as introduced to provide for a new term. Nevertheless, the Scottish Government remains interested in finding a better term. It will discuss the matter further with stakeholders and, if consensus can be achieved, it will bring forward amendments at stage 2 to introduce an alternative term.

Modernising Regulation

6. Regulation of social housing exists to ensure that social landlords meet their obligations to their tenants and to help compensate tenants for the lack of choice that they have as a result of demand for social housing exceeding the available supply. It also provides reassurance that the substantial amounts of current and historic public investment in social housing are being used to deliver services for tenants of broadly comparable value across the country.

7. In bringing forward provisions to modernise regulation, the Scottish Government has two aims: to place current and future tenants, homeless people and other service users at the heart of the new regime; and, consistent with its wider approach to scrutiny reform, to create a proportionate and risk based regime that encourages and supports social landlords to improve their performance.

8. To achieve these aims, the Bill provides for the creation of the Scottish Housing Regulator (SHR) as a body corporate that is independent of Ministers. The SHR will have a range of functions in relation to the regulation of social landlords, many of which are based on functions that the Scottish Ministers exercise at present in respect of safeguarding the good governance, financial wellbeing and assets of RSLs. It will have a clear statutory remit to safeguard and promote the interests of current and future tenants, homeless people and other service users and will be able to do so on the basis of a proportionate and risk based approach.

9. The Bill includes provisions to encourage and support social landlords to improve their performance. At the heart of these is a provision for a Scottish Social Housing Charter, which will define the outcomes that social landlords should be achieving and will provide the framework for the SHR to assess and report on the performance of social landlords.

Reforming the Right to Buy

10. The policy objective of the RTB reforms is to safeguard social rented properties for future generations of tenants, whilst not removing existing RTB entitlements. If implemented in

full the Scottish Government estimates, for the period from 2012 to 2022, that the reforms would retain in the social housing sector between 10,000 and 18,000 houses that otherwise would be lost through RTB. These reforms will also encourage social landlords to build more new social housing. RTB has in the past been a factor in discouraging councils from building new housing. Reforming RTB represents an important part of the Scottish Government's initiative to encourage new council-house building and retain these properties for future generations of tenants.

Private housing

11. The Bill has the further objective, in relation to the private rented sector, of improving the effectiveness of the systems of landlord registration and licensing of houses in multiple occupation. It also includes improvements to local authority powers to deal with disrepair in private houses.

Homelessness

12. The Bill amends the definition of "local connection" in homelessness legislation to allow members of the armed forces to form a local connection with an area through their employment or residence in that area. The objective here is to make sure veterans are treated equally with other homeless applicants in terms of the local connection requirements.

Unauthorised tenancies

13. The Scottish Government has been consulting on whether to strengthen protection for unauthorised tenants whose landlord is in breach of a standard security, with the resultant risk of the property being repossessed¹. The tenants are unauthorised tenants in the sense that their landlord has failed to notify the secured lender of the tenancy. Such tenants are vulnerable to being made homeless with little notice, through no fault of their own, where their landlord gets into financial difficulties. In the light of responses to this consultation exercise the Scottish Government will decide whether protection should be strengthened and, if so, how best to do that, and whether to seek an amendment to the Home Owner and Debtor Protection Bill or an amendment to this Bill. The purpose of including the provision in this Bill is to allow the Committee to seek and hear full evidence on the general principles of the issue at stage 1 and to report to the Parliament accordingly. The Government can then use the Committee's report and the responses to its own consultation exercise to help frame an appropriate amendment for consideration at Stage 2 if the Government decides to proceed to deal with the issue in this Bill.

CONSULTATION

14. The provisions in the Bill reflect extensive consultation and discussion with stakeholders.

15. The provisions on regulation and RTB are based on proposals that the Scottish Government included in *Firm Foundations*², the discussion document on the future of housing that it published in October 2007. These proposals attracted broad stakeholder support. In light

¹ [Repossession of Residential Property: Protection of Tenants: Consultation: Home Owner and Debtor Protection \(Scotland\) Bill](http://www.scotland.gov.uk/Publications/2009/10/08121110/0) : <http://www.scotland.gov.uk/Publications/2009/10/08121110/0>

² <http://www.scotland.gov.uk/Publications/2007/10/30153156/0>

of that, the Scottish Government prepared and consulted on a draft Housing (Scotland) Bill, whose provisions illustrated how the proposals might be given legal effect. The consultation ran from 27 April to 14 August 2009. It attracted a total of 319 [responses](#). These have been published on the Scottish Government website. An [analysis of responses](#) was published on 10 November 2009.

16. Stakeholders expressed a high degree of support for the broad aims of the provisions and suggested a number of amendments to them. The Scottish Government has amended the draft Bill to take account of those suggestions that would strengthen and improve the Bill's provisions and for which there was broadly shared support among different groups. Principal among these changes are:

- A more radical reform of RTB through the inclusion of provisions to end RTB for tenants new to the social housing sector and to introduce more flexibility and local control over pressured area designations.
- Making specific reference to the interests of homeless people in the statutory objective of the SHR and to equal opportunities in its general functions; strengthening tenants' role in relation to the SHR; giving tenants the means of securing better access to information from their landlords; and addressing concerns among tenants and housing associations by dropping proposals to permit profit distributing businesses to be eligible to seek registration as registered social landlords.
- In light of discussions with bodies representing ex-servicemen and women, a provision to amend the local connection criteria in homelessness legislation to allow ex-service personnel to establish a local connection with an area through their previous employment and residence in the area.

17. A separate consultation on private sector housing issues for possible inclusion in the Bill took place between 6 July and 27 September 2009. The consultation paper was published on the Scottish Government website, with links sent to more than 200 stakeholders, including local authorities, professional and representative bodies, and voluntary organisations. The consultation paper included questions relating to landlord registration, licensing of houses in multiple occupation, and local authority powers to deal with disrepair in private houses. The Government received 117 responses, from individuals as well as a range of organisations. There were majorities (on many questions large) in favour of all the proposals. A [detailed report](#) on the consultation responses has been published on the Scottish Government website.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT, ETC

18. Information on these issues is provided in relation to each Part of the Bill. The Bill includes a specific provision that the SHR should discharge its functions with a view to promoting equal opportunities. It also provides that social landlords, in providing housing services, must act in a manner which encourages equal opportunities. The Bill as a whole is expected to have a positive effect on the well being of communities generally, including island communities. Its provisions do not have any adverse effect on human rights or sustainable development.

BILL CONTENT

19. The Bill is structured in the following parts:

Part 1 establishes the SHR, provides for the SHR to have an objective, general functions, general powers, a duty to co-operate with other regulators and independence from Ministers, and provides for the SHR's membership, proceedings, staffing and fee charging arrangements.

Part 2 provides for the SHR's registration of RSLs. It also provides powers for Ministers to specify the legislative registration criteria and for the SHR to specify regulatory registration criteria which bodies must meet before they can be registered.

Part 3 requires Ministers to prepare the Scottish Social Housing Charter and specifies the SHR's functions in respect of the Charter. It also makes provision for the SHR to set performance improvement targets for social landlords and to allow the SHR to assess social landlords' performance both in respect of the Charter and more generally.

Part 4 provides for the SHR to undertake inquiries and obtain information from social landlords.

Part 5 provides a range of means by which the SHR can intervene to require improvements in the performance of social landlords and safeguard the finances and assets of RSLs.

Part 6 provides for the SHR to determine the accounting requirements of RSLs.

Part 7 provides for the SHR to safeguard the assets of an RSL in cases where it becomes, or is at risk of becoming, insolvent.

Part 8 provides for the SHR to manage organisational and other changes in RSLs.

Part 9 provides for the SHR to safeguard the assets of RSLs through controls over RSLs' ability to dispose of land and other assets.

Part 10 makes special provision, including approval by tenants, for the change of landlord from a local authority landlord.

Part 11 ends RTB for new social housing and for new tenants to social housing; and introduces more flexibility and local control over the designation of pressured areas.

Part 12 makes amendments to the private landlord registration provisions in the Antisocial Behaviour etc. (Scotland) Act 2004.

Part 13 makes various amendments to local authorities' powers to deal with disrepair in the private housing sector and to the houses in multiple occupation provisions in the Housing (Scotland) Act 2006.

Part 14 makes a number of miscellaneous other amendments in relation to protecting unauthorised tenants and in relation to local authorities' duties in respect of homelessness.

Part 15 makes supplementary and final provisions.

20. The following sections of this policy memorandum set out the rationale for each part of the Bill.

DETAILED POLICY OBJECTIVES OF THE BILL

PART 1 – THE SCOTTISH HOUSING REGULATOR

Policy objectives

21. Under provisions in Part 3 of the 2001 Act, the Scottish Ministers are responsible for inspecting and regulating RSLs and local authority landlords. In 2008, the Scottish Government established the Scottish Housing Regulator as an executive agency so that these functions could be discharged on the basis of operational independence from Ministers. This was an interim arrangement following the abolition of Communities Scotland, which previously had discharged these functions on behalf of Ministers. The Government said at that time that its longer term objective was to separate the public policy role of setting standards for social landlords, which it considers to be the responsibility of Government, from that of measuring performance against those standards, which should be undertaken by an independent regulatory body.

22. Part 1 of the Bill provides the basis for the SHR to be the independent regulator. It creates the SHR as a body corporate. The SHR will operate through its membership comprising a Chief Executive (who will be a member of staff) and at least 3 ordinary members, including the Chair (akin to a Board with non-executive members). The SHR has the power to manage its own proceedings and with the core functions that it needs to operate effectively as an independent regulatory body. Section 6 guarantees the SHR's independence from Ministers and section 2 ensures that the SHR puts current and future tenants, homeless people and other service users at the heart of regulation by giving the new body the statutory objective of safeguarding and promoting the interests of these groups – in effect making this the SHR's core purpose. To reinforce the position of tenants, homeless people and other service users at the heart of regulation, section 4 requires the SHR to consult representatives of these groups about how it discharges its general functions and to involve them in doing so.

23. In framing the SHR's core functions, this part of the Bill also describes the manner in which the SHR is to perform its functions. This includes the duty to do so in a manner that encourages equal opportunities. Reflecting the Scottish Government's wider policy on scrutiny reform, there is a requirement for the SHR to act proportionately, accountably and transparently and to target action where it is needed. This will ensure that the SHR is able to focus regulatory interventions on poorer quality landlords and those at risk of failing their tenants and to reduce the burden of regulation on those that demonstrate they are performing well.

24. Also with the purpose of streamlining and reducing the burden of regulation, section 18 provides for the SHR to co-operate with other regulators. This is intended to ensure that the SHR and the other named bodies work together wherever possible to reduce the impact of their

actions on social landlords, for example avoiding duplication in the collection of information by different regulatory bodies.

25. Recognising the central role that the Accounts Commission plays in the scrutiny of local authority services, section 5 requires the SHR to consult the Commission about how it discharges its functions in respect of local authority landlords. This reflects the need for the SHR to have a particular relationship with the Commission through which it can develop an effective means of safeguarding and promoting the interests of local authority tenants as part of wider developments to establish a streamlined system for scrutinising local authority functions.

26. The Scottish Ministers are given the duty of appointing members to the SHR's Board. The Scottish Government will make appointments in compliance with the guidance on public appointments and with a view to achieving a Board whose members collectively are able to give strategic direction to the new body and ensure that it delivers tenant focused regulation in a proportionate and targeted manner.

27. Among the powers given to the SHR is the ability to charge fees for any of its functions. This power is subject to requirements on the SHR to consult on any proposals to charge a fee and to receive the approval of Ministers before doing so. In effect, the provision restates the current power under which the Scottish Ministers are able to charge fees. To date Ministers have not used this power, preferring instead that all the costs of regulation should be met from public expenditure. It is the policy of the Scottish Government to continue paying for regulation in general from public expenditure. Consequently, it does not expect the SHR to have any need to charge fees. The provision has been restated in its revised form in the Bill to retain the possibility of fee charging as a funding option for the future.

28. While this part of the Bill creates the SHR as a body corporate, it is not able to determine the status of the body as a non-Ministerial Department within the Scottish Administration, as this would not be within the legislative competence of the Parliament. Subject to the Bill being enacted, the Scottish Government intends to seek an order under the Scotland Act 1998 that will have the effect of making the SHR a non-Ministerial Department within the Scottish Administration.

Alternative approaches

29. An alternative approach would have been for the new body to be a non-Departmental Public Body. That would have provided for the same degree of independence, but would have limited the ability of the SHR to continue to benefit from the economies available through sharing the services of the Scottish Government's Human Resources.

