

# **HOUSING (SCOTLAND) BILL**

---

## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Housing (Scotland) Bill introduced in the Scottish Parliament on 13 January 2010:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 36–PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL**

4. The purpose of the Housing (Scotland) Bill is to safeguard social housing for the use of future generations of tenants by reforming the Right to Buy (RTB), and to improve value for tenants and taxpayers through a modernised system of social housing regulation. Parts 1-10 replace and modernise the regulatory framework established by the Housing (Scotland) Act 2001 (“the 2001 Act”) and in Part 3 of the Housing (Scotland) Act 1988.

5. The Bill also addresses, in relation to the private rented sector, problems and possible improvements in the systems of landlord registration and licensing of houses in multiple occupation (HMOs). It also includes improvements to local authority powers to deal with disrepair in privately owned houses.

6. The Bill includes an amendment to 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. It also provides for an order making power to improve the protection for tenants who are granted a lease of a property in breach of their landlord’s standard security conditions for that property (“unauthorised tenants”) where their landlord is in default under the standard security.

7. In summary, the Bill includes provisions that will:

- modernise social housing regulation;
- reform the Right to Buy (RTB);
- amend legislation on private sector housing;
- protect “unauthorised tenants”; and
- amend the definition of local connection.

8. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

## **STRUCTURE OF THE BILL**

9. The Bill is in 15 Parts.

- **Part 1** establishes the SHR as an independent regulator with the objective of safeguarding and promoting the interests of tenants, prospective tenants, homeless people and others using housing services provided by social landlords.
- **Part 2** requires the regulator to keep a register of social landlords and sets out the criteria for registration and the circumstances in which a body may be removed from the register.
- **Part 3** provides for Scottish Ministers to specify the outcomes social landlords must aim to achieve in a Social Housing Charter, and for the regulator to set performance improvement targets and assess and report on their performance. Part 3 also requires the regulator to set out standards of governance and financial viability for registered social landlords.
- **Part 4** provides the regulator with powers to carry out inquiries and obtain information from social landlords.
- **Part 5** gives the regulator a range of powers to intervene where it has concerns about a social landlord's performance, governance arrangements or financial viability. It also requires the regulator to issue a code of practice explaining how it will use its intervention powers.
- **Part 6** provides for the regulator to set accounting requirements for registered social landlords.
- **Part 7** provides the regulator with powers to deal with an insolvent registered social landlord.
- **Part 8** deals with the constitution, rule changes, amalgamation and dissolution of registered social landlords.
- **Part 9** sets out requirements for the disposal of land by registered social landlords.
- **Part 10** makes special provision, including approval by tenants, for the change of landlord from a local authority landlord.
- **Part 11** reforms the Right to Buy.
- **Part 12** amends the system of registration of private landlords contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. This is in relation to fees for appointing agents; public access to information on applications not yet determined and persons found not to be fit and proper to act as landlords; an increase in the maximum fine for offences; and a power for a local authority to obtain information to enable or assist it to carry out its landlord registration functions.
- **Part 13** makes changes to the powers available to local authorities under the Housing (Scotland) Act 2006 to address disrepair in private housing. This relates to maintenance powers, charging orders and repayment charges, the scheme of assistance and enforcement powers. Part 13 also makes changes to the system of HMO licensing to give The Scottish Ministers a power to bring by order additional types of multi-occupancy property within the scope of HMO licensing and to give

local authorities a power to refuse to consider an application for an HMO licence if it considers that there would be a breach of planning control.

- **Part 14** includes miscellaneous amendments.
- **Part 15** sets out supplementary and final provisions.

## **PART ONE – THE SCOTTISH HOUSING REGULATOR**

### **The Regulator**

10. Section 1 establishes the Scottish Housing Regulator (“the regulator” or “the SHR”) as a body corporate. Although not covered by the Bill, it is intended that the SHR will become a non-Ministerial office holder of the Scottish Administration (in other words, a non-Ministerial Department) and that its employees will be civil servants. The formal mechanism for this will be by an order made by Westminster under the Scotland Act 1998 following enactment of this Bill. Section 2(1) gives the regulator the objective to safeguard and promote the interests of those who are, or who may become, tenants of social landlords, or homeless, or the recipients of housing services provided by social landlords. Section 2(2) requires the regulator to perform its functions in a way that is in line with its objective and which it considers most appropriate for the purpose of meeting that objective.

11. Section 3(1) sets out the Scottish Housing Regulator’s general functions. These are to keep a publicly available register of social landlords and to monitor, assess and regularly report on all social landlords’ performance of housing activities and on registered social landlords’ financial well-being and standards of governance. (“Social landlords” provide housing for people in housing need at rents below open market levels. They can include registered social landlords and local authorities that provide rented housing and other housing services. A registered social landlord is an industrial and provident society or company limited by guarantee that is registered with the Scottish Housing Regulator.)

12. Section 3(2) requires the regulator to perform its functions in a proportionate, accountable and transparent way that is targeted only where action is needed and that is consistent with any other principle which appears to it to represent best regulatory practice.

13. Section 4 requires the regulator to consult and involve bodies representing homeless people, tenants and other service users in its work and to publish a statement about how it intends to do this.

14. Section 5 requires the regulator to consult the Accounts Commission for Scotland on how it will carry out its powers and duties in respect of local authority landlords. The regulator must publish a statement on how it will do so.

15. Section 6 makes the regulator independent from Scottish Ministers by preventing them from directing or otherwise trying to control how the regulator carries out its functions (except where contrary provision is made).

## **Membership**

16. Section 7 deals with the detailed membership of the regulator. Subsection (1) provides for the regulator's chief executive to be a member of its board and for ordinary members to be appointed by Scottish Ministers (after normal public appointment procedures). Ministers have discretion to appoint the number of members they think is appropriate for the regulator, but must appoint a minimum of three members.

17. Section 8(1) sets out the categories of person who are disqualified from being members. These are MSPs, MPs, MEPs, office holders of the Scottish Administration, local councillors, employees of local councils and employees and officers of any registered social landlord. Subsection (2) allows Scottish Ministers to remove an ordinary member from office if they are satisfied that the member is an undischarged bankrupt or has been absent from meetings for over six consecutive months, is unable to discharge the member's functions as a member or is unsuitable as a member. Subsection 150 defines what is meant by an "undischarged bankrupt".

18. Section 9 allows the Regulator to reimburse its ordinary members' expenses incurred in carrying out their functions.

## **Chairing and Proceedings**

19. Section 10 deals with the regulator's constitutional arrangements. Subsection (1) requires the Scottish Ministers to appoint one of the ordinary members to chair meetings of the regulator's board and allows Ministers to appoint another ordinary member to act as deputy chair.

20. Section 11 provides for the SHR to regulate its own procedure and that of any committees that are established. Subsection (2) prevents any of the regulator's proceedings or acts being called into question in the event that there is a vacancy in its membership or if the process for appointing a member was carried out incorrectly.

## **Staff and property**

21. Section 12 provides for the regulator to appoint as a member of staff a chief executive. The first chief executive will be directly appointed by Scottish Ministers after consulting with the chair of the regulator's board (if that person has been appointed at the time of the chief executive's appointment). The regulator may appoint subsequent chief executives. Both the appointment of the chief executive and the terms of their appointment are subject to approval by Scottish Ministers.

22. Section 13 provides for the regulator to appoint other members of staff and the terms of such staff are subject to the approval of Scottish Ministers. It introduces schedule 1 which makes transitional provisions about the regulator's staff and property.

## **Powers**

23. Section 14 sets out the regulator's general powers. Subsection (1) allows the regulator to do anything it thinks necessary or advisable for the purpose of or in connection with the

performance of any function conferred on it by this Bill. Subsection (2) prevents the regulator from borrowing money. The regulator must also have the consent or approval of Scottish Ministers before it can:

- acquire or dispose of land;
- give guarantees; or
- determine the location of its office premises.

24. Section 15 provides for the regulator, at its discretion, to authorise anyone to carry out any of its functions and the extent to which they can carry out such a function. The regulator can authorise both members of its staff and people who are not members of its staff to carry out its functions.

### **Fees, studies, co-operation and annual reports**

25. Section 16 allows the regulator to charge a fee in respect of performing any function in relation to a social landlord and requires the social landlord to pay that fee. It provides the mechanism for a charging scheme to be approved, should the regulator wish to charge fees.

26. Section 17 gives the regulator the power to commission studies or to carry them out itself to inform its approach towards meeting its objective. The regulator is able to, but is not required to, publish a report on any study or research.

27. Section 18 requires the SHR to co-operate with other relevant regulators. Subsection (2) sets out the bodies that are considered to be relevant regulators. These are:

- the Office for Tenants and Social Landlords (known as the Tenant Services Authority)
- the Office of the Scottish Charity Regulator
- Healthcare Improvement Scotland
- Social Care and Social Work Improvement Scotland
- the Scottish Public Services Ombudsman
- the Financial Services Authority
- the registrar of companies
- the Accounts Commission for Scotland.

28. Section 18(3) allows the regulator to disclose any information to the relevant regulator for any purpose connected with the performance of its functions or in order to enable or assist the relevant regulator to perform any function.

29. Section 19 stipulates that the regulator must annually prepare and publish a general report on how it has used its functions, lay a copy before the Scottish Parliament and send a copy to Scottish Ministers. Subsection (2) states that this report must include information about the use

of the Regulator's powers under Parts 4 (Inquiries and Information) and Part 5 (Regulatory Intervention) of this Bill. Subsection (3) gives the regulator discretion to decide what other information should be in the report, what the report looks like and how it is to be published.

## **PART TWO – REGISTERED SOCIAL LANDLORDS**

### **The register of social landlords**

30. Section 20 places a duty on the regulator to maintain an accessible register of social landlords. Subsection (2) prevents local authorities and local authority landlords from being included in the register. Subsection 4 specifies the information that must be held in the register.

31. Section 21 arranges for the transition from the current register of social landlords maintained by the Scottish Housing Regulator on behalf of Scottish Ministers to the new register. The new register will include all those bodies that are currently on the Scottish Housing Regulator's register.

32. Section 22 provides the regulator with powers to determine the way in which an application must be made and the type of information the body applying for registration must provide. The regulator can charge for registration.

33. Section 23 places the regulator under a duty to include in the register every applicant body which it considers meets the registration criteria. Subsection (2) states that the registration criteria are made up of the legislative registration criteria and the regulatory registration criteria. Subsection (3) provides that as long as a body is on the register then it should be presumed that it is eligible for registration even if it is subsequently removed from the register.