Consultation

30. Responses to the consultation on the draft Bill showed that there was extensive support for the principle of independent regulation. Concerns were expressed that the proposed provision on the SHR objective did not give sufficient weight to the needs of homeless people and that there was not a means to allow those representing tenants, homeless people and other service users to engage with the SHR. The first of these concerns has been addressed by including homeless people as a specific category within the SHR's objective (in the draft they

had been included among other service users). The second has been addressed by the provision at section 4 on SHR involving representative bodies. Concerns were also expressed about the SHR's duties in respect of equal opportunities, which have been addressed by the duty on it to discharge its functions so as to encourage equal opportunities.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

31. The equal opportunities duty on the SHR will have a positive effect on equal opportunities. The fact that the SHR will regulate the performance of local authority landlords and RSLs on a common basis will avoid differential treatment of the tenants of the two types of social landlord. A number of respondents to the consultation on the draft Bill had identified a differential approach as a potential form of discrimination that could have been to the detriment of local authority tenants. Treating both types of landlord on a common basis for the purposes of regulating their performance as social landlords is in effect building upon the current arrangements for inspecting local authority landlords. The provisions at this part of the Bill raise no issues for island communities or sustainable development.

PART 2 - REGISTERED SOCIAL LANDLORDS

Policy objectives

32. Part 2 of the Bill provides for the SHR to assume functions, broadly equivalent to those exercised at present by the Scottish Ministers under Part 3 of the Housing (Scotland) Act 2001 ("the 2001 Act"), in relation to the registration of social landlords. The policy objective is to encourage improvements in the level and quality of social housing by allowing for a wider range of bodies to be registered and regulated by the SHR. The Bill provides for this by allowing new types of bodies to become eligible to seek registration. This part of the Bill does not extend to local authority landlords, which will continue to provide housing services without the requirement to register with the SHR.

33. The 2001 Act focused on the structure and status of an RSL by stipulating that to be eligible to register as a social landlord the body must be non-profit distributing and either an industrial and provident society or a registered company. The policy is that eligibility for registration should no longer be dependent on the structure and status of the body but should be based on what the body is established to do. This follows the approach in the Charities and Trustee Investment (Scotland) Act 2005 where a body applying for charitable status must demonstrate that it has charitable purposes and it is not required to have a specific constitution.

34. Basing eligibility for registration as an RSL on the nature of the body's activities rather than its legal status also has the effect of allowing providers of social housing from other European member states to become RSLs in Scotland, in compliance with the requirements in the European Services Directive. The Directive aims to reduce barriers to businesses operating and providing services across the EU and is regarded as applying to RSLs because they do not solely provide housing for people in need. A requirement to meet registration criteria that specifies bodies with a legal status only recognised in the UK would prevent providers of social housing from other European member states from registering as RSLs in Scotland.

35. The Government's policy is that those landlords that are RSLs under the provisions of the 2001 Act (industrial and provident societies and registered companies), and that continue to comply with the requirements of registration set out in the legislative and regulatory registration criteria in terms of Part 2 of the Bill, will continue to be RSLs in terms of the Bill.

36. The provisions at section 24 give Ministers the power, through an order, to specify which types of body are eligible for registration – the legislative registration criteria. Ministers will have to consult on the order before it is laid before Parliament. Ministers will also be required to review the legislative eligibility criteria for registration from time to time and, following such a review, they may amend the criteria. This should allow greater flexibility in the governance arrangements and objects of the bodies that might be eligible for registration by the SHR.

37. Section 25 enables the SHR to set (following consultation with stakeholders) regulatory registration criteria that eligible bodies will have to meet before they can be registered. The areas that the criteria can cover are the financial situation of an organisation, arrangements for the governance and financial management of the body and the way in which they provide (or will provide) housing services. This will give the SHR, with its knowledge and understanding of RSLs' finances, business operations and governance, the power to set criteria or standards in relation to financial fitness and competence that bodies will have to meet in order to be registered. The SHR will have the power to remove a body from the register if it no longer meets (or has never met) the registration criteria, or if a body has ceased to carry out activities or ceased to exist. There are appeals to the Court of Session against a decision not to register, not to remove from the register, or to de-register an RSL.

38. The Scottish Government's policy is to encourage openness and transparency in the RSL sector. It considers that it is in the public interest for certain information about the body to be recorded by the SHR in the Register of RSLs, including details of the body's legal status, purposes and objects, and information on how to contact the body. All of this information must be held in the register and made available to the public.

39. It is also Government policy to streamline the scrutiny of public services by requiring scrutiny bodies to share information with other regulators. Section 30 provides for the SHR to notify other regulators with an interest after registering or de-registering a body, or after an appeal is brought under section 29, to inform other regulators of the outcome.

Alternative approaches

40. The Scottish Government considered two other potential approaches to the provisions on registration in the Bill.

- a) Continuing to specify on the face of the Bill the types of bodies that are eligible for registration. However, this could raise difficulties in terms of the European Services Directive if providers of social housing from other European member states were prevented from being eligible.
- b) Broadening out the eligibility for registration as a RSL to include both non-profit distributing and profit-distributing bodies. This is the approach that has been taken in England since the Housing and Regeneration Act 2008. Allowing such bodies to be

registered may have provided access to new funding for, and increased supply of, social housing. It would also have provided a safeguard for tenants of those registered profit distributing bodies by requiring those bodies to comply with regulatory criteria and to provide tenants with a Scottish Secure Tenancy. This would have been a significant change for the RSL sector, and for tenants. Both sets of stakeholders place a high value on RSLs being not for profit and the role that this allows them to play in the social economy. As a result, this proposal generated a strong reaction. Seventy-three per cent of all those who responded to the consultation on this issue disagreed with the proposal and this rose to 81 per cent of RSLs and 82 per cent of Registered Tenants' Organisations/ tenant representative bodies.

Consultation

41. The draft Bill contained provisions for Ministers to set legislative registration criteria and for the SHR to set regulatory registration criteria. Eighty per cent of respondents gave their views on Ministers being able to set legislative criteria and just over half of those broadly agreed with this approach. Almost half of those RSLs that responded felt that the eligibility criteria for RSL registration should be set out in primary legislation and a number felt that the power to set the criteria should lie with the Scottish Parliament, while others welcomed the opportunity for more innovative approaches to be taken. The purpose of the provision is to provide flexibility in the future. Prescribing criteria on the face of the Bill would restrict that flexibility. To ensure that this flexibility is subject to proper Parliamentary control, Ministers' order making powers are subject to affirmative approval by the Parliament. In view of the strong opposition to the proposal that profit distributing bodies should be eligible to register, the Bill no longer provides for this to be possible.

42. The draft Bill also contained provisions for existing RSLs to re-register within 24 months of the new register being established. Representative bodies of RSLs and a number of individual RSLs argued that the requirements for existing RSLs to re-register under new criteria should be removed. As these bodies have been registered and regulated by the Scottish Housing Regulator and its predecessor organisations for over 30 years, the Government agreed that this transitional provision is not necessary and should not be included.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

43. The equal opportunities duty on the SHR will have a positive effect on equal opportunities. The provisions in Part 2 do not affect local government because they relate only to private bodies and not to local authority landlords. The provisions at this part of the Bill raise no issues for human rights, island communities or sustainable development.

PART 3 - PERFORMANCE OF SOCIAL LANDLORDS

Policy Objectives

44. The principal policy objective of Part 3 of the Bill is to create a modernised and proportionate regime of regulation that assists and encourages landlords to improve their performance and the value that they deliver for their tenants, homeless people and other service users. The provisions in this part are intended to achieve that objective by creating a statutory

framework within which the SHR will regulate the performance by social landlords of their housing activities. They do so by introducing a Scottish Social Housing Charter and by giving the SHR functions in respect of monitoring, assessing and reporting on landlords' performance against the Charter and, if necessary, acting in response to the outcome of its assessments.

Purpose of the Scottish Social Housing Charter

45. The Charter will set a number of high level outcomes that social landlords across Scotland should be achieving, or working to achieve, in a given period. Before preparing or reviewing the Charter, the Scottish Ministers must consult tenants and social landlords (or their representatives), secured creditors of RSLs or their representatives, the Accounts Commission for Scotland, the SHR and other stakeholders about the outcomes that they wish to see included in the Charter. The object of these discussions is not to create new duties or burdens on landlords. Rather it is to understand what tenants, those in need of social housing and communities more generally value about social housing and to use that understanding to develop a set of outcomes that together will describe in general terms what landlords should be delivering. In practice, this description is likely to be a statement of what good landlords are achieving already for their tenants, those in housing need and the communities in which they operate.

46. In providing a broad description of what social landlords should be achieving, the Charter will serve a number of connected purposes. It will:

- Give tenants across the country a clear understanding of what they should expect from their landlords.
- Give those in housing need a clear understanding of what they can expect from prospective landlords.
- Give landlords clarity and certainty over what they should be achieving over the medium term.
- Give communities, other stakeholders and taxpayers an appreciation of the value that social housing should be delivering in return for public investment in it.
- Establish the modernised framework within which the new SHR will assess and report on landlords' performance, which in turn will:
 - Give landlords the information they need to identify areas where they can improve their performance.
 - Give tenants the information they need to hold their landlords to account and to drive improvements in their landlords' performance.
 - Enable the SHR to highlight strong performance among good landlords and, where necessary, provide the basis for it to require poorer landlords to improve their performance and to set targets for improved performance within the sector more generally.

The process for preparing the Charter

47. The Bill provides for the Scottish Ministers to prepare a Charter and submit it to the Scottish Parliament for approval. Before preparing a Charter, Ministers must consult

stakeholders. This process of consultation will allow stakeholders to discuss with each other, as well as with the Government, their respective ideas about what the Charter should contain. The discussions would allow stakeholders to understand each others' priorities, the balance to be struck between competing priorities and the various factors, whether practical, financial or organisational, that might constrain landlords' ability to deliver particular outcomes. An important aspect of this process would be to identify whether a particular outcome might add to the costs of landlords or Government, to understand whether such costs would be justified and if so how they might be met.

48. To inform the preparation of the first Charter, the Government envisages a four stage consultation process:

a	Stage 1 - initial stakeholder discussions	a	Autumn 2010
b	Stage 2 - discussion paper published	b	Early 2011
c	Stage 3 - 2 nd stage stakeholder discussions	c	Spring 2011
d	Stage 4 - formal consultation on a draft Charter	d	Late summer/autumn 2011
Charter effective from April 2012			

- In stage 1, the Government will convene a series of stakeholder discussion groups across the country at which those representing tenants, landlords, local authorities, the SHR and others with an interest in social housing seek to identify outcomes that might be included in the Charter. These discussions might begin by seeking to identify the principles that should underpin the Charter and against which outcomes proposed for inclusion in the Charter might be tested. The Government would draw together in a discussion paper the suggestions and proposals that emerged from these discussions.
- In stage 2, the discussion groups would be reconvened to consider and propose changes to the suggestions and proposals outlined in the discussion paper. In light of these discussions, the Government would prepare a draft Charter with suggested outcomes, which it would publish alongside a commentary explaining how the outcomes had been reached.
- In stage 3, the Government would undertake a formal public consultation on the draft Charter. The draft would include an assessment of the likely cost to Government, landlords or tenants of achieving the Charter's outcomes. The Government would revise the Charter in light of responses to the consultation.
- In stage 4, the Government would submit the revised draft Charter to the Scottish Parliament for its consideration. It would be open to the Parliament to invite final comments from stakeholders before deciding whether to approve the Charter.

49. Once approved by the Scottish Parliament, the Charter would be binding on social landlords and provide the basis for the SHR's assessment and reporting of landlords' performance until the Parliament approved a new Charter. The length of time the Charter remains in force is a factor that could be determined in the consultation process. At present, given the substantial effort that would go into the process for preparing the Charter and the

intention that the Charter should provide clarity and certainty for landlords and tenants over the medium term, the Government envisages the first Charter running for a period of four years.

Principles underpinning the Charter

50. The Government envisages that the consultations with stakeholders about the outcomes to be set in the Charter should begin by identifying a number of principles that should underpin the Charter and that should inform discussions about the outcomes that the Charter should set. Such principles might include that:

- **The Charter should be cast firmly in terms of the outcomes that landlords should be achieving.** This would reflect the fact that social landlords have primary responsibility for determining how they deliver housing services and achieve improvements in the quality of these services. The Charter should respect that responsibility by not prescribing the means or processes by which landlords should achieve the outcomes.
- **The outcomes set by the Charter must reflect the views, and balance the interests, of tenants, homeless people and other stakeholders.** The purpose of the consultation process described above is to allow a thorough debate about what social landlords should be delivering for their tenants, homeless people, other service users and the communities in which they operate. The views on priorities emerging from this should help the Government and the Parliament to strike a fair and realistic balance between the interests of different stakeholders, ensuring for example that the interests of existing tenants are not promoted at the expense of those in housing need or of future generations of tenants.
- **The outcomes set by the Charter should focus on the housing and related services that social landlords deliver.** Social landlords deliver a variety of wider services for their tenants and communities, but the Charter should focus its attention on the core services that all landlords should be delivering, leaving it to the discretion of landlords, tenants and local communities to determine what additional services it would make sense for particular landlords to provide.
- **The outcomes set by the Charter should be assessable, but not require landlords to undertake disproportionate reporting to the SHR.** If the SHR is to perform its functions of monitoring, assessing and reporting on landlords' performance against the Charter, landlords must be able to assess – and report to the SHR – whether they are delivering the outcomes set by the Charter. Consequently, the Charter's outcomes must be susceptible to assessment, but they must not place disproportionately heavy assessment and reporting burdens on landlords and should be based on self assessment by landlords.
- **The outcomes set by the Charter should provide a benchmark that reflects what good well managed landlords are delivering at present.** Outcomes should not be set at levels that exceed those being achieved by good landlords. They should describe what constitutes good delivery by a well managed landlord and thus define the minimum level of performance that all landlords should be achieving.
- **The outcomes set by the Charter should support and be consistent with landlords providing good value for money.** Outcomes should not divert landlords from their responsibility to manage their businesses efficiently, effectively and

economically in the interests of their existing and future tenants, homeless people and other service users.