### **Registration criteria**

34. Section 24 provides Scottish Ministers with order making powers to set legislative registration criteria for registered social landlords. Subsection (1) lists the areas that the criteria may cover. These are the purposes or objects, the legal status and governance arrangements of the body. Ministers also have powers to set different criteria for different types of bodies. Subsection (2) requires Ministers to consult the regulator, tenants or their representatives and social landlords or their representatives. Subsection (3) requires Ministers to review the legislative registration criteria from time to time, taking into account whether or not changes to the criteria would be likely to increase the level or quality of housing services provided by registered social landlords. Subsections (4) and (5) allow Ministers to include in an order (under subsection (1)(b)) a provision to make, amend or modify a provision in the Bill which they consider to be appropriate to adapt the Bill so that it applies to bodies that have a status other than that of an industrial and provident society or a registered company. Bodies of such other status may be prescribed under subsection (1)(b).

35. Section 25 provides the regulator with powers to set regulatory registration criteria about a body's financial situation, the arrangements for its governance and financial management and the manner in which it provides housing services. The regulator is able to set different criteria for different types of bodies. The regulator must consult interested parties before setting, revising or withdrawing any criteria.

36. Section 26 requires the regulator to issue guidance on how it will assess whether a body meets the registration criteria and to make this available to those with an interest in the guidance. Before issuing, revising or withdrawing guidance the regulator must consult Scottish Ministers, registered social landlords or their representatives, tenants of registered social landlords or their representatives, and secured creditors of registered social landlords or their representatives.

### **Removal from register**

37. Section 27 provides that the regulator may remove a body from the register if it considers that the body no longer meets the registration criteria, has never met those criteria, has ceased to carry out activities or has ceased to exist (it could also remove a body on receipt of an application under section 27). Under subsection (2) the regulator may require the body to provide information to demonstrate that it meets any of the registration criteria. Before it removes a body from the register, the regulator must give the body at least 14 days notice and have regard to any views expressed by the body in that period.

38. Section 28 requires the regulator to set criteria for voluntary de-registration and to remove from the register, at its request, a landlord that meets those criteria. The regulator must consult Scottish Ministers, tenants of registered social landlords or their representatives, registered social landlords or their representatives and secured creditors of registered social landlords or their representatives and inform those affected of any change or replacement of de-registration criteria.

### **Appeals**

39. Section 29 provides an appeal mechanism for bodies aggrieved by a decision of the regulator not to register it as a social landlord or to remove it, or not to remove it, from the register. The appeal is to the Court of Session. Subsection (2) provides for the actions that the Court may take to decide an appeal. Under subsection (3), where the appeal is against the decision relating to the removal of a body from the register the regulator must not remove the body from the register until the appeals process is complete.

### **Communication with other regulators**

40. Section 30 requires the regulator to notify other regulators of its decision to register or de-register a body.

## **PART 3 – PERFORMANCE OF SOCIAL LANDLORDS**

41. Part 3 of the Bill requires the Scottish Ministers to set out the standards and objectives (“the outcomes”) social landlords should aim to achieve in a document known as the Scottish Social Housing Charter. Part 3 also requires the regulator to assess and report on social landlords’ performance of housing activities and gives it the power to set performance improvement targets. The regulator is also required to set out standards of financial management and governance for registered social landlords.

## **The Scottish Social Housing Charter**

42. Sections 31 to 33 provide for the Scottish Ministers to publish a Scottish Social Housing Charter setting out what social landlords should aim to achieve (the outcomes) in performing housing activities. Once it is published, Ministers must review the Charter from time to time. Section 33 requires Ministers to consult interested parties, including landlords and tenants or their representatives, the regulator, lenders and the Accounts Commission, before publishing the Charter for the first time and each time it is reviewed. Ministers must submit the Charter to the Scottish Parliament for approval and it only comes into effect once it has been approved.

43. Section 32 gives examples of the kind of service areas the Charter might cover. The examples are for illustrative purposes and are not necessarily the areas that will be covered by the Charter, as these will be developed in consultation with stakeholders under section 33.

## **Performance improvement targets**

44. The Charter will provide a framework for the regulator to assess and report on social landlords' performance. Section 34 allows the regulator to set performance improvement targets for social landlords. Subsection (2) allows it to set targets for an individual landlord or a group of landlords if, for example, their performance falls below that of the sector generally. Before setting, revising or withdrawing targets that apply to social landlords, subsection (3) requires the regulator to consult Scottish Ministers and the other interested parties specified (landlords and tenants or their representatives, the regulator, lenders and the Accounts Commission). The requirement to consult does not apply if the target affects only one landlord, or if the regulator considers there is an urgent need to set the performance improvement target.

## **Guidance, performance assessment and reports**

45. Section 35 provides for the regulator to publish guidance about how it will assess social landlords' performance against the Charter and the indicators it will use to measure progress. There is a requirement for the regulator to consult specified interested parties before issuing, revising or withdrawing this guidance.

46. Section 3(1)(b)(i) provides for the regulator to monitor, assess and report on social landlords' performance of housing activities. Section 38(1)(a) requires 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) requires the assessment to include an assessment of the social landlords' performance against the Charter.

47. Section 39 sets out reporting requirements for the regulator. It must publish, at least once a year, a report on landlords' performance in achieving the outcomes that the Charter sets and in meeting performance improvement targets. Subsection (2) allows the regulator to include in its reports information about its use of regulatory intervention powers, the financial health of RSLs, and any other information it considers likely to be useful to social landlords, their tenants, prospective tenants or other service users.

### **Encouragement of equal opportunities**

48. Section 37 requires social landlords to provide housing services in a way that encourages equal opportunities.

### **Code of conduct: RSL governance and financial viability**

49. Section 38 prescribes what the regulator must consider when assessing social landlords' performance of housing services; the level and quality with regard to rents and service charges; the Charter relevant performance improvement targets; and guidance under section 35. It also requires the regulator to consider the standards set out in the code of conduct and guidance under section 36, when it assesses registered social landlords' financial management and governance arrangements. Section 36 requires the regulator to publish a code of conduct setting out the standards of governance and financial management registered social landlords are expected to meet. It must also publish guidance on the code of conduct. Before it publishes, revises or withdraws the code of conduct or guidance, subsection (4) requires the regulator to consult registered social landlords, their tenants or their representative organisations, and lenders or their representative organisation (the Council of Mortgage Lenders).

## **PART 4 – INQUIRIES AND INFORMATION**

50. Part 4 provides the regulator with powers to carry out inquiries and obtain information from social landlords.

### **Inquiries**

51. Sections 40 to 44 replace the inspection powers in sections 69, 70, 72 and 73, and paragraphs 16 to 18 of Schedule 7, in the Housing (Scotland) Act 2001 with more flexible powers of inquiry, consistent with the principles of a proportionate and risk-based approach to regulation.

52. Section 40(1) allows the regulator to make inquiries into bodies connected with a social landlord, such as subsidiaries or associates, as well as the social landlord itself. Subsection (2) allows the regulator to determine the purpose and timing of inquiries. For example, it may decide to carry out an inquiry unannounced or at short notice, or an inquiry into a group of landlords, a specific theme or specific geographical area.

53. Inquiries can relate to a social landlord's housing activities (which are defined in the Interpretation section, 150). The regulator may also make inquiries into RSLs' financial or other affairs (section 40(3)(b)). An inquiry can be carried out by the regulator's own staff, or the regulator may appoint someone else (an "inquirer") to carry it out.

54. Section 41 gives the regulator right of access at reasonable times to a social landlord's premises and to any relevant information, including documents stored electronically. The landlord (and anyone on the landlord's premises) must ensure the regulator is given any facilities or assistance it may reasonably request for its inquiries. The regulator has the power to obtain, copy or take away any relevant information held by a social landlord. This section also makes it a criminal offence to fail to assist, or in any way obstruct, the regulator in carrying out its inquiries.

55. Section 42 allows the regulator to arrange for a social landlord's housing to be surveyed if it suspects the landlord is failing, or at risk of failing, to achieve an outcome in the Social Housing Charter, meet a performance improvement target or implement a performance improvement plan. Subsection (9) makes it a criminal offence to obstruct a survey. It is also an offence for a landlord to fail to give at least seven days' notice of the survey to residents in the houses due to be surveyed.

56. Section 43 allows the regulator to have an "exceptional" audit carried out as part of its inquiries into an RSL's affairs. Under this section, an exceptional audit is carried out by a qualified auditor, appointed by the regulator, to audit the RSL's accounts and balance sheet and report back to the regulator on any specified matters. This is separate from, and does not affect, the audit requirements contained in either Part 6 of this Bill or any other legislation.

57. Section 44 gives the regulator the power to publish a report of any inquiries it makes, but it is not obliged to publish a report on every inquiry. It must, however, publish and bring to landlords' attention a statement setting out the types of inquiries on which it will publish reports. Whenever it publishes an inquiry report the regulator must send a copy to the social landlord concerned and to every registered tenants' organisation associated with that landlord.

## **Information**

58. Section 45 requires the regulator to provide a means for tenants to bring to its attention significant performance failures by social landlords. The regulator must publish a statement explaining what is meant by "significant performance failures" and the arrangements it will make for dealing with them.

59. Section 46 gives the regulator the power, when making inquiries or for any other purpose related to its regulatory functions, to obtain any information it needs about a social landlord or a connected body. A request for information can be made to any person. However, subsection (3) provides that the regulator's initial request must be directed to the social landlord or the connected body. It can only be directed elsewhere if the landlord or connected body fails, or is unable, to provide the information required. It is a criminal offence under section 47 to fail without reasonable excuse to provide (or knowingly or recklessly provide false or misleading) information, or to alter, suppress or destroy information required under section 46

60. Section 48 places a duty on the regulator to issue a code of practice on inquiries, setting out how it will make inquiries and perform functions under Part 4 of the Bill. There is a similar duty on the regulator in section 51 covering regulatory intervention under Part 5.

## **PART 5 – REGULATORY INTERVENTION**

61. Part 5 replaces the regulatory intervention powers in the Housing (Scotland) Act 2001. Section 49 lists the powers contained in this Part, which can include requiring a social landlord to comply with the Scottish Social Housing Charter, meet a performance improvement target or implement a performance improvement plan. For local authorities, the intervention powers are no longer solely linked to inspection.

62. There is no fixed sequence for the use of these powers and the regulator can use them individually or in combination. However, section 50 requires the regulator to consider the principle that social landlords should be responsible for determining how to provide housing services and manage their own affairs when deciding whether, and how, to intervene (while section 3(2) requires regulatory action to be targeted only where it is needed). Section 51 requires the regulator to consult on and publish a code of practice explaining how it will take decisions about use of its intervention powers.

### **Remedial action**

63. Section 52 replaces the Scottish Ministers' power (at section 74 of the 2001 Act) to require a local authority to produce a remedial plan with a power for the regulator to require any social landlord to submit a performance improvement plan. The regulator can require the submission if it considers that the landlord is failing, or at risk of failing, to achieve an outcome set in the Scottish Social Housing Charter or to meet a performance improvement target. The regulator can also require an improvement plan if this is justified by the social landlord's conduct or, in the case of an RSL, if there has been misconduct or mismanagement in its financial or other affairs.