- **The outcomes set by the Charter should not impose unfunded new burdens on social landlords.** One purpose of the stakeholder consultation exercise is to allow landlords to establish whether any proposed outcome would give rise to additional costs and stakeholders generally to consider whether such costs would be justified and if so how they should be met. The Scottish Ministers would not submit to Parliament a draft Charter that would impose any new costs without also identifying whether there was agreement among stakeholders as to how they should be met (for example through specific Government funding, higher rents or efficiency savings by landlords).

What the Charter might include

51. Section 32 of the Bill provides examples of the matters that might be included in a Charter. The list of examples is not intended to be prescriptive or exhaustive: a Charter need not cover all or any of the matters in the list and may cover matters not in it. The Government wants the outcomes in the Charter to be set through consultation with stakeholders and expects that the content of successive Charters will vary in light of the changing views and priorities of stakeholders. However, it recognises that informed consideration of the Bill will be helped if it can provide some illustration of the matters it envisages being covered by the Charter. This section offers illustrations of the type of matters that the Charter might cover. These illustrations reflect the findings of the Government's research into [Identifying the Priorities of Tenants of Social Landlords](#).

52. At present, the Government envisages that the Charter will provide for two types of outcomes, each being of equal importance: **national outcomes**, which all landlords would be expected to deliver, regardless of their circumstances; and **local outcomes**, which would be drawn up by landlords in consultation with their tenants and the local communities they serve. The question of which outcomes should be subject to national or local standards will be explored during the Charter consultation process.

53. The Government expects the outcomes set by the Charter to reflect how the effective performance of housing activities enable registered social landlords, in partnership with local authorities, to contribute towards the achievement of Single Outcome Agreements (SOAs). As the principles proposed above suggest, social landlords also make wider contributions towards SOAs through the various other roles that they play in their communities in collaboration and co-operation with a range of partners. While these would not be reflected in the Charter, they would remain an important part of wider role that social landlords play in their communities.

Possible national outcomes

54. Examples of the matters that might be covered by the national outcomes include:

- providing housing of a defined standard of quality;
- providing simple, fair and open access to housing in a local authority area;
- preventing and alleviating homelessness;

This document relates to the Housing (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 13 January 2010

- promoting equalities and diversity; and
- providing access to information about landlords' operations.

Possible local outcomes

55. Some outcomes and service standards are more appropriately set at local level, taking into account the particular needs and priorities of particular groups of tenants and local communities. What constitutes the local level for the purposes of such outcomes will vary from area to area and landlord to landlord. In the case of smaller landlords, it might make sense to have one set of local outcomes for all of its stock. In the case of larger landlords, it might make more sense to have different outcomes for different areas. A number of practical considerations will influence how each landlord approaches this question.

56. Subject to stakeholders' views on a suitable definition of locality, the Charter's local outcomes could cover matters such as:

- achieving effective tenant participation and involvement in decision making;
- providing a repairs and maintenance service that reflects tenants' priorities;
- providing housing and estate management that reflect tenants' priorities;
- where appropriate, providing factoring and other services that are responsive to the needs of owners and other residents; and
- where appropriate, providing services that are responsive to the accommodation needs of Gypsies/Travellers.

Specifying the detail of particular outcomes

57. The detail or specificity contained in each outcome, whether local or national, is likely to vary from outcome to outcome. Part of the purpose of the stakeholder consultation exercise is to establish a level of detail that describes effectively what a landlord should be delivering under each outcome. It will be important that each outcome is expressed in sufficient detail to give tenants and landlords clarity over what is to be delivered, without this being so detailed that it constrains landlords' discretion in deciding how to deliver the outcomes, or makes it impossible for the SHR to assess and report annually on achievement of the outcomes.

Pitching the level of outcomes

58. Subject to the views expressed in the consultation, and in line with the principles described above, the Government believes that the outcomes should seek to describe minimum levels of outcome that any well managed landlord should be able to meet, as opposed to more challenging or stretching levels which landlords would have to work towards meeting. Under such an approach, the Charter would set the minimum levels to be achieved under each outcome and the SHR, in light of its assessment and reporting of performance against the Charter would identify the scope for improvement within the sector. The SHR's role under this approach is discussed further in the following section.

Assessment of performance by the SHR

59. The Bill provides for the SHR to monitor landlords' performance against the Charter. Section 3(1)(b)(i) of the Bill provides for the SHR to monitor, assess and report on landlords' performance of housing activities. Section 38(1)(a) provides for the assessment to include the level and quality of housing services with particular regard to the level of rents charged; and section 38(1)(b) provides for the assessment to include an assessment of performance against the Charter. Section 39(1)(a)(i) provides for the SHR to publish, at least annually, reports of its assessments of landlords' performance in achieving the outcomes that the Charter sets.

60. These provisions, when taken with those on the Charter and the SHR's duties to act proportionately and only where action is required, create a framework within which the SHR can deliver streamlined regulation of social landlords' performance. Over time, they will enable SHR to ensure that landlords are delivering improved value for their tenants.

61. Section 35 provides for the SHR, having first consulted stakeholders, to issue guidance on how it will assess landlords' performance against the Charter. An important aspect of the consultation exercise will be identifying the information that the SHR needs to collect from landlords. This in turn will depend on what is included in the Charter. If, as the Government envisages, the Charter's contents are in effect a description of what good landlords are doing at present, most of the information that the SHR needs will be information that good, well managed landlords collect as part of their own self assessment, performance monitoring and improvement procedures. In such circumstances, providing this information to the SHR should not be unduly burdensome for landlords. As many of the outcomes are likely to relate to tenants' experience of, or satisfaction with, landlords' services, the Government expects that an important aspect of information collection will be through each landlord capturing a clear and consistent understanding of their tenants' experience and reporting that to the SHR.

62. Basing the SHR's regulation of landlords' performance on the Charter provides an opportunity to streamline the collection of information from landlords. The Bill gives the SHR the ability to collect the information it requires to perform its functions, including its duties to regulate landlords' performance against the Charter. This will enable the SHR to collect information about local authority housing currently collected by other parts of the Scottish Government and enable the Government to review its role in this respect. The creation of the Charter will also be an opportunity for the SHR to review and assess its information requirements to ensure that they are geared to the requirements of assessing performance against the Charter. (The SHR will continue to collect information from RSLs necessary for it to discharge its separate functions in relation to safeguarding the finances and governance of RSLs.)

63. On the basis of information supplied by landlords, the SHR will be able to assess and report on landlords' performance and the comparative value that landlords are delivering. By value the Government means the quality of service that a landlord is providing when weighed against the rents and other charges they are levying for that service. Over time, the SHR will develop views on such value in light of its successive assessments of performance and its knowledge of what landlords are charging. It will publish these views as part of its regular reports on performance.

64. Publishing such reports in a manner that is accessible and useful to tenants and landlords will be a key role of the SHR. It will enable landlords and tenants to compare their organisation's value, performance and costs with that of other landlords and to highlight areas of particular strength and good practice, areas where service improvement is required, or areas where costs are unintentionally and unnecessarily high.

65. The Government wants to see landlords use this information to drive self improvement in individual cases and across the sector as whole. Where landlords can demonstrate that they are using the information to achieve improvements in performance, the SHR will be able to adopt a light touch in its regulation of their performance and to focus its intervention activities on areas where landlords are at greatest risk of failing their tenants and where there is the greatest scope to improve performance.

66. This approach recognises that landlords have principal responsibility for managing their activities to secure continuous improvement. It is reflected in the range of the SHR's functions and the duties on it, at section 3(2), to perform these functions proportionately, accountably and transparently, targeted only where action is needed and in line with best regulatory practice. These duties govern how the SHR will operate. Thus, where a landlord appears to the SHR to be failing, or to be at risk of failing to comply with the Charter, section 52 provides for the SHR to require that landlord to produce a performance improvement plan setting out how and by when it will rectify any failure.

67. Section 34 provides for the SHR to require landlords, whether collectively, individually or in groups, to meet improvement targets that it has set. The Government also envisages the SHR using this power where the evidence of its assessments identifies areas where some landlords' performance against the Charter, whilst not judged to be failing (or at risk of failing), nevertheless falls below that of the best performing landlords. In such circumstances, the Government believes that the interests of tenants would justify the SHR setting a target for the poorer landlords to improve their performance over time. The SHR would also be able to use this target setting power to require landlords as a whole to improve some aspects of their performance where, for example through benchmarking against other landlords in the UK, it believed there was scope for improvement generally.

68. The Government and stakeholders will be able to draw on the SHR's reports in reviewing whether the outcomes set in the first version had proved to be effective in identifying the most important areas of landlord activity and in coming to a view on whether any of them would need to be revised or replaced in the second version of the Charter.

Code of conduct

69. Governance describes the arrangements for the leadership, direction and control of an RSL. Strong governance in an organisation will allow it to deal effectively in an open and accountable way with any problems, while poor governance can lead to problems in service delivery and financial management. It is for this reason that the Scottish Government considers that it is important that the Bill places requirements on social landlords which will help to support good governance.

70. Part 1 of schedule 7 to the 2001 Act sets out certain legal restrictions that apply only to RSLs on payments and benefits to governing body members and employees. The rules seek to

prevent governing body and staff members benefiting from their positions. The SHR can moderate the restrictions by setting classes of exemptions.

71. In 2006 the SHR consulted on proposals to consider the repeal of Part 1 of schedule 7 and to replace it with an ethical code of conduct. The Scottish Housing Regulator pointed out that the legal restrictions in schedule 7 had been in place in earlier forms of law for over 20 years. It also noted that those restrictions were at odds with a proportionate and risk-based regulatory framework and did not always promote a culture of self-reliant, self-reflective, high ethical standards. There was some support from the sector for abolishing the restrictions.

72. The Scottish Government recognises the importance of ensuring that the law continues to protect the good name of the RSL sector but recognises that the detailed requirements in the existing legislation are out of step with the modernised regulatory framework. Section 36 of the Bill requires the SHR to issue a principles-based, ethical code of conduct following consultation with the sector. RSLs will be required to comply with the code of conduct and the SHR would be able to use its intervention and enforcement powers to take action against an RSL that breaches this code.

Alternative approach

73. The Scottish Government considers that it is important, in the interests of consistency, to have some form of common approach to setting standards in social housing. It considered two alternative approaches to setting standards through the Charter. One option was to set standards through regulation making powers. The Scottish Government rejected that on the grounds that it would be too prescriptive and inflexible given the range and diversity of landlords operating in the sector. The other option was to follow the approach taken for the regulation of social housing in England where the regulator sets standards and monitors landlords' delivery of those standards. Giving the SHR the function of setting standards would not have met the Government's objective of separating standard setting from monitoring and it would have been a less democratically accountable process than the one provided for in the Bill.

74. The Scottish Government considered retaining the approach in schedule 7 to the 2001 Act, but ruled it out on the grounds that it was excessively prescriptive.

Consultation

75. Stakeholders' views on the proposed Charter were mixed. Tenant groups in particular welcomed the prospect of there being a clear description of what all landlords should be delivering for their tenants. Landlords and their representatives were more ambivalent, expressing concern that the proposal outlined in the consultation lacked detail that risked becoming an excessively prescriptive or burdensome development. The lengthy description of the Scottish Government's plans for the Charter set out at paragraphs 45 to 58 is intended to address these concerns.

76. The Scottish Government asked for stakeholders' views on its proposals to abolish the requirements in Part 1 of schedule 7 on payments and benefits and replace them with a code of conduct as set out above. Fifty-five per cent of all respondents broadly supported the proposal and 64 per cent of RSLs that responded were in favour. Those who welcomed the proposal

noted that the schedule 7 requirements are “*outdated and cumbersome*” and are “*a bar to voluntarism, discriminatory and uncompetitive in a local market*”. Some RSLs who supported the proposal suggested that more detail is required and their support was conditional on further consultation.

77. The Scottish Government recognises that there are mixed, and sometimes opposing, views in the sector about how effective and how burdensome schedule 7 is. Having considered the responses to the consultation the Government considers that it is appropriate to take forward its proposal to replace schedule 7 with a code of conduct. The Bill requires the SHR to consult stakeholders on the standards of financial management and governance for RSLs.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

78. The provisions on the Charter, in particular the scope to identify through consultation the outcomes that social landlords should be achieving, have the potential to promote equal opportunities, human rights, the particular interests of island communities and sustainable development. The Charter will apply to local authority landlords. They will be able to influence the outcomes that are decided in the Charter through the consultation exercise. The Scottish Government is clear that the Charter should not impose new burdens or requirements on local authority landlords and that it should capture what it is that good landlords will already be achieving for their tenants. The local outcomes that the Charter will set can be aligned to local authority single outcome agreements.

79. The provisions on the code of conduct raise no issues for equal opportunities, human rights, island communities and sustainable development. They do not affect local government because the provisions relate only to private bodies and not to local authority landlords.

PART 4 – INQUIRIES AND INFORMATION

Policy objectives

80. The Scottish Government’s policy is for a modernised regime of regulation that is risk-based, proportionate and targeted at poorer performing landlords. The Scottish Government recognises that it is for social landlords to deliver good services to tenants but wants to ensure that the SHR has the right set of regulatory tools, along with the flexibility to use those tools, so that it can tackle problems effectively.

81. The shift to assessment by the SHR on the basis of annual reporting and self-assessment by landlords is central to creating a regulatory regime that minimises the burden on good landlords and concentrates efforts on improving performance.

82. The Bill repeals Ministers’ powers under the 2001 Act to inspect RSLs and local authority housing and homelessness services and replaces these with the powers to carry out inquiries about social landlords. The Scottish Government’s view is that the new powers will allow the SHR to shape the scale and scope of the inquiry so that it can target areas of concern.

83. The policy intention is that the SHR should use these powers to carry out a range of inquiries of different scale, depending on its assessment of risk or its need to capture information about practice across the sector. These inquiries would range from lower-level requests for specific information, through validation of self-assessment performance information, to higher-level inquiries such as targeted investigations into a service delivery area, analysis of a business plan, or a wider inquiry into the organisation's activities. The Bill also provides for the SHR to make inquiries about a body that is connected to a social landlord. This is to allow the SHR to ensure that the activities of a subsidiary or body connected with the social landlord would not undermine the ability of the social landlord to continue to provide good services to its tenants and future tenants.

84. The types of inquiry might include:

- planned inquiries;
- unannounced inquiries to check aspects of an individual landlord's performance and management;
- inquiries into the governance and financial management of RSLs; and
- thematic studies and inquiries into performance by a number of landlords against a particular outcome in the Charter or across a specific geographic area.

85. Section 42 introduces a new power for the SHR to survey, or to instruct a survey of the physical condition of housing stock. The policy intention is that this will allow the SHR to validate self-assessment information on the quality of their stock or the level of investment that is provided by landlords.

86. Sections 46 and 47 give the SHR the power to request information from a landlord to:

- enable it to assess the landlord's performance;
- meet the SHR's objective of safeguarding and promoting tenants' interests; or
- ensure the good governance and financial viability of the RSL sector.

87. This would include requests for self-assessment of performance to enable the SHR to assess landlords' performance against the Scottish Social Housing Charter. The SHR would also be able to require an RSL to provide information on its financial management, its governance, and the relationship between it and its parent or subsidiary bodies.

88. To ensure that the SHR's exercise of these powers is transparent and proportionate, section 48 of the Bill requires the SHR to consult on, and then publish guidance about, how it would use its powers of inquiry.

89. The Bill repeals the powers in Part 4 of schedule 7 to the 2001 Act that allow Ministers to appoint a person to conduct a statutory inquiry into an RSL's affairs. It is the Scottish Government's view that this very broad-ranging power would not sit well alongside the modernised powers of inquiry in sections 40 to 44. Section 40(3)(b) will allow the SHR to take

more targeted and proportionate action to tackle an RSL's financial viability and governance issues. These are discussed in more detail at paragraphs 104-107 below.

90. The provisions in the Bill which make it an offence to fail to co-operate with the SHR in an inquiry or in response to a request for information are the same as those that are in the 2001 Act. The existing legislation provides for an offence in relation to a failure to co-operate in an inspection and a failure to provide information and the same offences are applied in the Bill.

Alternative approaches

91. The Scottish Government considered retaining inspection as the regulatory tool for driving performance improvement across the sector. This does not fit with the wider policy shift to streamline the scrutiny of public services by reducing the burden of inspection so that regulated bodies can focus resources on service delivery. The new powers for the SHR to conduct inquiries and collect information are intended to replace the current inspection powers with a more flexible and proportionate set of powers. These will allow the SHR to target its action where it is needed and reduce the burden of regulation on landlords that can demonstrate good performance.

Consultation

92. Responses to the consultation showed that there is broad agreement from stakeholders to the provisions on inquiries and information. Some landlords were concerned about the proposals to report publicly on performance and about the information that they will be expected to provide to the SHR on progress against the outcomes in the Scottish Social Housing Charter. There was some concern about the use of the term "inquiry" in the Bill as this suggested a quasi-legal investigation; whereas the intention is that an inquiry can be more or less formal as the circumstances demand.

93. Registered tenants' organisations and individual tenants suggested that the Bill should provide a means for tenants to bring concerns about their landlord's performance to the attention of the SHR. The Scottish Government agrees that this is important and section 45 of the Bill requires the SHR to make arrangements to help tenants to provide it with information on significant performance failures by social landlords. It does not intend that the SHR will have a complaints handling function for dealing with individual grievances. That is the remit of the Scottish Public Services Ombudsman. To ensure transparency about how and when the SHR will respond to tenants it must publish a statement setting out what it considers to be a significant performance failure, how it will deal with information provided and how it will respond to tenants.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

94. The proposals raise no issues for equal opportunities, human rights, island communities and sustainable development. They provide for equitable regulation and protection of tenants of all social landlords including those who are tenants of local authorities. They shift the focus of scrutiny of local authority landlords and homelessness services from inspection to self-assessment and targeted inquiry.

PART 5 – REGULATORY INTERVENTION

Policy objectives

95. Part 5 gives the SHR a broader range of enforcement and intervention powers to enable it to protect and promote the interests of tenants, future tenants, homeless people and other service users.

96. Sections 49 to 64 incorporate the intervention powers in the 2001 Act and supplement them with powers that would enable the SHR to take enforcement action requiring a landlord to:

- comply with the Scottish Social Housing Charter;
- meet a performance improvement target; or
- implement a performance improvement plan.

97. The new powers introduced by this Bill are power:

- to serve an enforcement notice; and
- to require a social landlord to submit a performance improvement plan.

98. Ministers' intervention powers in the 2001 Act that are transferred to the SHR are:

- appointment of a manager for housing activities (and for RSLs for financial or other affairs);
- appointment and removal of officers to RSLs; and
- transfer of assets of RSLs following inquiries.

99. The Scottish Government wishes to ensure that the SHR can respond to risk effectively and can operate in a targeted and proportionate way, so the Bill does not specify a sequence or escalation of enforcement powers. Instead, the SHR will have discretion to decide how it will use its powers of intervention in light of the circumstances of any particular case. It is important that this is done openly and transparently. Therefore, the SHR will be required to consult on, and then publish guidance on, its criteria for deciding how to use its intervention powers.

100. One consequence of this new approach is that in the case of local authorities, the SHR will no longer have to carry out an inspection before taking enforcement action as is required under the 2001 Act. This puts local authority landlords on the same footing as RSLs.

101. The power at section 52 to require a social landlord to submit a performance improvement plan would replace the existing power to require a local authority to produce a remedial plan.

102. The provisions that allow the SHR to require a social landlord to submit a performance improvement plan will apply in a number of circumstances. These are:

- where a landlord is failing, or at risk of failing, to meet an outcome in the Scottish Social Housing Charter or a performance improvement target;
- where there has been misconduct or mismanagement of an RSL's financial or other affairs; or
- any other conduct by a social landlord justifies the SHR requiring a plan to be submitted and implemented.

103. The Scottish Government's policy is to ensure that the SHR is able to take steps to secure improvements in services provided by social landlords and in the financial management and governance of RSLs where the SHR considers these are necessary. It is for the social landlord to determine how they will deliver the improvements that are needed and to publish their performance improvement plan once it has been approved by the SHR. By making it publicly available, tenants and others with an interest in the landlord's performance will be able to see what steps are being taken and the timescale for delivery of the plan.

Securing the financial viability and good governance of RSLs

104. The financial viability and good governance of RSLs are of critical importance to RSL tenants. Any weakness in these matters undermines the sustainability of the business, the confidence of its lenders and ultimately its ability to continue delivering services for its tenants. So it is essential that the new SHR has the same specific powers as the present agency to address any risks to RSL finances or governance. The Bill provides for the SHR to monitor, assess and report on the financial viability and governance of RSLs and to satisfy itself that each RSL has the financial strength to continue the delivery of its social landlord services to current and future tenants.

105. Where the SHR identified a risk to an RSL's financial strength, or problems with governance that might create such a risk, it would be able to intervene in various ways. The existing provisions in the 2001 Act would be repealed and replaced by a modernised set of powers that would enable the SHR to take proportionate and targeted action to protect tenants' interests and safeguard an RSL's social housing assets for future use. Central to these would be the power to carry out an inquiry into an RSL's financial or other affairs. As noted above, this falls within the section 40(3)(b) powers to make inquiries about social landlords.

106. Once it had conducted an inquiry under section 40(3)(b) the SHR would have discretion to take the following action:

- Section 54 - where it had established that there had been misconduct or mismanagement, it would be able to appoint, or require the RSL to appoint, a manager for financial or other affairs to the RSL.
- Section 58 - suspend an officer of an RSL (a committee member in relation to an industrial and provident society or a director in relation to a company limited by guarantee, or any other person concerned in the management or control in relation to a RSL of any other status).

- Section 59 - remove an officer where it considered that there has been misconduct or mismanagement of the RSL's financial or other affairs.
- Section 62 - appoint a new officer, or an additional officer, to ensure the proper management of the RSL's financial or other affairs.
- Section 64 - transfer the RSL's land and assets to another RSL.

107. It should be noted that the term officer that is used in sections 57 to 60 refers to a committee member of an industrial and provident society or a director of a company limited by guarantee or any other person concerned in the management or control of an RSL of any other status. It is not the Government's policy that the SHR should have a role in appointing or removing staff of an RSL and nothing in the Bill has the effect of giving the SHR any power to do so.

Alternative approach

108. The Scottish Government considered whether or not the SHR should have a wider range of intervention powers including the power to fine landlords. It decided against this approach following discussions with representative bodies of tenants and social landlords, who tended to believe that fining a landlord for poor performance would penalise their tenants who would meet the cost of those fines through increased rents.

Consultation

109. Responses to the proposals in the consultation highlighted concerns about how the powers would be used and the circumstances that will trigger each type of action. Some respondents felt that the intervention powers placed too much emphasis on the intervention and policing aspects of regulation. A number of RSL respondents argued for checks and balances to ensure that the SHR uses its powers in a proportionate and risk-based way. In contrast, tenant bodies that responded to the Bill argued that the SHR should have greater, not lesser powers.

110. The Scottish Government recognises that it is important to ensure that there is transparency about how these powers will be used by the SHR. The provisions at section 3 in terms of how the SHR is to discharge its functions will ensure that it exercises these powers transparently; and section 51 places a duty on the SHR to consult on and issue a code of practice setting out how it will exercise its regulatory intervention powers.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

111. The proposals raise no issues for equal opportunities, human rights, island communities and sustainable development. The regulatory intervention provisions at sections 49 to 54 apply to both RSLs and local authorities. The SHR is under a duty at section 5 to consult with the Accounts Commission on how it will exercise its regulatory powers in respect of local authorities. It is also under a duty at section 18 to co-operate with the Accounts Commission.

PART 6 – REGISTERED SOCIAL LANDLORDS: ACCOUNTS AND AUDIT

Policy objectives

112. Part 6 of the Bill covers the accounting and audit requirements for RSLs. The provisions of the 2001 Act would be repealed and the Bill provides for the SHR to have the power to set accounting requirements. RSLs would have to comply with these requirements and their auditors' reports would have to state whether or not they did comply.

Alternative approach

113. The Scottish Government considered following the existing legislation with Ministers' retaining the order making power to set accounting requirements. It concluded that this would compromise the policy of ensuring that the regulation of social landlords is independent of Ministers.