64. The regulator may accept, modify or reject a performance improvement plan. The social landlord must be notified of any intention to make changes to or reject a plan. If the plan is rejected the social landlord must submit a revised plan and, once accepted, must implement it. The landlord also has to publish the plan and send a copy of it to any registered tenants organisations associated with it.

### **Enforcement notices**

65. Section 53 allows the regulator to serve an enforcement notice on a social landlord if it considers that the social landlord is, or is at risk of, failing to achieve an outcome set in the Scottish Social Housing Charter, meeting a performance improvement target, or of implementing an approved performance improvement plan. The regulator may also serve an enforcement notice if it considers that:

- there has been misconduct or mismanagement of the registered social landlord's affairs;
- the social landlord's assets or tenants' interests need to be protected;
- the registered social landlord's assets need protection;
- the social landlord's financial viability is at risk; or
- any other conduct of the social landlord justifies the notice.

66. The enforcement notice requires the landlord to take action to put right or avoid a failure or other problem, or to protect its tenants or assets. The regulator must publish the notice and send a copy to any registered tenants organisation associated with the social landlord.

### **Appointment of a manager**

67. Section 54 allows the regulator, if it considers it necessary, to appoint someone to manage a social landlord's services (or aspects of its services). There are two criteria, set out at subsection (1), that must be met before the regulator can make such an appointment. First, it considers (either following an inquiry or for some other reason) that the landlord is failing or at risk of failing to:

- achieve an outcome in the Social Housing Charter;
- meet a performance improvement target;
- implement an agreed improvement plan; or
- comply with an enforcement notice.

68. Secondly, it must consider such an appointment is needed to make sure the social landlord provides an appropriate standard of services. In the case of a local authority landlord there is a further requirement at subsection (3) for the regulator to consult the local authority, its representative body (COSLA), and the Accounts Commission before making an appointment.

69. There is no requirement to consult before making an appointment to a registered social landlord, although the criteria at section 54 (1) must be met. Section 55 provides that, where it has established that there has been misconduct or mismanagement, the regulator may appoint or require the RSL to appoint a manager for its financial or other affairs.

70. Section 56 allows the regulator to determine the period and terms and conditions for the appointment of a manager. The manager will have general powers to do what is necessary to fulfil his or her functions, and may also be given specific powers by the regulator. The manager must comply with any direction given by the regulator (section 56(3)).

### **Removal, suspension and appointment of officers**

71. Under section 57, the regulator may remove an officer of a registered social landlord (a committee member of an industrial and provident society or a director of a company limited by guarantee) who is bankrupt or apparently insolvent; disqualified from being a company director or charity trustee; incapable of fulfilling their role because of a mental disorder; or is impeding the effective management of the registered social landlord because of their absence or failure to act. The regulator must give the officer and the registered social landlord 14 days' notice of its intention to remove the officer. "Officer" has the meaning given in the Interpretation section (150).

72. Section 58 gives the regulator power to suspend a "responsible individual" (an officer or agent) if it considers they have been responsible for, party to, or otherwise contributed to misconduct or mismanagement of the registered social landlord's other affairs, or if it considers that its tenants' interests or its assets need to be protected, or that there is obstruction or non co-operation in relation to Part 8. Again, the regulator must give the individual and the RSL 14 days' notice of its intention. The regulator may appoint an individual to perform the suspended individual's functions or give the RSL directions about performing those functions or other matters arising from the suspension. Subsection (5) makes it an offence for a suspended

individual to act, without the regulator's consent, in the management or control of any registered social landlord.

73. Section 59 allows the regulator to remove a responsible individual if its inquiries confirm misconduct or mismanagement or the registered social landlord's assets or tenants' interests need to be protected or that there is obstruction or non co-operation in relation to Part 8. Again, there is a requirement for the regulator to give 14 days' notice. Subsection (3) makes it an offence for an individual who has been removed to act without the regulator's consent in the management or control of any registered social landlord. A "responsible individual" is a person defined as such under section 60: an officer or agent of an RSL who appears to have been responsible for, facilitated or contributed to, or has been privy to the misconduct, mismanagement, failure etc.

74. A decision by the regulator under section 57, 58 or 59 can be appealed to the Court of Session under section 61.

75. Under section 62 the regulator has the power to appoint a new or additional officer to a registered social landlord. It may do this to:

- replace an officer it has removed;
- if the RSL has no officers; or
- if it considers it necessary for the proper management of the registered social landlord's financial or other affairs.

### **Protection of assets**

76. Sections 63 and 64 allow the regulator to protect the registered social landlord's assets during and following inquiries into its financial or other affairs. Section 63 allows it to restrict particular types of transactions or payments. The regulator can also direct a bank or other person not to part with any money, assets or securities it holds for the registered social landlord without its consent. Subsection (3) makes it an offence to fail to comply with a direction given under this section.

77. Section 64 allows the regulator to transfer the registered social landlord's assets to another registered social landlord if, after making inquiries, it considers there has been misconduct or mismanagement of the registered social landlord's affairs or that it would improve management of the assets. Before doing this the regulator must consult, and consider the views of, the tenants and any secured creditor known to the regulator, of any houses it proposes to transfer. The terms of transfer must set the price the regulator considers, after obtaining an independent valuation, the assets would fetch if sold by a willing seller to a willing registered social landlord. They must also provide for the settlement or transfer of the transferring landlord's debts and liabilities in relation to the transferred property.

### **PART 6 – ACCOUNTS AND AUDIT**

78. Part 6 provides the regulator with the power to set requirements for registered social landlords' accounts and audit arrangements. This part of the Bill replaces similar powers of the Scottish Ministers in Part 3 of Schedule 7 of the 2001 Act.

79. Section 65 allows a determination of accounting requirements by the regulator. The requirements should ensure that registered social landlords' accounts are properly prepared and provide a true and fair picture of their affairs. The regulator's determination may be general or for a particular purpose and can apply to different RSLs or different cases. The regulator may revise or withdraw a determination and must bring any determination to the attention of any affected registered social landlords. A determination cannot relate to an accounting period before it was published (section 65). Subsection (3) requires the regulator to consult before making any determination.

80. Section 66 places a duty on registered social landlords to comply with the regulator's accounting requirements. The auditor's report on a registered social landlord must state if, in the auditor's opinion, its accounts comply with the requirements. Under section 67, the registered social landlord must provide the regulator with a copy of its accounts and auditor's report within six months of the end of the accounting period to which they relate. Section 68 makes it an offence for a registered social landlord to fail to comply with either of these requirements.

81. Section 69(2) places a duty on reporting accountants and auditors appointed to prepare accounts or carry out internal audits for a registered social landlord to disclose to the regulator any matter they believe is of material significance to the regulator's functions, under section 3, of monitoring, assessing and reporting on social landlords' performance, financial wellbeing and standards of governance. This includes both significant matters relating to the affairs of the registered social landlord and to the affairs of a parent or subsidiary body connected with the registered social landlord.

82. Section 69(3) empowers accountants and auditors to report any matter they do not consider is of material significance under section 69(2), but which they think could be relevant to the exercise of any of the regulator's functions. The duty and the power to report matters to the regulator both continue after someone has stopped acting in the capacity of auditor or reporting accountant to the registered social landlord.

## **PART 7 – INSOLVENCY ETC**

83. This Part of the Bill sets out the action to be taken in the event of a registered social landlord becoming, or at risk of becoming, insolvent.

84. Throughout this Part of the Bill references to notifying and consulting secured creditors are qualified to refer only to those creditors the regulator is able to contact after making reasonable inquiries.

### **Arrangements for and effect of a moratorium**

85. Section 70 sets out in a table who is required, and in what circumstances, to notify the regulator that certain steps are being taken to enforce a security over land. Notice is required both before and after taking one of the actions specified. Subsection (2) allows the regulator to define what is meant by a step "to enforce a security over a registered social landlord's land".

86. Section 71(1) provides that a step will have no effect unless the person taking it has notified the regulator in advance of their intention. However, failure to notify the regulator *after* the step has been taken will not make the step invalid (section 71(2)).

87. Taking one of the steps specified at section 70 automatically triggers a stop (a moratorium) on the disposal of land held by the registered social landlord (section 72). Section 88 defines land as including “any existing or future interest of the landlord in rent or other receipts arising from land”. Taking another specified step during the period the moratorium (section 73) is in place will not result in a new moratorium or affect the length of the existing one. Any moratorium must, unless cancelled or extended, end 56 days after notice is given that the specified step has been taken.

88. Section 73 also provides for the regulator, with the consent of all the registered social landlord’s secured creditors (who can be located after reasonable enquiries), to extend the moratorium from time to time. Notice of such an extension must be given to the registered social landlord and any liquidator, administrative receiver, receiver or administrator appointed in relation to the registered social landlord or its land. Where the regulator considers the proper management of the registered social landlord’s land can be secured without making a proposal under section 77 of this Bill - and following consultation with the person whose step triggered the moratorium - the regulator can cancel the moratorium. The regulator must notify the registered social landlord and its secured creditors when a moratorium ends. Where a moratorium has ended, other than by cancellation, the notice given must also provide an explanation of section 74.

89. Under section 74 if, after a moratorium has ended (other than by cancellation), a specified step is taken against the same registered social landlord within three years, a new moratorium will not be triggered. The regulator may, with the consent of the registered social landlord’s secured creditors, renew the original moratorium for a specified time. The regulator must give notice of the renewal to the registered social landlord and any liquidator, administrative receiver, receiver or administrator appointed in relation to the registered social landlord or its land.

90. Section 75 ensures that, under a moratorium, the registered social landlord’s land cannot be disposed of without the regulator’s consent (unless the regulator’s consent is not required under section 104 of this Bill). The regulator may consent to a disposal before the moratorium begins and it may place conditions on its consent.

91. Section 76 gives the regulator powers to appoint, or require a registered social landlord to appoint, an interim manager with powers to manage some or all of its affairs during a moratorium. The interim manager must, however, comply with any direction given by the regulator and may not dispose of land or grant security over land.

### **Making proposals for future ownership and management**

92. During the moratorium the regulator can make proposals for the future ownership and management of the registered social landlord’s land in an attempt to ensure the land’s future and proper management by a registered social landlord (section 77). Before making proposals it must consult those people listed at subsection (2). The regulator must consider the interests of all the registered social landlord’s creditors and must aim to avoid worsening the position of any

unsecured creditors. The proposals may provide for the appointment and remuneration of a manager to implement the proposals. The proposals must not result in non-preferential debts being paid before preferential ones or preferential creditors being paid different proportions of preferential debt, unless they have agreed to being paid a smaller proportion. (The term “preferential debt” refers to money owed to Her Majesty’s Revenue and Customs for income tax deducted at source, VAT, car tax, betting and gaming duties, social security and pension scheme contributions, and remuneration of employees.)

93. The regulator must submit its proposals to all those of the registered social landlord’s secured creditors who can be located after reasonable enquiries have been made; the registered social landlord and its committee or board; and any liquidator, receiver or administrator. The regulator must also arrange to make the registered social landlord’s members, tenants and unsecured creditors aware of its proposals (section 78).