Consultation

114. Members of the Expert Working Group³ that the Scottish Government established to consider and advise it on technical aspects of the regulation of RSLs recommended that the Bill should place a duty on auditors and accountants to bring information that is likely to be materially significant to the SHR's objectives and functions to the attention of the SHR. The Scottish Government has adopted this approach in the Bill recognising that the provision will help to allay fears amongst landlords and tenants that certain important information may not otherwise be made known to the SHR.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

115. The proposals raise no issues for equal opportunities, human rights, island communities and sustainable development. They do not affect local government because the provisions relate only to private bodies and not to local authority landlords.

PART 7 – REGISTERED SOCIAL LANDLORDS: INSOLVENCY ETC.

Policy objectives

116. Schedule 8 to the 2001 Act deals with the insolvency of RSLs. Its provisions are imported into the Bill by the provisions at Part 7, which would give the SHR the power to develop proposals to rescue an insolvent RSL.

117. Following the collapse of Ujima, a social landlord in England registered by the Housing Corporation, the Scottish Government reviewed the powers and duties in schedule 8. These are similar to the powers available to the Housing Corporation under the comparable English legislation when dealing with Ujima. The Scottish Government believes that it is essential in the

³ The Scottish Government invited representatives from RSLs, the Scottish Federation of Housing Associations, Council of Mortgage Lenders, the Chartered Institute of Housing and the SHR to participate in the group. The RSLs were – Easthall Park Housing Co-op, Dunedin Canmore Housing Association, New Gorbals Housing Association, Dumfries and Galloway Housing Partnership and Parkhead Housing Association.

current financial climate to ensure that the powers in the Bill would allow the SHR to deal promptly and effectively with the risk of insolvency among RSLs so that it can safeguard tenants' interests.

118. The Expert Working Group on technical matters included the insolvency provisions among the subjects that it considered. In finalising the provisions in the Bill, the Scottish Government has taken on board the views of that group, as well as the views expressed through the consultation on the draft Bill.

119. The provisions in schedule 8 to the 2001 Act are transferred into Part 7 of the Bill with a number of changes. These changes are:

- the SHR's powers to deal with insolvency can be triggered earlier in the winding-up process (the SHR would be able to take action either when the RSL's governing body takes the decision to present, or another party presents, a winding-up petition. At present the powers are triggered when the Court grants a winding-up order);
- streamlining the requirements to trigger a moratorium on the winding up of an RSL;
- only those creditors who can be identified, rather than all creditors, need to agree to the SHR's proposals for rescuing a failing RSL; and
- providing for the appointment of an interim manager to manage an RSL's affairs during a moratorium.

120. The table at section 70 sets out the circumstances in which a person taking a step towards initiating the insolvency of an RSL must notify the SHR. The power to determine what is meant by a "step" is transferred from Scottish Ministers to the SHR.

121. A moratorium begins on a step being taken under section 70(1). If no prior notice is given then the step has no effect (section 71(1)) and the 56 day period of the moratorium does not start.

122. The order making power for Ministers at section 24(4) would enable them to establish arrangements for the SHR to deal with the possible insolvency of different types of bodies. This power would be used in the event of Ministers exercising their powers under section 24 to permit other types of (non-profit distributing) bodies to become eligible for registration as RSLs.

123. The overall purpose of the insolvency process is to allow the SHR to put a rescue package in place to protect tenants' interests and to secure and safeguard the social housing assets for the future. This process is important, but where the SHR knows that an RSL is facing insolvency it should be able to act in the tenants' interests without going through a cumbersome and complex process. The Scottish Government considers in such circumstances that the SHR should have the power to direct a transfer of assets and engagements to an RSL willing to receive them without using the complex inquiry process set out in schedule 8 to the 2001 Act.

Alternative approach

124. The Scottish Government considered transferring the powers vested in Ministers as they stand in the 2001 Act into the Bill. However, in light of the current financial crisis and of the problems that led to the collapse of Ujima it considered that continuing this approach would not provide adequate means of safeguarding tenants' interests or of safeguarding social housing assets.

Consultation

125. In its detailed discussions on insolvency, the Expert Working Group wished to ensure that the provisions in the Bill will allow the SHR to take quick and effective action to prevent an RSL becoming insolvent. And, in the event that an RSL is insolvent, the SHR will be able to take forward proposals to safeguard services to tenants and to safeguard social housing assets.

Effects on equal opportunities, human rights, island communities, local government, sustainable development, etc.

126. The proposals raise no issues for equal opportunities, human rights, island communities and sustainable development. They do not affect local government because the provisions relate only to private bodies and not to local authority landlords.

PART 8 – REGISTERED SOCIAL LANDLORDS: ORGANISATIONAL CHANGE ETC.

Policy objectives

127. Part 8 of the Bill makes provision in relation to organisational change (such as restructuring, winding up or dissolution) by RSLs. It replicates the provisions in Part 2 of schedule 7 to the 2001 Act, transferring Ministers' powers to consent to organisational change to the SHR. The Scottish Government considers that the SHR's role in overseeing these changes is important to its function of safeguarding and promoting the interests of tenants, particularly as organisational changes can have an impact on how well the organisation is governed.

128. The order making power for Ministers at section 24(4) would allow them to make further provision for additional types of bodies in respect of organisational change. This power would be used in the event that bodies other than registered companies and industrial and provident society RSLs meet the legislative criteria set by Ministers by order under section 24 and become RSLs.

Alternative approach

129. In its consultation paper, the Scottish Government proposed that the Bill could be used to streamline the approach to consents for organisational change. The paper sought views on proposals that only three types of rule change would require regulatory consent. These were changes that:

- altered the objects of the RSL;
- concern the distribution of assets to an RSL's members; or

- enable the society or company to become, or cease to be a subsidiary or associate of, another body.

Consultation

130. The consultation paper outlined the proposed changes in very broad terms. 68 per cent (218) of respondents answered the question on streamlining consents. Of the 218 respondents, 62 per cent (135) supported the proposed change. A clear majority of local authorities and RSLs were in favour. However, a number of RSLs highlighted potential risks. They expressed concern that a streamlined approach could allow a small number of members of an RSL to vote through a rule change that was not in the best interests of the RSL. The Expert Working Group shared this concern that the proposed restrictions could inhibit the SHR's ability to screen proposals that may undermine the good governance of the RSL. They also noted that the current requirements are not onerous.

131. Having considered the responses to the consultation, the Scottish Government's view is that the regulatory requirements for organisational change that are in the 2001 Act should be followed in the Bill.

Effects on equal opportunities, human rights, island communities, local government, sustainable development, etc.

132. The proposals in Part 8 do not raise any issues for equal opportunities, human rights, island communities and sustainable development. They do not affect local government because the provisions relate only to private bodies and not to local authority landlords.

PART 9 – DISPOSAL OF LAND OR ASSETS BY REGISTERED SOCIAL LANDLORDS

Policy objectives

133. Part 9 of the Bill deals with the disposal of land or assets by Registered Social Landlords. This replicates the provisions in sections 66 to 68 of and schedule 9 to the 2001 Act. Ministers' powers to grant consent to disposals of land by RSLs are transferred to the SHR. Section 103 provides that RSLs may dispose of both land and any other asset by granting security over it, subject to consent by the SHR for disposal where that consent is needed. The Government considers that RSLs should have to seek the SHR's consent for the disposal of both land and assets by granting a standard security over them so that the SHR can safeguard the financial viability of the organisation.

134. Sections 110 to 115 replicate the provisions at section 68 of and schedule 9 to the 2001 Act which require social landlords to ballot their tenants on disposals that would result in a change of landlord. The Bill provides for Ministers' powers to grant consent for an RSL to dispose of houses in this way to be transferred to the SHR. However, Ministers retain their powers to grant consent in respect of disposals by local authority landlords in terms of the existing equivalent provisions in the 2001 Act. Sections 110 to 115 make it clear when an RSL does not need to ballot its tenants because the transfer of houses is considered to be a transfer of engagements under the Industrial and Provident Societies Act 1965.

Alternative approach

135. No alternative approach was identified.

Consultation

136. The Scottish Government discussed its proposals in depth with the Expert Working Group and considered the existing requirements in the 2001 Act in relation to rule changes. They concluded that these requirements are not overly burdensome and recommended that a similar approach be adopted in the Bill. The Government considered both the Group's recommendations and the responses from stakeholders to the consultation and concluded that the Bill should require RSLs to seek regulatory consent for disposal of land and assets.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

137. The proposals raise no issues for equal opportunities, human rights, island communities and sustainable development. They do not affect local government because the provisions relate only to private bodies and not to local authority landlords.

PART 10 – CHANGE OF LANDLORD: SECURE TENANTS

Policy objectives

138. Part 10 of the Bill replicates the “Tenant’s Choice” provisions at sections 56 to 64 of the Housing (Scotland) Act 1988 (which allow a person to seek Ministerial approval to purchase a house belonging to a public sector landlord which is let under a Scottish secure tenancy).

139. Ministers’ powers to grant approved status to a person to enable that person to acquire a house from a local authority landlord, to specify the form of the application the person must submit to acquire a house and to consent to subsequent disposals of a house, are all transferred to the SHR.

140. Ministers’ powers to designate a rural area (which has the effect of making houses in that area exempt from the change of landlord provisions) are repealed. The Scottish Government’s view is that this exemption was required in order to retain houses in the public sector so that local authorities would be able to discharge their duty to provide accommodation under the homelessness legislation. Before 2001, RSLs were not required to help local authorities discharge these functions. Section 5 of the 2001 Act requires RSLs to provide accommodation for homeless people. Therefore the change of landlord provisions would not lead to a reduction in the houses available to let.

141. The criteria which exempt houses that are provided for people with special needs or disabilities remain. Houses that are owned by island local authorities for the purposes of their functions as an education authority and which are required for the accommodation of those persons who are or will be employed by the councils, also remain exempt.

142. The provisions in the Bill will only relate to local authority landlords and not to “public sector landlords” defined in the 1988 Act. This is because bodies that were public sector landlords named in the 1988 Act (Scottish Special Housing Association, the Housing Corporation, Scottish Homes, and New Town Development Corporations) have been wound up.

Alternative approach

143. The Scottish Government considered leaving the provisions in the existing legislation and leaving the powers to grant approved status with Ministers. However, it felt that this would have created a two-tiered approach requiring approval from Ministers to acquire houses and the approval of the SHR to grant consent for security on existing assets in order to acquire the houses. The Government concluded that it would be more straightforward to transfer these powers to the SHR so that they can consider the application in terms of its objective of safeguarding and promoting the interests of tenants and the financial management of RSLs.

Consultation

144. The Scottish Government stated its intention in its consultation paper to bring all the provisions on regulation of social landlords into one Bill. In practice, the provisions in the 1988 Act have not been used by a landlord in Scotland for a number of years so the Government did not consult specifically on the amendments to the Tenants’ Choice provisions.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

145. The proposals do not raise issues for equal opportunities, human rights or sustainable development. The provisions relating to island communities remain as they are in the 1988 Act. The provisions do affect local authorities because they specify that an approved landlord can purchase a tenanted house from a local authority landlord using these provisions. However, the provisions replicate existing provisions in the 1988 Act except for removing the exemption criteria of a designated rural area.

PART 11 - REFORMING THE RIGHT TO BUY

Policy objectives

Background

146. A tenant holding a Scottish secure tenancy (SST) from a social landlord will generally have some form of Right to Buy (RTB) entitlement. This gives them the entitlement to purchase the property they are renting at a discount. The level of discount varies and primarily is dependant upon the length of time they have rented property from a social landlord and the type of RTB entitlement they have. There are two forms of RTB entitlement commonly known as: preserved (included with tenancies starting before 30 September 2002); and modernised (included with tenancies starting on or after 30 September 2002). Preserved RTB entitlements typically have more generous discounts than those under modernised RTB terms.

147. RTB entitlements may be subject to a range of exemptions and limitations. For instance, many RSL tenants have had their rights suspended until 2012. In addition, 14 pressured areas

have been designated across 12 local authority areas resulting in the suspension of modernised RTB entitlements for five years in those areas (but preserved terms sales still take place).

148. A small proportion of tenants have no RTB entitlement. This is usually a result of the characteristics of their tenancy agreement (RTB is only conveyed by an SST) or their social landlord (housing let by charitable landlords or those with fewer than 100 houses is exempt from RTB) or the nature of the property they are renting (for example, housing that is part of a group housing scheme is exempt from RTB).

Reforms to the Right to Buy

149. The Scottish Government recognises that RTB has brought certain advantages. It has extended the benefits of home ownership to many families and has helped to create communities that are more mixed. However, since its introduction RTB has resulted in the sale of about half a million properties. The case for reforming RTB rests on the fact that it has resulted in more properties being lost from social rented stock than have been built in recent times and the view that this ongoing depletion of social housing stock is unsustainable in the face of continued high levels of need for this form of housing in Scotland.

150. The Scottish Government is committed to making no changes to the RTB entitlements of existing tenants. In general this will mean that:

- existing tenants who remain in their current tenancies would continue to have their existing RTB entitlement over that property - either on preserved or modernised terms;
- existing tenants who transfer voluntarily to a new tenancy would continue to receive modernised RTB entitlements over that property; and
- existing tenants who are required to move by their landlord or who agree to move at the landlord's request (for example, if their current property is to be demolished) would keep their existing RTB entitlement over the property to which they transfer.

151. Through these reforms the Scottish Government aims to strike a better and fairer balance between tenants who wish to own their own home and the needs of prospective tenants for social rented accommodation. The Bill includes the following three RTB reforms, which are listed below and then discussed in turn:

- ending the RTB for new supply social housing;
- ending the RTB for new tenants entering the social rented sector; and
- reforming pressured-area designations.

Ending the RTB for new supply social housing

152. Through the first of these reforms the Government aims to ensure that new supply social housing should never be available for sale under RTB and therefore should always remain available for renting as social housing. This should apply to properties first let under an SST on or after the date on which the relevant Bill provisions ending the RTB for new supply social housing come into force (the relevant day), if the house was not let on or before 25 June 2008

(the date of the Parliamentary announcement that the Scottish Government intended to legislate to end RTB on new social housing). This would include newly built houses and also newly acquired houses being rented as social housing for the first time. This would mean that in general people becoming tenants in such housing after the relevant day would not be entitled to RTB for such housing. A tenant of a new supply social house would only be entitled to buy it if:

- Under defined circumstances (for example, if their current house is to be demolished) their landlord requires them to move to a new supply social house or the tenant agrees to move to a new supply social house at the landlord's request.
- Their landlord did not inform them within the set timescale that they would not have RTB over the new supply house they have been offered for rental.

153. The Bill will also, in some circumstances, safeguard social housing first let on an SST after 25 June 2008 but before the relevant day. This would mean that people who took up tenancies in new supply social housing after 25 June 2008, but before the relevant day, will keep their RTB entitlement over those properties. This is consistent with the Government's manifesto commitment to protect existing RTB entitlements. However, if they move without exercising their RTB and the house is let again after the relevant day, the new tenant will have no RTB entitlement over that property. So, after the relevant day, people who become tenants of housing that was first let under an SST after 25 June 2008 will have no RTB over those properties.

154. Also, where a tenant who was entitled to RTB moves first to new supply social housing (over which they would not have any RTB entitlements) and later moves to a second property that is not new supply social housing, they would generally still have the RTB over the second property. They would also be able to count their period in occupation of the new housing towards the minimum qualifying period and for discount entitlement purposes.

Ending the RTB for new tenants entering the social rented sector

155. This reform means that in general those becoming tenants for the first time, and those returning to social housing after a voluntary break, would not be entitled to RTB in relation to the property they move into or any subsequent property they let from a social landlord (new supply or otherwise). A new tenant to social housing is defined as:

- a person whose SST came into force on or after the date on which this provision comes into force and who did not hold an SST immediately before that date; or
- a person who had an SST on the coming into force date of the provision, which came to an end and who left the social housing sector for a period of time and then returned at a later date.

156. However, in terms of the latter category, a person should not be defined as a new tenant (and should therefore continue to enjoy an existing RTB entitlement) if, under defined circumstances, their landlord has required them to move or the tenant has agreed to move at the landlord's request (for example, if their current house is to be demolished).

157. The Bill provides for tenants of other relevant landlords (such as those employed and housed by the regular armed forces, police, or fire authorities) to ensure that they continue to get

modernised RTB entitlements (unless any other RTB exemptions or limitations prevail) if they transfer directly to the social rented sector without a break between tenancies. This would mean that tenants who started their current tenancy with a relevant landlord before the date on which the provision comes into force and who transfer directly to the social rented sector after that date would continue to get modernised RTB entitlements.

158. The Bill provides that social landlords will have discretion to be able to disregard breaks in occupancy of social housing that arise as a result of circumstances outwith the control of the person in question. For example, a tenant may be forced to move from their home for a short time due to a fire or threat of domestic violence, to live in temporary accommodation, returning to take up a new SST over a different property. Social landlords will be able to use their discretion to disregard such a break in occupancy (and breaks arising from other circumstances outwith a tenant's control), and to treat the tenant as having had an SST immediately before the coming into force date of this provision, therefore allowing the tenant to retain the RTB.

Reforming pressured-area designations

159. Under the Housing (Scotland) Act 1987, a local authority may ask Ministers to designate any part of its area as a "pressured area" for a period of up to five years. Ministers may decide to designate the area as pressured if a great deal more social rented housing is (or is likely to be) needed than is available; and if the RTB would worsen the situation. The Scottish Government has issued guidance which provides details of the type of evidence that local authorities should include in pressured area designation applications. The effect of a designation is to suspend all modernised RTB entitlements in the designated area. Those tenants with preserved RTB entitlements are unaffected.

160. The Bill's provisions on pressured-area designations are intended to extend the scope of the pressured-area designation process and make local authorities responsible for designating, amending and revoking pressured areas themselves without the requirement for Ministerial consent. These reforms aim to make the arrangements more effective in safeguarding social rented accommodation and let local authorities match RTB to local housing need more easily and in a more targeted way. The three principal reforms to the pressured-area designation process are described below.

161. The first reform is to extend the scope of designations to allow particular housing types (as well as areas) to be designated as pressured. Under this reform any particular housing type may be designated as pressured if a great deal more social rented housing of that type is (or is likely to be) needed than is available; and if the RTB would worsen the situation. This reform should allow councils to better meet demand for certain types of social rented accommodation. For example, it could make it easier to house families in areas where demand for larger houses is high.

162. The second reform is to extend the five-year maximum time frame for a designation to ten years. This should have the effect of suspending for a maximum period of ten years the modernised RTB entitlements of tenants who live in a designated area or in a designated housing type. Those tenants with preserved RTB entitlements will remain unaffected. This reform should stop more RTB sales going ahead as a result of a pressured area or housing type designation, which should make it more worthwhile for a local authority to make a designation.

163. The third reform removes the requirement for a local authority to have to make a proposal to Ministers and instead allows a local authority to designate any part of its area or any housing type as pressured if a great deal more social rented housing is (or is likely to be) needed than is available; and if the RTB would worsen the situation. This reform is in keeping with the broad aim of the Concordat between the Scottish Government and COSLA of promoting accountability of local partners in achieving policy outcomes.

164. Under this devolved decision-making regime local authorities will still be subject to many of the same types of requirements that are included in current legislation:

- In preparing to designate an area or a housing type as pressured, the local authority should have regard to guidance that will be issued by Ministers. The guidance will set out a) what information a local authority may take into account in making a designation, b) the terms of the designations and c) how and when to exercise the power to designate an area or housing type as pressured.
- Local authorities will be required, before making a pressured area or pressured housing type designation (or any amendment or revocation of a designation), to consult every relevant RSL and tenant representative organisation as well as other residents or persons that the local authority sees fit to consult. As part of the consultation process, local authorities should publicise the terms and effect of any proposed designation (or any amendment or revocation of a designation) and its reasoning for thinking that a new designation (or a change to an existing designation) is required.
- Local authorities will still be required to publicise new designations (by identifying the area or housing type, the date on which the designation takes effect and the period for which it has effect) and its effect (that is, the suspension of modernised RTB entitlements for affected tenants). In addition, local authorities will still be required to publicise any amendment to or revocation of a designation (and the effect of the amendment or revocation).
- Local authorities or RSLs offering an SST on a property affected by a pressured area or pressured housing type designation will still be required to inform the tenant of this and its effect.
- Local authorities will still be able to make further pressured area or housing type designations regardless of whether there are designations already in force or whether there have been designations in force in the past.
- As is currently the case, a RTB application that is submitted to a social landlord prior to the designation of an area or housing type as pressured, will not be affected by the designation.

Reforms requiring new or amended guidance

165. In addition to these three reforms that require new legislation, we consulted upon another two reforms that we intend to undertake. However these reforms require changes to guidance only, therefore they do not feature in the Bill. These two reforms are:

- developing guidance for RSL applications to extend the ten-year suspension; and

- revising guidance on landlords' continuous occupation discretionary powers.

166. RSLs are able to apply to Ministers to extend beyond 2012 the current suspension of RTB on their properties. The Scottish Government proposes to develop new guidance for RSLs to use if they wish to make such applications. This guidance would be underpinned by criteria that reflect the importance of meeting housing need and safeguarding stock and take account of the effect of RTB on a landlord's ability to pay for policy priorities such as the Scottish Housing Quality Standard (SHQS).

167. The continuous-occupation rule effectively "resets the clock" on a tenant's RTB qualifying period and discount entitlement if there is a break of more than one day between ending one tenancy and taking up another. Our revisions to guidance on landlords' continuous occupation discretionary powers aim to encourage landlords to use their discretionary powers more widely to disregard short breaks between tenancies when the breaks are outwith the tenant's control.

Alternative approaches

168. Two alternative approaches to meeting the policy objectives were considered. The Scottish Government considered an option comprising ending RTB for new supply social housing and reforming pressured-area designations. However this option was rejected because we considered that it safeguarded too few properties from sale. Compared to the package of reforms described above, this option was estimated to safeguard between 7,000 and 12,000 fewer properties from sale. The Government also considered an option comprising ending RTB for new supply social housing, reforming pressured-area designations and ending RTB for any tenant who entered the social rented sector or who transferred to a different property with a social landlord. Although this option was estimated to safeguard an additional 5,000 to 10,000 properties from sale (compared to the package of reforms described above) it was rejected because it could be perceived to be interfering with existing entitlements, which runs counter to the Government's manifesto commitment to "review current right to buy legislation – while protecting the rights of existing tenants – to make it more responsive to local needs".

Consultation

169. Respondents to the consultation generally supported the proposed RTB reforms. They were positive about the financial impact of the proposed reforms, although there were concerns that social landlords that are more dependent on RTB receipts may have difficulty bringing housing up to the SHQS by 2015. Most respondents supported the definition of "new supply social housing". However, there were concerns about tenants regaining RTB after a spell in new supply housing, and safeguards for tenants affected by demolition. Although there was broad agreement that new tenants should no longer have the RTB, there were concerns about the loss of some of the positive impacts that RTB has had (for example in promoting tenure diversification) and difficulties with a system where tenants have multiple categories of RTB entitlement. Lastly, there was strong support for proposals to extend the scope of and devolve decision-making for pressured-area designations.

170. During the consultation period officials also held meetings with key stakeholders (tenant groups, COSLA, SFHA and Shelter) in order to hear first hand their views on the RTB reforms.

Effects on equal opportunities, human rights, island communities, local government, sustainable development, etc

Effects on equal opportunities

171. The most significant equal opportunities issue raised in relation to RTB was a concern that restricting RTB would further limit home ownership opportunities for people with disabilities, lower income and younger households (the group that most commonly exercises their RTB). Conversely, respondents did recognise that these restrictions should result in greater availability of housing for social rent (particularly newly built, more accessible properties), which will be of benefit to these, and other, groups in meeting their housing needs.

Effects on Human Rights

172. The RTB reforms included in the Bill raise no human rights issues.

Effects on island communities

173. There should be no differential impact upon island communities. The RTB reforms should help to safeguard island communities' social housing stock, encourage island local authorities to build more social housing and allow island local authorities to match RTB to local housing need more easily.

Effects on local government

174. Twenty-six local authorities provide social housing in their respective areas, whereas the remaining six local authorities have divested themselves of their housing stock to RSLs that were created to acquire and manage it. There will be two principal effects arising from the RTB reforms.

175. Firstly, local authorities should be better able to fulfil their strategic housing function. More social housing stock will be safeguarded from sale under RTB as a result of the reforms and will thus be available to house those on social housing waiting lists. In addition, reforms to pressured-area designations should make them more effective in safeguarding social rented accommodation and let councils match RTB to local housing need more easily.

176. Secondly, the RTB reforms will affect the financial position of the 26 local authorities with their own housing stock and thus who have Housing Revenue Accounts (HRAs). There is likely to be a reduction in local authorities' RTB receipts as a result of the RTB reforms. However, this should be offset by the benefit of continued rental income over the remaining lifetime of the stock not sold as a result of the reforms. In response to the consultation, social landlords stated that they should be able to adjust their businesses to accommodate any impact, and that no significant negative impact should arise from the proposed reforms.

Effects on sustainable development

177. The goal of sustainable development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations. The Scottish Government believes that the RTB reforms will promote environmental, social and economic aspects of sustainable development, as described below.