94. Section 79 allows secured creditors to either agree (with or without changes) or reject proposals about future management and ownership of a registered social landlord. The regulator must agree any changes to the proposals before those changes have effect. Subsection (3) lists those whom the regulator must notify about the agreed proposals.

95. The regulator may, under section 80, and with the agreement of the RSL and the secured creditors to whom the original proposals were submitted, modify agreed proposals from time to time. Sections 77 on the formulation of proposals and 79(3) on giving notice of agreed proposals apply equally to any such modifications.

### **Implementing the proposals**

96. Once agreed the proposals are binding on the regulator, the registered social landlord, the registered social landlord’s secured and unsecured creditors and any liquidator, administrator or receiver appointed in respect of the registered social landlord’s land (section 81). The registered social landlord’s officers must co-operate in implementing the proposals but they are not required or allowed to do anything in breach of their duty as a trustee or other duty owed by them (section 81(2)).

97. The Regulator must appoint a manager to implement the agreed proposals if these provide for such an appointment (section 82). The manager can do anything that is needed to implement the proposals and a number of specific powers are set out in section 83. A manager must, so far as practicable, consult a registered social landlord’s tenants on anything likely to affect them and explain the effect such a thing is likely to have.

98. A manager appointed to a registered social landlord that is an industrial and provident society is also able to transfer the engagements of that registered social landlord to, or amalgamate it with, another registered social landlord that is an industrial and provident society (section 84).

99. The regulator may provide financial or other assistance to the landlord to preserve its position while proposals are being designed and agreed, and to an officer of a registered social landlord or a manager appointed to implement the agreed proposals. The regulator may, in particular, lend staff and arrange payment of a manager’s remuneration and expenses. But the

regulator cannot pay grants, make loans, indemnify an officer or manager, make payments or give guarantees connected with loans without the consent of the Scottish Ministers. (Section 85).

100. The landlord or any creditor can apply to the Court of Session if they believe the manager is not acting within the agreed proposals. If it finds that this is the case then the Court has the power to confirm, modify or reduce any decision or other act of the manager, give directions to the manager or make any other order it sees as necessary (section 86).

101. Section 87 allows anyone bound by the agreed proposals to apply to the Court of Session if he or she believes another person who is also bound by them is not acting in accordance with them. The Court can then confirm, modify or declare the action ineffective; or make any order it thinks appropriate by way of interdict, award of damages or otherwise.

## **PART 8 – REGISTERED SOCIAL LANDLORDS: ORGANISATIONAL CHANGE**

102. Part 8 concerns changes to a registered social landlord's name, office, or constitution. It replaces the previous requirements in Part 2 of Schedule 7 to the Housing (Scotland) Act 2001 dealing with the constitution, change of rules, amalgamation and dissolution of registered social landlords.

103. Sections 89 to 91 replace paragraphs 7 and 8 of Part 2 of schedule 7 to the 2001 Act. Section 89 requires registered social landlords to notify the regulator of a change of name or a change in registered office within 28 days of the change being made.

104. Under section 90, registered social landlords must obtain the regulator's consent for any other change to the registered social landlord's constitution - for example changes to their rules, memorandum or articles. If the registered social landlord is an industrial and provident society and obtains consent under section 90 to amend its rules, section 91 requires the registered social landlord to send a copy of the consent along with the copies of the amendment sent to the Financial Services Authority under section 10(1) of the Industrial and Provident Societies Act 1965.

105. The provisions in sections 92 to 102 replace those in paragraphs 9 to 12 of Part 2 of schedule 7 to the 2001 Act that relate to arrangements for restructuring, winding-up or dissolution of an registered social landlord.

106. Sections 92 to 95 apply to industrial and provident society registered social landlords whose inclusion in the register of social landlords has been recorded by the Financial Services Authority. Under section 93, the regulator cannot give consent for the purposes of these sections unless it is satisfied the society has consulted its tenants about the matter requiring consent. The Financial Services Authority can only register resolutions for the restructuring (section 93), voluntary winding up (section 94) or dissolution (section 95) of a society if the regulator consents to the resolution and a copy of the consent accompanies any documents required to be sent to the Financial Services Authority.

107. Sections 96 to 100 apply to registered social landlords that are registered companies. Section 96 provides that the regulator cannot give consent for the purposes of these sections unless it is satisfied the company has consulted its tenants on the matter requiring consent. Under

section 97, a court order under sections 899 (court sanction for compromise or arrangement) or 900 (powers of court to facilitate reconstruction or amalgamation) of the Companies Act 2006 can only be made if the regulator consents. If the whole or part of the company is transferred to another company under section 900 of the Companies Act 2006, the other company will be included in the register of social landlords.

108. Under section 98 a special resolution by a company under section 53 of the Industrial and Provident Societies Act 1965 has effect only if the regulator consents to the resolution if passed. The new industrial and provident society created in pursuance of that resolution is to be included in the register of social landlords.

109. Under section 99, the regulator must consent to a voluntary arrangement in relation to a company under section 5 of the Insolvency Act 1986, before it will take effect. Under section 100 of this Bill, the regulator must consent to a special resolution being passed under the Insolvency Act 1986 for the voluntary winding up of the company for it to be valid.

110. Section 101 applies to RSLs that are industrial and provident societies or registered companies. Under this section, the regulator may present a petition for the winding up of the registered social landlord under the Insolvency Act 1986 on the ground that the registered social landlord is failing to properly carry out its objects or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986. Section 101(2)(c) introduces a third ground, in addition to those previously available under Part 2, Schedule 7 of the Housing Scotland Act 2001, that the regulator has directed the registered social landlord under section 64 of this Bill to transfer all its assets to another registered social landlord.

111. Section 102 applies to a registered social landlord that is also an industrial and provident society which has been dissolved in accordance with section 55 of the Industrial and Provident Societies Act 1965, or a registered company which has been wound up under the Insolvency Act 1986. Under this section the regulator can direct that any surplus assets, available after the registered social landlord's liabilities have been discharged, can be transferred to another registered social landlord. The regulator must consult the tenants of the houses to be included in such a transfer and have regard to their views before making such a direction. The regulator may also discharge any liability of the registered social landlord to ensure that assets, which would otherwise need to be sold, can be transferred to another registered social landlord. The regulator may only direct the transfer of assets from a registered social landlord which is a charity to another charity which has the same, or similar, charitable purposes (under section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005). Before directing a transfer from a charitable registered social landlord, the regulator must consult the Office of the Scottish Charity Regulator.

## **PART 9 – DISPOSAL OF LAND BY REGISTERED SOCIAL LANDLORDS**

112. This Part of the Bill sets out the provisions governing registered social landlords that want to dispose of land, including houses or other assets. The meaning of “disposal” is given in the interpretation section of the Bill (section 150) as a “sale, lease, security, charge, option to acquire or any other disposal of any property or any interest in property (including entering into a contract for disposal)”.

## **Regulation of disposals**

113. Chapter 1 of Part 9 (sections 103 to 108) provide the regulator with powers similar to those of the Scottish Ministers under sections 65 to 68 of the 2001 Act.

114. Section 103, which replaces section 66 of the 2001 Act, provides the basic power for an RSL to dispose of its land (or any other asset by granting security over it). This power is subject to the regulator's consent unless this is not required under section 104 of this Bill. Consent may be given generally, to certain disposals, or for particular purposes. The regulator may place conditions on the consent.

115. Section 104 specifies those disposals that do not require the regulator's consent (principally the granting of a tenancy or the sale of a property under the right to buy). Under subsection (1)(g) the regulator may determine further disposals not requiring its consent, following consultation with Scottish Ministers, registered social landlords or their representatives and secured creditors of registered social landlords or their representatives. The regulator must bring any determination to the attention of those affected by it. Subsection (2) includes an occupancy arrangement as a new category of disposal that does not need the regulator's consent.

116. If consent is not required for a disposal, the registered social landlord must notify the regulator as soon as practicable after making such a disposal. Section 105 sets out provisions allowing the regulator to dispense with notification, either generally or for a particular purpose.

117. The registered social landlord may be required to consult tenants before it disposes of land and a ballot may be required if a disposal results in a change of landlord. Section 106 and Chapter 2 of Part 9 of this Bill set out the circumstances in which both consultations and ballots are to take place.

118. Section 106 applies to all disposals of land by a registered social landlord which require a landlord's consent that are not covered by Chapter 2. For such disposals the registered social landlord must consult with the tenants of the houses included in the disposal and anyone else the regulator requires it to consult. The registered social landlord must inform the regulator of the views expressed by those consulted.

119. Section 107 states that the disposal of land by a registered social landlord, where the regulator's consent is required, is void unless the regulator has given the required consent.

## **Special procedure for disposals resulting in a change of landlord**

120. Chapter 2, sections 109 to 115, replaces the provisions in Schedule 9 of the Housing (Scotland) Act 2001 in respect of registered social landlords. Chapter 2 sets out the requirements for consultation before the regulator can agree to a registered social landlord disposal that will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the transferring registered social landlord (unless the disposal is a transfer of engagements under section 51 of the Industrial and Provident Societies Act, in which case section 107 applies).

121. Section 109 provides that Chapter 2 applies to disposals of land by a registered social landlord where the regulator's consent is required and which result in a tenant under a Scottish

secure tenancy ceasing to be a tenant of the registered social landlord making the transfer, unless the disposal is a transfer of engagements under section 51 of the Industrial and Provident Societies Act 1965.

122. Under section 110 the regulator, having regard to any information available to it, cannot consent to a disposal to which Chapter 2 of Part 9 of this Bill applies unless the registered social landlord certifies that it has complied with sections 111 to 113 of this Bill; the regulator is satisfied that the majority of tenants voting in a ballot under section 113 wish to proceed; and unless the regulator is satisfied that where the disposal is to a person and not another registered social landlord, a disposal to another registered social landlord is not appropriate.

123. Section 111 requires a registered social landlord proposing to make a disposal, to which Chapter 2 of Part 9 of this Bill applies, to serve a notice on the tenants of each house included in the proposal which specifies to whom the disposal is to be made, explains the likely consequences of such a disposal for the tenants, informs the tenants of their right to make representations to the registered social landlord within such a reasonable period as specified (at least 28 days) and which includes any other details the registered social landlord considers appropriate. After considering any representations made within the specified period, the registered social landlord must then serve a further notice which informs tenants of any significant changes to the proposals, informs tenants of their right to object to the proposed disposal within such a reasonable period as specified (at least 28 days), explains that the disposal requires the regulator's consent and explains that the regulator is not permitted to give consent unless satisfied that the majority of tenants voting in a ballot conducted under section 113 wish the disposal to proceed.

124. Section 112 contains provisions to allow the regulator to obtain further information on a proposed disposal before deciding whether to consent. The regulator may direct the registered social landlord to carry out, and provide information on, further consultation with tenants (in addition to that under section 111 and either before or after a ballot under section 113). The registered social landlord may also be required to provide any information, the regulator feels is relevant, on the representations and objections made in relation to the proposed disposal, information about the ballot under section 113 or any other information relating to the proposed disposal.

125. Section 113 requires a registered social landlord proposing to make a disposal, to which Chapter 2 of Part 9 of this Bill applies, to conduct a ballot of tenants who will be affected and inform the regulator of the outcome. The registered social landlord must have regard to any guidance issued by Scottish Ministers when conducting the ballot or informing the regulator of the results of the ballot.

126. Under section 114, the registered social landlord is not required to give notice under section 111 to, and may exclude from a ballot under section 113, any tenant unaffected by the proposed disposal. A tenant will be unaffected if the registered social landlord expects the tenant to have vacated the house before the disposal is made. The regulator can only consent to a proposed disposal where there are such unaffected tenants if the registered social landlord has served notice on the regulator confirming that the unaffected tenants have all vacated the houses concerned.

127. Section 115 offers protection to the purchaser in any proposed disposal under Chapter 2 of Part 9 of this Bill. The regulator's consent for such a disposal will not be invalidated by a failure of the regulator or registered social landlord to comply with any provision of this chapter.

## **PART 10 – CHANGE OF LANDLORD – SECURE TENANTS**

128. This Part of the Bill replaces the provisions in Part III (sections 56 to 64) of the Housing (Scotland) Act 1988 (the “1988 Act”) that deal with a change of secure tenants' landlord (known as “tenant's choice”). Those provisions will be repealed by paragraph 3(3) of schedule 2 to the Bill. Section 116 provides for a person that is approved by the regulator under section 117 of the Bill to acquire certain houses from local authority landlords and section 118 sets the criteria that determines which houses are eligible to be acquired.

129. Section 56 of the 1988 Act provides for approved landlords to acquire eligible houses from a public sector landlord defined as one of a number of bodies including islands or district councils, development corporations within the meaning of the New Towns (Scotland) Act 1968, the Scottish Special Housing Association, the Housing Corporation and Scottish Homes. Section 116 replaces “public sector landlord” with “local authority landlord” because the other bodies have been wound up.

130. Under section 117 the regulator has the power to grant approved status to a person that is not a local authority landlord. Subsection (2) provides that the regulator may give approval for particular reasons, acquisitions, areas or purposes. Different approvals may be given for different cases to enable that person to acquire a house from a local authority. The regulator may grant approval subject to conditions and may vary or revoke an approval.

131. Section 118 provides that an eligible house is a house that is owned by a local authority and occupied by a qualifying tenant. A qualifying tenant is a tenant with a Scottish secure tenancy where an order for recovery of possession has not been granted under section 16(2) of the Housing (Scotland) Act 2001.

132. Section 118(3) makes certain houses exempt from sale to an approved landlord. These are a house that is one of a group which has been provided with facilities (including a call system and the services of a warden), a house that has been specially designed or adapted for elderly or disabled people whose special needs require accommodation of the kind provided by the house, and houses owned by islands local authorities for the purposes of their functions as an education authority, that are required for the accommodation of someone who is employed for those purposes (and where the local authority is not likely to be able to reasonably provide other suitable accommodation for that person). Section 56(5)(c) of the 1988 Act also provides that an area determined by Scottish Ministers as a rural area is not eligible to be acquired by an approved person. Scottish Ministers' order making power to determine a rural area is repealed by paragraph 3(3) of schedule 2 to the Bill.

133. Section 119 sets out the requirements that an approved person must meet when they apply to a local authority to acquire a house. Section 120 requires the local authority landlord to make an offer to sell the house, or to refuse the application, within two months of the date on which an application is made under section 119.

134. Section 121 sets out the process for determining the market value of an eligible house. The local authority must instruct the district valuer or a qualified valuer nominated by the local authority and accepted by the applicant to determine the market value. The valuer must have regard to the price which the house would realise if sold on the date on which the application was made on the open market by a willing seller as well as a number of other assumptions. Where a valuer determines that the house would not realise any price if offered for sale on the open market they can take the price to be either a negative value, equal to the amount which would require to be paid to an approved person in order that the approved person would willingly acquire the house, or where an approved person would willingly acquire the house for no consideration, nil, and the market value of the house may accordingly be determined to be a negative value or nil value.

135. Section 122 sets out the conditions of sale of an eligible house to an approved person. It provides for the applicant to be able to request an amendment to the offer to sell if they consider a condition to be unreasonable or wish to have a new condition included in the offer. The applicant may refer the matter to the Lands Tribunal if a local authority landlord refuses a request or fails to respond within one month of the refusal. The Lands Tribunal can uphold, strike out or vary, or insert a new condition in the offer. Where a Lands Tribunal determination results in a variation of the offer to sell, it must order the local authority landlord to make an amended offer to sell to the applicant within two months of its determination.

136. Section 123 sets out requirements in relation to the acceptance of an offer to sell. The applicant may accept an offer to sell within two months of the date on which the offer was made, or the date on which the latest amended offer was made, or the date of a determination by the Lands Tribunal which does not require the local authority to make an amended offer. Where notice of acceptance is not given within the required period, the offer to sell and the application lapse. A notice of acceptance is of no effect unless the qualifying tenant and the applicant have concluded a lease of the house for a period immediately after the acquisition of the house. Giving a notice of acceptance constitutes a sale of the house between the local authority landlord and the applicant on the terms contained in the offer.

137. Section 124 provides for a local authority landlord to refuse an application on the basis that it disputes the applicant's right to acquire the property or it considers any information in the application to be materially incorrect. It specifies the process for giving notice of refusal and allows the applicant to refer the matter to the Lands Tribunal for a finding in respect of its right to acquire.

138. Where a local authority landlord fails to comply with provisions on the offer to sell provision (section 120), an order made by the Lands Tribunal under section 122(9) or fails to progress an application under any finding made by the Lands Tribunal under section 124(3), the applicant may refer the matter to the Lands Tribunal. Subsection (2) provides that the Lands Tribunal may make an offer to sell to the applicant and this has the same effect as if it is done by the local authority landlord.

139. Section 126 requires a person who acquires property under Part 10 to seek the regulator's consent for the subsequent disposal of that property. Consent may be given generally, to certain disposals, or for particular purposes. The regulator may place conditions on the consent. Before consenting to a disposal the regulator must be satisfied that the person seeking the consent has

consulted tenants of the houses included in the disposal and any other person that the regulator requires the person to consult. This section does not apply to a disposal by a registered social landlord which is required to seek consent under Part 9 of the Bill.

140. Section 127 provides for the extension of time periods referred to in Part 10 of the Bill where the applicant or local authority give notice of the extension before the end of the time period.

## **PART 11 – RIGHT TO BUY: REFORMS**

141. This part amends existing provisions on right to buy in the Housing (Scotland) Act 1987 (the “1987 Act”) and inserts some new provisions. In general, tenants who currently have the right to buy will continue to do so on existing terms. Part 11 ends the right to buy for new supply social housing and new tenants, reforms existing pressured area designation provisions.

### **Re-accommodated persons: protection of right to buy**

142. The amendment made by section 128 to section 61 of the 1987 Act ensures that, under the circumstances provided for, the right to buy entitlements of tenants who are re-accommodated by their landlord and experience a break in occupation as a result are protected for all social housing let under a Scottish secure tenancy.

143. Paragraph (a) adds an additional two circumstances to those already included within section 61(2)(c) of the 1987 Act in order to ensure that a tenant who is accommodated by such landlords under the circumstances provided for (see sub-paragraph (c)), is not deemed to have incurred a break in continuous occupation.

144. The effect of paragraph (b) is to ensure that breaks in occupation of a tenancy resulting from the circumstances provided for should be disregarded for the purposes of determining the period of occupation. That is, any period beginning with the termination of a tenancy in terms of section 18(2), 20(3) or 22(3) of the 2001 Act, and ending with the person being re-accommodated in pursuance of sections 19(3)(b), 21(3)(b) or 22(6) of the 2001 Act should be disregarded.

145. Paragraph (c) adds an additional two categories of person providing accommodation referred to in section 61(2)(c) (occupation requirement for exercise of right to purchase) to the list of landlords included in section 61(11) of the 1987 Act. The category in new section 61(11)(ab) includes those persons who provide accommodation to a tenant in instances where the tenant is required to move by their landlord under the circumstances provided for. The category in new section 61(11)(ac) includes those persons who provide accommodation to a tenant in instances where the tenant’s existing house is to be demolished and the tenant agrees to move at their landlord’s request.

### **Limitation on right to buy: new tenants**

146. Section 129 inserts a new section 61ZA into the 1987 Act to extend the range of circumstances under which the right to buy cannot be exercised to include new tenants to the social housing sector. This is intended to ensure that tenants taking up a Scottish secure tenancy

for the first time (following commencement of section 129) and those returning to the social rented sector after a break will not have the right to buy over any property they rent from a social landlord.

147. Subsection (1) of new section 61ZA sets out the tenancies which are not included in this limitation. These are tenancies of properties let under a Scottish secure tenancy created on or after the commencement date of section 129 of the Bill, where the tenant was immediately prior to that date occupying a house let by a social landlord or a landlord mentioned in section 61(11), or occupying living accommodation provided as mentioned in section 61(11)(ab), (ac) or (n).

148. Subsection (2) sets out the circumstances where an interruption in continuous occupation should be disregarded (where a tenant's tenancy has been terminated under section 18(2), 20(3) or 22(3) of the Housing (Scotland) Act 2001 and the tenant is then re-accommodated in pursuance of section 19(3)(b), 21(3)(b) or 22(6) of that Act) and also provides discretion for a landlord to disregard an interruption in occupation, where it appears to the landlord to result from circumstances outwith the control of the tenant.

### **Pressured areas: amendments**

149. Section 130 amends the existing pressured area provision in section 61B of the 1987 Act to extend the maximum designation period from 5 to 10 years, to allow particular housing types as well as particular areas to be designated as pressured and to allow local authorities (rather than Scottish Ministers) to designate, revoke or amend pressured area and housing type designations, without requiring Scottish Ministers' approval.

150. Subsection (2) amends section 61C of the 1987 Act and sets out the process which local authorities should follow when designating a pressured area or housing type. Before making, amending or revoking a designation, local authorities have to take such steps as are reasonable to publicise its proposal to make, amend or revoke designations and its reasons for so proposing. They must consult every registered social landlord holding houses for housing purposes in the part of their area covered by the proposals and such bodies representing the interests of tenants and other residents in that part and such other persons as the authority thinks fit. Local authorities proposing to make, amend or revoke pressured area or housing type designations should have regard to guidance issued by Scottish Ministers about how they should do it, the information they should take into account before doing so and the terms of such designations.