- *Environmental effects.* The RTB reforms are unlikely to have significant environmental effects because their primary impact will be upon housing tenure of existing or planned future social housing stock. A marginal environmental benefit could accrue by retaining more stock in the social housing sector (as a result of the estimated decrease in RTB sales). The environmental performance of that retained stock is likely to be better than it might have been under private ownership because social housing stock is subject to energy efficiency standards set within the SHQS, whereas no such standards have yet been set for private sector housing.
- *Social effects.* The chief disadvantage of RTB in social terms has been to remove properties from the social rented sector and to reduce the number of homes available for social rent. As a result, prospective tenants, many of whom are homeless, must wait longer for properties to become available. The RTB reforms should result in greater availability of social housing by retaining up to an additional 18,000 units in the social rented sector. The Government anticipates that prospective tenants chiefly should benefit from this in two principal ways. Firstly, more households should benefit from the greater security of tenure and on average lower rents in the sector compared to private renting options. Secondly, prospective tenants should experience shorter waiting times for suitable properties to become available.
- *Economic effects.* The Government believes the RTB reforms should promote greater long term financial sustainability within the social housing sector by increasing social landlords' reliance on more stable revenue income from rents and decreasing their reliance upon volatile capital income from RTB sales receipts. The financial impact of the reforms will not be fully felt for five years; the time that new tenants would have taken to meet the minimum qualifying period under the modernised RTB. The Government has estimated that social landlords' capacity to invest in existing stock in order to meet the 2015 deadline for attaining the SHQS should not be significantly affected by the reforms.

PART 12 – REGISTRATION OF PRIVATE LANDLORDS

Policy objectives

178. The system of landlord registration was established by Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. Registration is designed to protect tenants by ensuring that only people who are fit and proper to let out residential property can operate legally as private landlords. The operation of landlord registration is the responsibility of local authorities.

179. In 2008 the consultants Arneil Johnston carried out for the Scottish Government a review of the legislative framework of landlord registration, following up a review of good practice. This led to the identification of several areas where amending the 2004 Act now will strengthen existing powers or clarify the legislation, and thus may help local authorities to take action where they have concerns. These relate to obtaining evidence, higher fines, including additional information in the landlord register and fees for nominating unregistered agents.

180. When a landlord or agent breaches the terms of the 2004 Act, authorities can apply sanctions which can lead to criminal prosecution or a cessation of the rent payable. These sanctions effectively act as a bar on a landlord's ability to let a house. The use of enforcement powers varies among local authorities.

181. There are a significant number of landlords whose applications or status under the landlord registration system are under review because of a local authority's concerns. However, some local authorities have stated that they are reluctant to use the powers they have to refuse applications for registration because they expect difficulty in achieving a successful prosecution should that step be necessary. There have been no reports to the procurator fiscal as a result of landlord registration. Some local authorities have said that one reason for this is because of difficulties in gathering evidence to ensure that robust cases against landlords can be developed.

182. The review of landlord registration recommended that the Scottish Government should consider local authorities' ability to obtain information. One of the key issues for local authorities is proving that a tenancy is in place. It has been suggested that provisions similar to those in section 186 of the Housing (Scotland) Act 2006 ("the 2006 Act") could assist. These require persons associated with a property to provide information to a local authority to enable or assist it to exercise functions contained within the Act (including those relating to HMO licensing).

183. The Bill contains similar provisions for the purposes of landlord registration, in order to make it easier for local authorities to gather evidence. This covers persons who own, occupy or have an interest in the house concerned or who act for the owner. On request, they must confirm to the local authority the nature of their interest in the house, provide details of others with an interest and also provide the local authority with any other information about the land or premises that it may reasonably request. As with section 186 of the 2006 Act, failure to provide information without reasonable excuse or providing false information are criminal offences, subject to a fine not exceeding level 2.

184. The sanctions available to the sheriff on disposal of landlord registration cases is an issue that has been raised by local authorities. A substantially higher fine may act as more of a deterrent and more adequately reflect the seriousness of the offences. The 2006 Act increased the maximum fine for operating an HMO without a licence from £5,000 to £20,000, making it more likely that fines imposed would be significant in comparison with the income from letting. Similar considerations apply to fines in relation to landlord registration and the Bill therefore increases the maximum fine level for failing to register as a landlord or communicating with another person with a view to entering into a lease or an occupancy arrangement without being registered (currently level 5, or £5,000) to £20,000.

185. Local authorities are required to maintain a register of landlords and agents who are considered fit and proper persons to let a house under a lease or occupancy arrangement. Information on registered persons and their residential properties is held on the register. The release of information to members of the public is circumscribed to ensure that the information is not used for malicious or commercial marketing purposes or would not, if released, represent an unacceptable intrusion in a registered person's private life.

186. Public access to the register in a local authority's area is, in legal terms, by application to the local authority. In the great majority of cases this is done by accessing the landlord registration website. A member of the public can request information with respect to a particular residential property or a particular person.

187. Local authorities have indicated that there are circumstances where it would be helpful to give out additional information regarding an application for registration and the review of landlord registration recommended that a change to legislation was needed to allow additional information on applications to be given out. Most stakeholders at the legislative focus groups agreed that additional information on whether an application had been submitted but not yet decided would be useful, but that it should be limited to that fact and should not indicate whether, for example, the local authority had decided to investigate aspects of the application. Stakeholders also felt that as one of the principal aims of landlord registration was to remove the worst landlords from the sector, then having the facility to make members of the public aware that landlords had been refused registration would help protect tenants. The main landlord bodies supported these changes and the local authorities represented, including COSLA, were content, as long as the information is worded carefully.

188. The Bill therefore provides for two additional categories of information to be available to the public. The first is an indication that an application in relation to a property has been received but has not yet been decided. This will be helpful if a member of the public or a tenant is concerned that a landlord may be unregistered, since a landlord may legally rent a property if he or she has submitted an application for registration, which has not yet been decided. It will also be useful for landlords in that position to have this information publicly available, as proof that they are operating legally, despite not yet being registered.

189. The second type of additional information to be included in the landlord register is where a landlord has been refused registration or has been de-registered because of failure to meet the legal requirements. This information will alert tenants and members of the public to the fact that someone has been found to be not fit and proper to be a landlord, if he or she is attempting to let a property, thus increasing the protection provided by the registration system.

190. Although the position of agents in the private rented sector is of great importance, legal considerations mean that there is no requirement for agents to register in their own right (although an agent may do so voluntarily). However, a landlord must include any agent in an application for registration and a fee is paid for this. Where a landlord has been registered and then subsequently adds an agent, there is currently no power for the local authority to charge a fee for this addition. This does not matter if the agent is already registered, which many professional agents are, but if the landlord nominates an unregistered agent (such as a friend or relative) the agent will have to be assessed as fit and proper, which will involve expense for the local authority.

191. The Bill therefore amends the 2004 Act to allow a local authority to charge a fee, to be prescribed by regulations, in this situation. This will be fairer for local authorities, who will be able to recover their costs, and for those landlords and agents who pay fees because they register at an earlier stage.

Alternative approaches

192. No alternative methods of dealing with these specific issues have been identified. The option of “doing nothing” was rejected, because that would mean not addressing the problems identified by local authorities and other stakeholders with the operation of the registration

system, particularly the possibility of improving enforcement and information. The provisions in the Bill will allow the registration system to operate more effectively.

Consultation

193. The proposal to empower local authorities to require persons associated with a property to provide information to help it to carry out its landlord registration functions gained strong support. Some respondents expressed concerns about requiring tenants to provide information, since the landlord might end the tenancy. However, as with section 186 of the 2006 Act, the intention is to protect tenants, in this case from landlords who are not fit and proper to let property. Local authorities are conscious of the need to protect the interests of current and future tenants, which is the fundamental purpose of the registration system, and will use the powers with this in mind.

194. A clear majority (73 per cent of those who responded on this question) was in favour of increasing the maximum fine for landlord registration offences to £20,000. Most group respondents agreed that it was appropriate to bring the maximum fine in line with that for operating an HMO without a licence. Some respondents commented that the current level of fines may discourage local authorities from taking legal action.

195. A number of other respondents felt that, rather than increase the level of fine, local authorities should use their existing powers to take enforcement action. The Scottish Government encourages local authorities to use their powers, but believes that a higher fine will reflect the seriousness of the offences and act as a deterrent. It also disagrees with the respondents (including some groups and the majority of individuals) who felt that a maximum of £20,000 is excessive. This is a maximum which is in line with HMO licensing, will allow the courts to impose a more severe penalty in the worst cases, and means that average fine levels are less likely to be regarded as an acceptable business cost.

196. The proposal to include in the landlord register information on applications that have not yet been processed and on landlords who have been refused registration or de-registered gained strong support. There was a feeling among a number of respondents that the additional information would be valuable to tenants. There were some concerns about how the information will be available online; such issues will be addressed when the database system is amended.

197. A clear majority (62 per cent of those responding) supported giving a local authority the power to charge a registered landlord a fee for subsequently nominating an unregistered agent. Some organisations were concerned that such a charge could discourage landlords from using agents; however, this charge would relate only to unregistered agents, whereas professional agents are likely to be already registered.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

198. The provisions on the private landlord registration system are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The amendments do not raise any human rights issues. They have no specific implications for island

communities or sustainable development. Local authorities have welcomed the changes to the system which they administer.

PART 13 – AMENDMENT OF HOUSING (SCOTLAND) ACT 2006

Policy objectives

199. The Housing (Scotland) Act 2006 gives local authorities new and updated powers to tackle disrepair, primarily in the private sector. The powers came into force on 1 April 2009, with a transitional year to enable local authorities to move to the new powers (where these are replacing those available under the Housing (Scotland) Act 1987) by the end of March 2010.

200. The Scottish Government consulted on draft guidance to support the implementation of the new powers in summer 2008. As well as providing comments on the guidance itself, this consultation raised a number of points on the underlying policy. Local authorities have indicated that they feel that the current legislation in some ways restricts the effectiveness of local authority powers. The amendments to be introduced by the Bill will ensure that local authorities have appropriate powers to encourage owners to look after their own properties.

Maintenance Powers

201. The Housing (Scotland) Act 2006 gives local authorities new powers to take action to deal with the condition of properties before they fall into serious disrepair. The authority can serve a maintenance order requiring the owner (or owners) to prepare and submit a maintenance plan to secure the maintenance of the property to a reasonable standard over a set period. They can do so only where there is evidence that a property has not been, or is unlikely to be, maintained to a reasonable standard. The purpose behind this power is to encourage owners to take responsibility for looking after their own properties.

202. Where the owner does not submit a maintenance plan by the date specified in the maintenance order, or submits one which is unsatisfactory, the local authority can devise a plan itself. The local authority can also vary a maintenance plan once it is in force, either of its own accord or on application of an owner, if it is satisfied that a change in circumstances merits such a variation, or before it enforces a maintenance plan.

203. Local authorities have powers to recover from the owner the costs associated with implementing a maintenance plan where the owner fails to carry out the work. The Bill extends these provisions to allow local authorities to recover costs arising from drawing up a maintenance plan where the owner fails to submit a satisfactory one as required by the maintenance order. This will encourage owners to fulfil their obligations under the maintenance order by submitting maintenance plans, rather than relying on the local authority to do so. It also allows local authorities to recover costs arising from varying a maintenance plan. And authorities will be able to issue a repayment charge to recover these costs.

204. Local authorities are responsible for registering maintenance orders, maintenance plans which are approved, devised or varied, and a notice of a revocation of a maintenance plan, in the appropriate land register. This ensures that potential and future owners are aware of the continuing obligation to comply with the order or plan while it remains in force.

205. These registration costs only arise where the local authority has had to take action to ensure owners are looking after their properties. It is reasonable that they should be met by that owner and not from the public purse. The Bill therefore introduces a power to allow local authorities to recover from owners the expenses it incurs in relation to the registration of these documents and to issue a repayment charge in respect of this.

206. Owners who share with others a responsibility for maintaining common parts may establish a maintenance account, whether or not in connection with the local authority's use of its enforcement powers. The 2006 Act gives local authorities new powers to pay in missing shares to a maintenance account on behalf of owners where –

- the owner is unable to comply with the requirement to pay;
- it is unreasonable to expect the owner to pay; or
- the owner cannot be identified or found, despite reasonable inquiry.

207. The Bill extends this power to give local authorities the ability to pay missing shares in respect of an owner who is unwilling to contribute their share of the costs. This will allow the local authority to take action to enable maintenance work to go ahead where it is being obstructed on account of an individual's refusal to pay for costs for which they are responsible. The local authority will be able to recover expenses from the "unwilling" owner in relation to this action, and so is consistent with the 2006 Act's aim of ensuring owners are responsible for looking after their own properties.

Enforcement powers

208. The 2006 Act gives local authorities new powers to deal with problems of poor quality housing on an area basis. The authority can designate a Housing Renewal Area (HRA) where a significant number of houses in the locality are substandard, or any housing is adversely affecting the amenity of the area.

209. In order to declare an HRA, the local authority must consult publicly on a draft HRA designation order, before deciding (and notifying interested parties) whether or not to proceed with that. The 2006 Act requires that the authority submit a draft designation order to Scottish Ministers for approval if it wishes to proceed.