### **Limitation on right to buy: new supply social housing**

151. Section 131 inserts a new section 61F into the 1987 Act to extend the range of circumstances (set out in sections 61A to E) under which the right to buy cannot be exercised to include new supply social housing. A new supply social house is defined in subsection (3) as a house which is let under a Scottish secure tenancy created on or after the relevant day (which is the day on which section 131 comes into force), but which was not so let on or before 25 June 2008.

152. Subsection (2) of the new section provides that the limitation on exercising the right to buy over new supply social housing does not apply in the following circumstances:

- Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house, following an order for recovery of possession under section 16(2) of the Housing (Scotland) Act 2001, on any of the grounds set out in paragraphs 9 to 15 of Schedule 2 to that Act.
- Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house where the landlord has erroneously brought the tenancy / joint tenancy to an end and re-possessed the house because the landlord believes that the tenant is/tenants are/ are not occupying the house; or where the tenant of a house that has been designed for a person with special needs dies and as a result the landlord is required to re-accommodate a person who would otherwise have qualified to succeed to the tenancy.
- Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house, as a result of a written agreement between the landlord and tenant where the tenant agrees to move from their original house which the landlord wishes to demolish.
- Where a tenant's short Scottish secure tenancy is converted back to a Scottish secure tenancy under section 37 of the 2001 Act.
- Where a Scottish secure tenant who has a right to buy moves to a new supply social house from another house without the landlord having given the tenant seven days notice before the creation of the Scottish secure tenancy to which the new supply social house is subject, that they will lose the right to buy over that new supply house.

## **PART 12 – REGISTRATION OF PRIVATE LANDLORDS**

153. Section 132 explains that the provisions in this Part make amendments to the system of landlord registration contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”).

154. Section 133 amends section 88(2) of the 2004 Act, which requires a registered person to give notice to the local authority of the appointment of an agent, by inserting three subsections after subsection (2). Subsection (2A) requires the notice to be accompanied by any fee determined by the local authority and subsection (2B) provides that no fee shall be payable if, when the notice is given, the person appointed is entered in the register as a relevant person or another relevant person's entry in the register states that the person appointed acts for the other relevant person. Subsection (2C) gives Scottish Ministers the power to prescribe by regulations the fees for this purpose, how the fees are to be calculated, and the circumstances in which no fee is to be paid.

155. Section 134 makes provision in relation to public access to information about landlord registration on the register. Subsection (1) amends section 88A(1) of the 2004 Act to require a local authority to provide confirmation of whether a registration application in relation to a specific house has been made but not yet determined and information on whether a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord or because the person's agent was found to be not fit and proper. Subsection (2) inserts a new section 92ZA into the 2004 Act. This requires a local authority to note in its register the fact that a person was refused entry to, or removed from, the register as being not fit and proper to act as a

landlord, or because the person's agent was found to be not fit and proper. This note must be made when the appeal procedure has been exhausted and must be removed after 12 months or sooner if the person is subsequently registered.

156. Section 135 increases the maximum fine level in section 93(7) of the 2004 Act, for offences relating to acting as an unregistered landlord, from level 5 on the standard scale to £20,000.

157. Section 136 inserts new section 97A into the 2004 Act. Section 97A contains powers for a local authority to obtain information to enable or assist it to carry out its functions under Part 8. This information can be obtained from various specified persons. The local authority can serve a notice on such a person requiring him or her to provide information on the nature of his or her interest in the house; specified information about other people with an interest in the house or who act in relation to a lease or occupancy arrangement; and other information about the house or such a person that can be reasonably requested. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence and is subject to a fine on summary conviction not exceeding level 2 on the standard scale.

### **PART 13 – AMENDMENT OF HOUSING (SCOTLAND) ACT 2006**

158. Section 137 explains that the provisions in this Part make miscellaneous amendments to the Housing (Scotland) Act 2006 (the “2006 Act”).

159. Section 138 removes the need for local authorities to submit draft Housing Renewal Area (HRA) designation orders to Scottish Ministers for approval. Local authorities will still be required to give notice of their decision not to proceed with an HRA following public consultation on a draft designation order, and to give notice when an HRA is made. It also adds a requirement for local authorities to consult various interested parties before making any modification to an HRA which it thinks is significant.

160. Subsection (1) of section 139 extends the situations in which local authorities can pay missing shares into a maintenance account to include making a payment of a missing share on behalf of owners who are unwilling to pay. Subsection (2) enables local authorities to recover the cost of devising a maintenance plan where an owner fails to submit a satisfactory plan within the time specified in the maintenance order, and costs arising from the variation of a plan, from the owner of the house concerned. Subsection (3) amends section 61 of the 2006 Act to allow a local authority to recover from owners any expenses incurred in registering documents related to maintenance orders and plans, including the cost of registration, any administrative expenses, and interest at a reasonable rate. Local authorities will also be able to issue a repayment charge in respect of these costs. Subsection (4) allows local authorities to recover the costs of registering a repayment charge or the discharge of a repayment charge. This includes the cost of the registration, plus any related administrative expenses and interest at a reasonable rate, and can include the issue of a further repayment charge.

161. Section 140 amends section 71 of the 2006 Act to extend the situations in which local authorities can provide assistance under section 71 of the 2006 Act to include demolition.

162. Section 141 amends the houses in multiple occupation (HMO) licensing regime in the 2006 Act. Subsection (1) amends section 125 of the 2006 Act to give the Scottish Ministers the power to specify by order additional categories of multi-occupancy living accommodation as licensable HMOs. Any such category must meet the usual requirement of a licensable HMO that there are three or more occupants being members of more than two families. However, it does not necessarily have to be a house or premises in terms of the 2006 Act, nor does it have to be the only or main residence of the occupants. Before making such an order, the Scottish Ministers must consult relevant persons. Subsection (2) inserts into the 2006 Act new section 129A. This gives a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. If the applicant subsequently obtains planning permission or a certificate of lawful use or development and makes a further application for a licence within 28 days, no fee may be charged in relation to that application (as provided for by new section 129A(4)). If an application is refused before an existing licence for the HMO has expired, the existing licence will expire either on its normal expiry date (had an application for a new HMO licence not been made) or on such later date as the local authority considers reasonable in the circumstances.

## **PART 14 – MISCELLANEOUS**

### **Protection of unauthorised tenants**

163. Section 142 provides that the Scottish Ministers may by order make such provision as they consider appropriate for the purposes of protecting or helping a tenant where they have been granted a lease in breach of their landlord's standard security conditions or if their landlord is in default under that standard security, in the event of the landlord being in default under the security (leading to for example the property being repossessed).

### **Local authority duties on homelessness: armed forces**

164. Section 143 amends section 27 of the Housing (Scotland) Act 1987. Section 27 currently specifically prohibits a person or household forming a local connection with an area due to employment or residence in it as a result of service in the armed forces. In contrast civilian residence or employment forms such a connection. The duties of a local authority to a homeless person are affected by whether the person has a local connection with that authority. This amendment will allow persons serving in the regular armed forces of the Crown, and those who live with them, to form a local connection in the area they have lived or worked in.

## **PART 15 – SUPPLEMENTARY AND FINAL PROVISIONS**

### **Offences by bodies corporate etc.**

165. Section 144 sets out the position where an offence is committed by a social landlord, a body corporate, a Scottish partnership or an unincorporated association. It provides that where the offence was committed with the consent of or if it is attributable to any neglect of a relevant individual (defined in subsection (2)) of these bodies, the individual, as well as the offender, is also guilty of an offence.

### **Formal communications**

166. Section 145 deals with formal communications. A formal communication is any notice, notification, direction, consent, order, licence, application (other than to a court) or decision that is served, given or made under the Bill or for the purposes of the Bill. There is provision about how such communications are to be made and served.

### **Orders**

167. Section 146 sets out the general provisions applying to subordinate legislation to be made under the Bill.

### **Minor and consequential amendments**

168. Section 147 introduces schedule 2 which makes changes to other legislation required as a consequence of the Bill.

### **Ancillary provisions**

169. Section 148 gives the Scottish Ministers a free-standing power to make orders containing such ancillary provision as is necessary or expedient for the purposes or in consequence of the Bill.

### **Connected bodies**

170. Section 149 defines what is meant by a body that is connected to a registered social landlord or a local authority landlord. A body is considered to be connected if the registered social landlord or local authority landlord is able to direct the body in accordance with its wishes and if the connected body can direct the registered social landlord or local authority landlord in accordance with its wishes. A body that is a subsidiary of a social landlord (including a registered social landlord or local authority landlord), a body which has a social landlord as a subsidiary, and a body which is the subsidiary of a body of which the social landlord is a subsidiary, is also a connected body. "Subsidiary" has the same meaning in section 149 of the Bill as in the Companies Act 2006 (c.46) or, as the case may be, the Friendly and Industrial Provident Societies Act 1968 (c.55).

### **Interpretation**

171. Section 150 clarifies the meaning of various expressions used in the Bill.

### **Commencement**

172. Section 151 allows the Scottish Ministers to set different dates to commence different provisions of the Bill.

### **Short title**

173. Section 152 gives the short title of the Bill.

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

174. The purpose of the Housing (Scotland) Bill is to safeguard social housing for future generations by reforming the Right to Buy and modernising social housing regulation to provide improved value for tenants and taxpayers. It also includes provisions to ensure that veterans are treated equally with other homeless applicants by amending the definition of “local connection”; to strengthen local authority powers to deal with disrepair in privately-owned housing; and to improve the operation of the systems for private landlord registration and licensing of houses in multiple occupation (HMOs).

### **BILL CONTENT**

175. This Financial Memorandum sets out the costs associated with the Bill under the following headings:

- modernising regulation;
- reforms to the Right to Buy (RTB);
- amending the definition of local connection; and
- reforms to private sector housing.

### **MODERNISING REGULATION**

#### **Introduction**

176. The Bill modernises social housing regulation by:

- i. establishing the Scottish Housing Regulator (SHR) as a body corporate, independent from Scottish Ministers;
- ii. providing for a register of social landlords;
- iii. establishing a framework for assessing, reporting and monitoring social landlords’ performance against outcomes set in a Scottish Social Housing Charter;
- iv. replacing the existing inspection powers with powers to conduct inquiries and obtain information from social landlords;
- v. providing the SHR with a set of regulatory intervention powers; and
- vi. providing the SHR with powers, in Parts 6-8 of the Bill, to regulate the financial viability and good governance of Registered Social Landlords (RSLs); and, in Part 9, to regulate disposals of land by RSLs.

## **Background**

177. Under the Housing (Scotland) Act 2001 (“the 2001 Act”), the Scottish Ministers are responsible for regulating and inspecting social housing. Communities Scotland exercised this power on Ministers’ behalf until it was abolished in April 2008. At that point, as an interim measure pending primary legislation, the Scottish Government created the SHR as an executive agency to exercise Ministers’ regulatory functions. The Bill establishes the SHR as a body corporate with statutory independence from Ministers.

178. In broad terms, the SHR will have two sets of functions: to regulate the financial wellbeing and standards of governance of RSLs and to regulate both RSLs’ and local authority landlords’ performance of housing activities.

## **Aims and Objectives**

179. The Bill provides for the SHR to assume the role of regulating the financial wellbeing and governance standards of RSLs by transferring to it functions that at present are conferred on Scottish Ministers under the 2001 Act. Scottish Ministers exercise these powers through the SHR which is at present an executive agency of the Scottish Government. The purpose of these functions now, and under the Bill, is to safeguard the assets of RSLs so that they remain available for the use of current and future generations of tenants. These functions also underpin the SHR’s overall objective of safeguarding and promoting the interests of current and future tenants. In total, RSLs have assets with a gross value of around £8 billion. These have been developed over the past 25 or so years with the assistance of £3.3 billion borrowing from the private sector and, over the last 15 years, £3 billion public sector investment from central government (SHR 2009, *Social Landlords in Scotland: Shaping up for Improvement*<sup>1</sup>). These assets enable RSLs to provide accommodation at below market rents for around 270,000 households.

180. In providing for the SHR to regulate the performance of all Scottish social landlords, the Bill includes a range of new functions alongside a number that are transferred from Scottish Ministers to the SHR. The functions will enable the SHR to monitor, assess and report on the performance of landlords, in particular against the outcomes that will be set by Scottish Ministers in the Social Housing Charter. The SHR will be able to set landlords targets to improve their performance and to intervene in a range of ways to improve performance if that is necessary. These functions will allow the modernised SHR to safeguard and promote the interests of around 600,000 households (the one in four households in Scotland living in council and RSL accommodation) by regulating what in effect are businesses with a total turnover of £2 billion a year. The modernised scrutiny framework will provide independent assurance that services are well managed, responsive, efficient, safe and fit for purpose. The scale of the sector as a whole means that even modest improvements in its efficiency could be worth substantial sums of money.

---

1

[http://www.scottishhousingregulator.gov.uk/stellent/groups/public/documents/webpages/shr\\_shapingupforimprovement.pdf](http://www.scottishhousingregulator.gov.uk/stellent/groups/public/documents/webpages/shr_shapingupforimprovement.pdf)

## **The Scottish Housing Regulator**

181. Part 1 of the Bill establishes the SHR as a body corporate, independent from the Scottish Ministers, exercising functions through a Board. Subject to enactment of the Bill and to the necessary orders under the Scotland Act 1998 being secured, the SHR will be a non-Ministerial Department within the Scottish Administration. The SHR will have the objective of safeguarding and promoting the interests of current and future tenants, people who are homeless and others who use the services of social landlords. It will have a specific duty to establish a means of engaging with representatives of tenants, homeless people and other service users. The costs of establishing the SHR are discussed at paragraphs 187 to 207 below.

## **The register of social landlords**

182. The 2001 Act provided for Scottish Ministers to maintain a register of social landlords and to set the criteria for registration. Part 2 of the Bill provides for the SHR to keep a register of social landlords. (Local authority landlords are not to be included in this register.) Part 2 also establishes two sets of criteria for registration: legislative criteria (set by Scottish Ministers through regulations) specifying the types of body eligible for registration; and regulatory criteria, set by the SHR. The registration provisions have no material cost implications. There have been very few registrations over the last few years (three organisations in 2006/07, one in 2007/08 and none in 2008/09). The Scottish Government does not expect the number applying for registration to change as a result of the Bill. Organisations applying for registration with SHR do incur costs, in terms of staff time, but they also benefit by becoming eligible for Housing Association Grant and favourable private borrowing rates. These costs and benefits flow from existing provisions in the 2001 Act and the Bill will allow these to continue for RSLs.

## **The Scottish Social Housing Charter**

183. Part 3 of the Bill provides for Scottish Ministers to publish a Scottish Social Housing Charter setting outcomes that social landlords must aim to achieve. It also provides for the SHR to assess and report on their performance and, where necessary, set performance improvement targets. The Scottish Ministers are required to consult the SHR, tenants or their representatives, social landlords or their representatives, lenders to the RSLs and their representatives, and the Accounts Commission about the outcomes to be included in the Charter before submitting it to Parliament for approval. The aim is not to create new burdens or duties on landlords, but to develop a set of outcomes that together will constitute a broad description of what landlords should be delivering. In practice this broad description is likely to be a statement of what good landlords are already achieving for their tenants, those in housing need and the communities in which they operate. The costs of the Charter will be established and agreed through the consultation and subject to approval by the Scottish Parliament.

## **Inquiries and information**

184. In practice, the SHR has already been moving away from carrying out cyclical inspections of social landlords. Part 4 of the Bill enshrines this approach in legislation by replacing the inspection powers in the 2001 Act with a more flexible set of inquiry powers. These powers could be used in a variety of ways, ranging from the SHR making simple requests for specific information to wider-ranging inquiries into aspects of a service, into a group of landlords, or making “thematic” inquiries covering a number of landlords and a specific topic. There may also be unannounced or short-notice inquiries. This change will require a shift in use

of resources both within SHR and regulated bodies but will have no direct cost implications. However, the move away from a cycle of routine inspections of every landlord to a more targeted, risk-based approach should reduce some of the indirect costs of regulation. This is discussed at paragraphs 208 and 215 below.

### **Enforcement powers**

185. Part 5 of the Bill provides the SHR with a 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. It incorporates existing powers from the 2001 Act and supplements them with powers to enable the SHR to take enforcement action when this is needed to require a social landlord to improve its performance or comply with the Charter. In the case of local authorities, enforcement powers in the 2001 Act were linked to inspection; this is no longer the case in the Bill. In all cases, however, the SHR will be required to act proportionately and to target its actions only where needed. Enforcement will be targeted only at the poorest performers.

### **Regulating RSL governance and financial viability**

186. Parts 6 to 8 of the Bill provide the SHR with a range of powers to regulate RSLs' governance and financial management arrangements, while Part 9 provides for it to regulate disposals of land. These provisions are largely imported from the 2001 Act and have no new financial implications. Stakeholders such as the Council of Mortgage Lenders (CML) attach great importance to these powers and to the role of an independent regulator in commanding the confidence of lenders. The CML takes comfort from regulation and the considerable expertise built up by the SHR and its predecessor organisations. In its response to the 2007 consultation document *Firm Foundations*<sup>2</sup>, the CML<sup>3</sup> emphasised that the effectiveness of regulation is directly related to pricing and the availability of lending in respect of both new and existing borrowing. This is clearly illustrated by the lower lending margins offered to RSLs compared to the commercial sector. It is estimated that over the last five years the lower lending margins for Scottish RSLs compared with the commercial sector as a whole can be estimated to have saved the sector in the region of £70 million.

### **Costs on the Scottish Administration**

187. Costs on the Scottish Government arise mainly from Part 1 of the Bill, which establishes the SHR as a non-Ministerial Department (NMD).

188. The Bill provides for the SHR to charge fees in respect of its functions. This provision (at section 16) is imported from section 81 of the 2001 Act. The Scottish Government believes it is important to retain this flexibility for the future, but current policy is for the Scottish Administration to continue meeting all of the costs of the SHR. The Scottish Government considers this approach is justified in the interests of avoiding the costs of regulation falling on landlords and, ultimately, on tenants through their rents. It will seek the Parliament's approval annually to SHR's costs being met in this way through successive Budget Bills. The cost of regulation is around 0.2 per cent of the £2 billion annual turnover of the social housing sector (£4 million).

---

<sup>2</sup> <http://www.scotland.gov.uk/Resource/Doc/201716/0053780.pdf>

<sup>3</sup> <http://www.scotland.gov.uk/Resource/Doc/214031/0056959.pdf>

189. Based on analysis of comparable running costs, the SHR's costs provide good value for money compared to the equivalent costs in England. SHR's costs per social housing unit are around £6.76 compared to an equivalent figure of £8 for the Tenant Services Authority.

190. When Communities Scotland was abolished in 2008, the SHR was created as an executive agency as an interim measure pending the creation of a fully independent body to regulate social housing. One of the Bill's main purposes is to provide for independent regulation by establishing the SHR as a body corporate. The extent and nature of that independence depends on the functions that the Bill confers on the SHR and on the relationship between the SHR and Scottish Ministers that the Bill establishes.

#### *Staffing arrangements*

191. A further objective of the Bill is to ensure that the creation of the SHR is achieved with minimal additional cost to the Scottish Government and with the minimum of disruption to the staff working for the SHR - all of whom are civil servants employed by the Scottish Ministers. During consultation on the draft Bill, some stakeholders expressed concern about the potential cost of setting up a new body. The NMD model will allow SHR staff to remain as civil servants without compromising the regulator's independence. It will also ensure business continuity and reduce the risk of incurring additional staffing, pension or redundancy costs during the transition from executive agency to corporate body status, because staff can be re-deployed in the Scottish Government. There will be a need for some project management and change management work to support the process of changing from an executive agency of the Government to a non-Ministerial Department. The transition costs in Table 2 below include the cost of a project manager to support the agency's executive management team to achieve a smooth transition to the Regulator's new organisational status. This is estimated to be £70,000 in 2010/11.

192. The SHR's chief executive will, however, be appointed in an open competition to identify a candidate who meets criteria specific to the appointment. The appointment will be on Senior Civil Service terms and conditions. The estimated cost of recruiting through external advertising, based on similar exercises, is £25,000. These costs will be met by the Scottish Government.

193. The NMD model also allows the SHR to continue with its existing streamlined corporate services. As an NMD it will continue to access specialist services through the Scottish Government's shared services arrangements for human resources, information technology, purchasing and accounts system and procurement expertise. The SHR will also benefit from the economies of scale secured through its participation in a number of Scottish Government contracts. This means that the SHR will not have to employ its own experts in these areas. It will however need to employ its own legal adviser, and it will create a new post of Tenant Concerns Co-ordinator (discussed below at paragraph 201). These appointments may be made through redeployment or internal advertising within the Scottish Government, but recruitment costs of £10,000 have been included in the estimated transition costs (summarised in Table 2 below) in the event that external advertising is required. On-costs will be met from the SHR's budget, including savings made elsewhere (for example the shift away from cyclical inspection) from 2010/11 onwards.

#### *Appointments to the SHR Board*

194. The Bill provides for the Board to consist of at least three non-executive members, one of whom will Chair the Board, and the Chief Executive. Appointments to the Board will be

regulated according to the code of the Office of the Commissioner for Public Appointments in Scotland (OCPAS). The cost of advertising, interviewing and making the appointments, based on recent similar exercises, is estimated at £30,000.

195. The Scottish Administration will meet the costs of subsequent appointments when they fall due every three or four years.

#### *Remuneration of Board Members*

196. The continuing cost of payments to Board members will be met from the SHR's budget. In its present form as an executive agency the SHR has an advisory Regulation Board which comprises senior SHR staff and three external members. In 2009/10, the external members were remunerated at the rate of £190 per day. The non-executive members of the new body will be remunerated at Pay Band 2 level. In 2009/10 daily rates for board members ranged from a minimum of £161 to a maximum of £241, and for chairs, from £193 to £337. Board members of the Office of the Scottish Charity Regulator (OSCR), which is also a NMD, received £200 a day in 2009/10 and its chair £270 a day.