210. Since the 2006 Act was passed, the way in which local and central government work together has been significantly altered by the Concordat agreed between local government and the Scottish Ministers. In addition, local authorities have a new duty under the 2006 Act to set out a strategy for identifying areas for designation as HRAs within their Local Housing Strategy. Local authorities are therefore encouraged to take responsibility for planning strategically as to how to deal with the problems in their area, and are best placed to do so.

211. The Bill therefore removes the need for ministerial approval for HRAs. This is consistent with the provisions on social housing, which will devolve the decision-making process on pressured area designations to councils, in keeping with the Concordat's broad aim of promoting accountability of local partners in achieving policy outcomes.

212. As well as providing new and updated powers to take enforcement action to improve the quality of housing, the 2006 Act gave local authorities more flexible powers in terms of providing assistance to home owners. The Scheme of Assistance provisions can include a range of assistance, from information, advice and guidance through to practical and financial assistance. The implementation of these powers has identified demolition as another situation where owners may seek assistance, and so the bill extends these powers to allow local authorities to provide assistance in relation to demolition as they see fit.

Alternative approaches

213. These proposals are alternatives to the approach which was taken in the 2006 Act, in response to feedback from stakeholders regarding the potential limitations of that approach. The effect of the changes could not be achieved through guidance as they require amendments to the legislative powers available to local authorities.

Consultation

Maintenance powers

214. There was broad agreement that local authorities should be able to recover costs from owners where they had to devise a maintenance plan on behalf of an owner, and strong support for giving authorities powers to recover expenses incurred in registering maintenance documents.

215. A majority of group respondents also supported extending local authorities' powers to pay a missing share into a maintenance account to include situations where an owner is unwilling to pay. It was noted by some respondents that this should still remain within the context that owners should take primary responsibility for maintaining their properties.

Repayment Charges

216. There was strong support from group respondents to allow local authorities to recover from owners expenses incurred in registering a repayment charge or the discharge of a repayment charge, although support was less clear amongst individual respondents.

Enforcement powers

217. Most respondents supported the removal of the need for ministerial approval for HRA designation orders, in line with the principles of the Concordat.

218. There was broad support, particularly amongst group respondents, to extend situations in which local authorities can provide assistance to include demolition.

Licensing of houses in multiple occupation

Policy objectives

219. Houses in multiple occupation (HMOs) are currently required to be licensed by the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000, as amended. This legislation will be replaced by Part 5 of the Housing (Scotland) Act 2006, when

it is brought into force. Licensing of HMOs was introduced to protect their occupants. It sets reasonable standards for physical conditions, safety and tenancy management.

220. An HMO is a house that is occupied by three or more people, who are members of more than two families. Under the 2006 Act, the house has to be the only or main residence of occupants for them to count towards the occupation level. A house that would otherwise be a licensable HMO is not one if a sufficient number of residents have a main residence elsewhere, possibly including people based outside Scotland who are working here for an extended period.

221. Some local authorities have expressed concern that some landlords are avoiding HMO licensing because – or because they are claiming that – occupants are living in the premises for only a short time and that they have a principal residence elsewhere. There are particular concerns that this could be the case where migrant workers are living in sub-standard and overcrowded conditions, and that landlords may frequently move them about among different premises, each being described as a “short-term let”.

222. In fact, the length of a let is irrelevant to whether a property is a licensable HMO. For example, a homeless hostel could be licensable if the residents stay for a single night, given that they have no other residence.

223. The Scottish Government consulted on changing the definition of an HMO, by removing the main residence requirement (with an exemption for holiday lets, which provide accommodation for tourists, not living accommodation). However, it became clear that this would widen the scope of licensing too far. For example, since there is no requirement for rent to be charged in an HMO, if a householder had three unrelated friends to stay for a short time, the house would have become a licensable HMO.

224. The Bill therefore amends the 2006 Act to provide for an order-making power, allowing Ministers to designate as licensable HMOs specified additional categories of multi-occupancy accommodation. This means that Ministers will be able to extend the benefits of HMO licensing – which can set conditions for physical conditions, safety and tenancy management – to types of multi-occupancy property that fall outside the current definition of a licensable HMO, but which demonstrate problems in relation to these features. It will be possible to focus on situations that present a particular problem that can be addressed by licensing, including those that may arise in the future, without bringing types of accommodation that are not considered to require regulation within the scope of licensing. This power may only be used after consultation with stakeholders.

225. A planning authority may decide that some HMOs in its area require planning permission. Some local authorities have stated that they are experiencing the problem that some HMOs which meet licensing requirements and have licences do not have planning permission and are operating in breach of planning law. They have either been refused planning permission, or would have been refused planning permission had an application been made, because of their effect on the local amenity. It is clearly anomalous that a local authority has to grant a licence to premises that are operating in breach of planning control, because the licensing legislation does not allow planning considerations to be taken into account. HMOs operating without planning permission can adversely affect neighbours and their owners have an unfair advantage as compared to landlords who comply with planning requirements.

226. The Bill therefore amends the 2006 Act to empower a local authority to refuse to consider an application for an HMO licence if it considers that any requisite planning permission has not been obtained. This means that a local authority will be able to decide whether to adopt this approach, depending on whether it has a problem with HMOs operating without planning permission. We expect that, if a local authority decided to exercise this power, the licensing section of the local authority would liaise with planning colleagues before dealing with a licence application (which is already good practice followed by some local authorities). If there were no planning concerns, the application would be dealt with. If there were planning concerns, the applicant would have to go through the planning process. Having obtained either planning permission or a certificate stating that planning permission is not needed, the applicant would re-apply for an HMO licence and the application would then be dealt with in the normal way.

227. This process would filter out the significant proportion of cases where an HMO is not a matter of planning concern, without the additional cost and burden for landlords and planning authorities of a formal certification process to confirm that this is the case. This approach would allow a local authority to deal with cases where HMOs are operating in active breach of a planning decision and with the anomaly that a person can obtain an HMO licence without having gone through any form of planning process.

Alternative approaches

228. We considered including in HMO licensing all short-term lets, apart from holiday lets. This would, for example, bring houses occupied by people who were visiting an area for a short time to work or carry out research, whether or not they had a main residence elsewhere, within the scope of licensing. However, in order to avoid an anomalous situation regarding properties on long-term lets occupied by people who have a main residence elsewhere, this option would have meant scrapping the main residence qualification altogether, not just for short-term lets. The result would have been that, for example, a house occupied by people on a long-term contract to work in the area, who returned to their main homes at weekends and during holidays, would become a licensable HMO.

229. Another option would have been to add the words “in the UK” to the term “only or main residence”. This would have meant that an HMO, whether on a short-term or long-term let, would count as the only or main residence of any occupant whose only or main residence was outside the UK (apart from people on holiday). It would thus have brought HMOs occupied by foreign migrant workers within the scope of licensing, but also those occupied by people from outside the UK who were visiting for short periods for purposes such as short-term study. However, people with a main residence within the UK would have continued not to count for HMO licensing purposes.

230. As explained above, it became clear that either of these changes would have unnecessarily brought a wide range of types of accommodation within the scope of HMO licensing. Other examples of situations that would have been affected include accommodation provided for people attending sporting or artistic events as participants or officials (such as an hotel accommodating an orchestra or a flat rented to a theatre group).

231. We considered making the obtaining of planning permission (where it is required), or formal confirmation that planning permission is not required, a requirement for the granting of

an HMO licence, with the onus on all applicants to produce evidence in the form of planning permission or a certificate of lawful use. However, this would have placed an undue stress on local authority planning departments (including local authorities that do not have a problem with HMOs and planning), which would have had to process thousands of applications every year, and would have caused unnecessary delay and expense to the many HMO owners (evidently the majority) who do not require planning permission. The delays in opening HMOs could have reduced the supply available to people seeking this sort of accommodation, many of whom will have low incomes, with possible consequences for the level of homelessness.

Consultation

232. There was a majority in favour of expanding the definition of a licensable HMO in some way, particularly for removing the main residence qualification. However, a number of respondents expressed concerns about particular types of property being brought into HMO licensing, such as accommodation for participants in cultural and sporting events, and one local authority considered that legislation should address specific problems. As explained above, the Scottish Government recognises the force of these arguments and therefore considers that the best way to expand the scope of HMO licensing would be by the use of an order-making power that can specify the types of property that are presenting problems. This would also reduce the amount of resources required by local authorities to process additional licence applications, a concern expressed by some respondents.

233. Although the majority of respondents felt that there was a problem with licensed HMOs operating without planning permission, a small majority of local authorities (12 out of the 23 responding) considered that there was not. A clear majority, including 21 local authorities, considered that having planning permission, where it is required, should be a requirement for the grant of an HMO licence. Some respondents expressed concerns that such a requirement could restrict the supply of accommodation. The majority of respondents considered that any such requirement should relate to renewals as well as new applications.

234. A clear majority favoured a mandatory requirement. However, for the reasons explained above, and in view of the fact that the problem is not universal, the Bill gives local authorities a discretionary power to refuse to consider an application for an HMO licence if it considers that any requisite planning permission has not been obtained. This will prevent landlords and local authorities from being burdened unnecessarily and will allow local authorities to decide whether, and how to, use the power.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

235. The local authority powers to deal with house condition and provisions on HMO licensing are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The provisions do not raise any human rights issues or issues relating to island communities or sustainable development. All of the provisions relate to local authority powers and have been welcomed by local authorities.

PART 14 – MISCELLANEOUS AMENDMENTS

PROTECTION OF UNAUTHORISED TENANTS

Policy objectives

236. The Scottish Government has been consulting on whether to strengthen protection for unauthorised tenants whose landlord is being repossessed⁴. Such tenants are vulnerable to being made homeless with little notice, through no fault of their own, where their landlord fails to notify the lender of the tenancy and then gets into financial difficulties. In the light of responses to this consultation exercise the Scottish Government will decide whether protection should be strengthened and, if so, how best to do that and whether to seek an amendment to the Home Owner and Debtor Protection Bill or this Bill. The Bill therefore indicates that more detailed proposals on protecting tenants affected by repossession action against their landlord may come forward at stage 2 if required.

LOCAL CONNECTION

Policy objectives

237. Residence or employment in the armed forces does not by itself form a local connection under Scottish Homelessness legislation. Change requires primary legislation to amend the definition of local connection (contained in section 27 of the Housing (Scotland) Act 1987) to remove the exemption for residence or employment connected to the armed forces. This will enable people leaving the armed forces to develop a local connection in the areas they have lived or worked in.

Alternative approaches

238. This approach will bring Scottish legislation in line with England and Wales and will fit with the Scottish Government's commitments to the welfare of the forces and veterans' community. An alternative course of action is not considered appropriate in the circumstances.

Consultation

239. COSLA consulted local authorities about the proposal in the Spring of 2009. This indicated broad support for the legislative changes to allow employment or residence in the armed forces to establish a connection.

240. Local authorities felt that the change would not present a problem and advised that current practice is to treat the very small number of cases sympathetically. This view was shared by local authorities with large bases in their areas and those without.

241. COSLA supports the proposed changes, which are also supported by ex-service organisations (Poppy Scotland, and Scottish Veterans Residences) and the MoD. Scottish Government officials have discussed the implications of legislative change at length with MoD.

⁴ [Repossession of Residential Property: Protection of Tenants: Consultation: Home Owner and Debtor Protection \(Scotland\) Bill](http://www.scotland.gov.uk/Publications/2009/10/08121110/0) : <http://www.scotland.gov.uk/Publications/2009/10/08121110/0>

The MoD has held discussions with Scottish veterans' organisations and the issue has been explored at the Veterans Programme (Scotland) Steering Group. Veterans organisations have consistently expressed the view that local connection should be established through service. This view has been expressed to Parliament via the cross party group on supporting Veterans.

Effects on Equal Opportunities, Human Rights, Island Communities, Local Government, and sustainable development

242. This amendment will not have any adverse equality impacts. It may well have benefits if cases involve ex-service personnel with mobility issues or disabilities, and it will have a positive impact in terms of ensuring that veterans are treated equally with other homeless applicants in terms of the local connection rules.

243. The amendment does not raise any human rights issues. It has no implications for island communities or sustainable development.

244. As noted above, COSLA consulted local authorities about this change in spring 2009. Local authorities said they dealt sympathetically with these cases. They generally welcomed the proposed amendment and did not foresee any significant impact on application numbers or on the homelessness service if the change is made. Homelessness statistics show that very few households becoming homeless from armed services accommodation are currently assessed as not having a local connection. Only five cases from those previously in armed services accommodation were assessed in 2007-08 and three in 2008-09.

This document relates to the Housing (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 13 January 2010

HOUSING (SCOTLAND) BILL

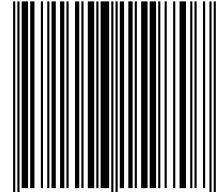
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