**Table 1 - Annual costs of SHR Board Remuneration**

Low	Medium	High	Best estimate
£17,554	£23,590	£29,626	£23,590

197. Estimates assume that there will be five Board members and one Chair. This is based on the practice of The Office of Scottish Charity Regulator (OSCR). Members will attend 12 Board meetings and four Audit Committee meetings during the financial year and estimates assume that Board members will be involved in three statutory intervention cases each year.

198. Financial estimates are based on Board members and Chair being remunerated at the lowest, medium and highest ranges of the relevant scale (£161 to £241 per day for members and £193 to £337 per day for Chairs). The best estimate assumes that on average Board members will be paid around the middle of that scale.

199. Members will also be remunerated for any preparatory work they do prior to board meetings at 50% of the daily rate. They may also have to review and comment on any statutory intervention the SHR takes and would be remunerated for this at approximately 25% of the daily rates. It is assumed that, in line with existing caseloads, there will be three statutory intervention cases each year. Finally, based on the SHR's current practice, an assumption of £30 per member per meeting has been included for travelling expenses. These costs are included in the figures detailed in Table 1 above.

#### *Engaging with representatives of tenants, homeless people and other service users*

200. The Bill gives the SHR a specific duty to establish a means of engaging with representatives of tenants, homeless people and other service users, as well as its overall objective of safeguarding and promoting their interests. In practice, this provision will require the SHR to build on the well-developed arrangements for tenant engagement that are already in place. Over the last five years (since 2004/05) the SHR has spent, on average, around £7,000 a year supporting its Tenants Regulation Advisory Group. Since 2006 it has also used volunteer tenant assessors working alongside its inspection teams, with support costs of around £11,000 a

year (with costs likely to increase by around £2,000 in 2009/10 to reflect recruitment of eight new tenant assessors). The SHR also routinely consults Registered Tenants Organisations during inspections. Service user engagement is already embedded in the SHR's work. The Bill will enshrine this practice in statute.

201. The Bill also includes a provision to enable tenants to notify the SHR of poor service performance or other failures that require the Regulator's attention. The SHR is proposing to appoint a Tenant Concerns Co-ordinator to lead on this work and ensure the SHR is meeting its statutory duty. At present, there is no formal mechanism for tenants to bring such failures to the attention of the Regulator nevertheless in practice tenants do contact the SHR about their concerns. As a result, the Scottish Government does not consider that any additional costs will be incurred as a result of the provisions on engaging with tenants, homeless people and other service users.

#### *Monitoring the performance of social landlords*

202. The SHR will have to develop efficient data collection systems using Information Technology (IT) to allow it to gather information from social landlords on their performance against the Charter and from RSLs on their governance codes and on their financial health and capacity. They will also want to minimise the burden on landlords of providing information by having a system that can reflect their submitted information back to landlords, tenants and service users in a way that allows them to see the analysis that SHR has done and to carry out their own analysis. The cost of the work to develop an IT system that delivers the functionality needed by the SHR is estimated to be a maximum of £300,000 over 2010/11 and 2011/12.

#### *Costs on the Scottish Administration - summary*

203. The agency's budget was £4.6 million in 2008/09 and £4.7 million in 2009/10. It is planned to be £4.3 million in 2010/11 - a reduction of 7.5% in its annual budget arising from the Government's commitment to reduce scrutiny costs.

204. In 2008 the Scottish Government, through the Efficient Government Programme, put in place a requirement for portfolios to deliver efficiency savings across the public sector. The Spending Review will determine the level of efficiencies required from 2011/12 and these might include further reductions in scrutiny costs. The Budget for the modernised SHR in 2011/12, its expected first year of operation, will be set in the 2011/12 Budget Bill. In view of the present severe pressure on public expenditure the Scottish Government does not envisage this exceeding the agency's 2010/11 budget.

205. The figures at Table 2 below show the most robust estimate for the SHR's budget over the next three years. Budget provision beyond 2010/11 will be subject to wider decisions on the Scottish Government budget, including any around future broader scrutiny efficiencies, and on the pace at which already planned reductions in staffing can be managed without generating extra costs. Given the current financial position, the Scottish Government expects the SHR's budget to be no more than the £4.3m shown for the three years from 2010 on and it will seek to achieve savings from that where possible.

206. Table 2 shows estimated transition costs of £435,000 over 2010/11 and 2011/12 to meet the cost of developing an efficient data collection system to support the key area of SHR's work

*These documents relate to the Housing (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 13 January 2010*

in monitoring performance of social landlords. This also includes costs for support to manage the change of the SHR from executive agency to non-Ministerial Department. These costs will be met from the Housing and Regeneration Directorate's budget.

207. The SHR budget for 2010/11 reflects scrutiny efficiency savings of £350,000. The SHR's continuing shift to a targeted and risk-based approach and the new functions provided for in the Bill will enable the organisation to continue to deliver efficiencies and more specialised monitoring and analytical activities. There are no savings as a consequence of the provisions in the Bill. However, as stated in paragraph 205 above the Scottish Government will seek to achieve savings to the SHR budget year on year in line with its budget requirements.

**Table 2**  
**Summary table of costs and savings in establishing the Scottish Housing Regulator**

Item	2009/10 £m	2010/11 £m	2011/12* £m	2012/13* £m	Additional Information
<b>Existing organisation budget:</b>					
Staff costs	3.6	3.3	3.3	3.3	Para 203
Non-staff costs	1.1	1.0	1.0	1.0	Para 203
<b>Total organisational budget</b>	<b>4.7</b>	<b>4.3</b>	<b>4.3</b>	<b>4.3</b>	
<b>Transition costs (best estimates):</b>					
Staff costs					
Appointments to Board	0	0.030	0	0	Para 194. Estimate based on recent similar OCPAS regulated appointments.
Appointment of Chief Executive	0	0.025	0	0	Para 192. Estimate based on recent similar exercises
Other appointments	0	0.010	0	0	Para 193. Advertising costs for posts in new structure (assumes some posts filled internally). Range of estimate £5k- £15k
Transition workforce planning	0	0.070	0	0	Para 191. Includes skills development and transition project management
<i>Total staff transition costs:</i>	<i>0</i>	<i>0.135</i>	<i>0</i>	<i>0</i>	
Non-staff costs:					
IT capital costs	0	0.10	0.20	0	Para 202. Range of estimates from 0.20 to 0.40, with best estimate 0.30 over 2 years
<i>Total non-staff transition costs</i>	<i>0</i>	<i>0.10</i>	<i>0.20</i>	<i>0</i>	
<b>Total transition costs</b>		<b>0.235</b>	<b>0.200</b>	<b>0</b>	Para 206.
Non-staff costs	0		0	0	
<b>Expected savings: There are no savings as a consequence of the Bill.</b>					
Reduction in staff	0	0	0	0	
Other efficiencies	0	0	0	0	
<b>Total expected savings</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	

\* Figures for 2011-2012 and beyond are subject to the outcome of the next Spending Review

### **Costs on local authorities**

208. The provisions to modernise regulation have no direct financial implications for local authorities. However, the Scottish Government expects the changes to have some indirect costs and benefits. For the last nine years local authority housing services have been subject to the single regulatory framework introduced by the 2001 Act. The 2001 Act's regulatory powers in relation to local authorities are all linked to inspection. The SHR is now coming to the end of its Ministerial commitment to complete "baseline" inspections of local authority landlords by 2010. The Bill replaces the inspection powers with the more flexible inquiry powers outlined in paragraphs 184 and 185 above.

209. The modernised framework that the Bill introduces will change the basis of local authority scrutiny from an inspection-based to an intelligence-led approach consistent with the Government's wider reforms to scrutiny in the Public Services Reform (Scotland) Bill. The Housing (Scotland) Bill gives the SHR the functions of monitoring, assessing and reporting on the performance of local authorities' housing activities, particularly in terms of the outcomes that will be set in the Scottish Social Housing Charter. Decisions on scrutiny of council housing (and other) services will in future be taken in the context of the new shared risk assessment process led by the Accounts Commission. The shared risk assessment will set the context for the regulation of local authority housing and homelessness services.

210. The SHR will be required to use its powers in a risk-based and proportionate way with an emphasis on self-evaluation by landlords as the starting point for scrutiny. The SHR will draw on information that councils with effective performance management systems will be collecting for their own purposes and which, therefore, can be shared with the SHR at minimal additional cost. The Scottish Government expects these changes to lead to a shift in resources within local authorities away from preparing for inspection to more effective information provision and self-evaluation.

211. While there is a lack of robust information about scrutiny compliance costs for local authorities or the public sector generally, there is anecdotal evidence that many local authorities spend significant resources in terms of staff time, and sometimes consultancy costs, in preparing for inspection. The move away from cyclical, full-service inspections should significantly reduce the burden and costs of compliance since it will largely remove the need to prepare intensively for inspection. Audit Scotland, which provided evidence to the Crerar Review, noted that information about the compliance costs of external scrutiny is largely unavailable. It did however conclude that "there is emerging evidence that well managed organisations find complying with scrutiny regimes (i.e. undertaking self-assessments and providing robust and reliable performance data) less onerous than those with poor governance and management arrangements." (Audit Scotland, 2007, *The costs of external scrutiny of public services*<sup>4</sup>).

212. Nearly all local authorities that responded to the consultation<sup>5</sup> on the draft Bill<sup>6</sup> agreed with the proposal to set outcomes for social landlords in a Scottish Social Housing Charter.

---

4

<http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/ReviewEvidence/AnnexD>

<sup>5</sup> [Draft Housing \(Scotland\) Bill: a Consultation - an Analysis of Responses:](#)

<http://www.scotland.gov.uk/Publications/2009/11/09092950/1>

<sup>6</sup> [Draft Housing \(Scotland\) Bill: a consultation:](#) <http://www.scotland.gov.uk/Publications/2009/04/27095102/0>

Nevertheless COSLA and some individual councils were concerned that this might introduce new information reporting requirements. During consultation, some authorities also expressed concern about perceived duplication between the reporting requirements of Audit Scotland and the SHR. The Scottish Government is committed to achieving a streamlined system for local authority performance reporting which avoids duplication between government agencies and departments. It will explore how this can be developed within the modernised system of regulation.

213. The Scottish Government cannot say at this stage what the costs of the Charter will be since it will be developed through a process of statutory consultation with the sector, tenants and other stakeholders. That process will include an assessment of the likely cost to landlords (and tenants and other stakeholders) to ensure that the outcomes set are realistic and affordable. As noted in paragraph 183 above, it is the Government's aim that the Charter will not create new burdens or duties on landlords. It will develop a set of outcomes that is likely to be a statement of what good landlords are already achieving for their tenants.

### **Costs on other bodies, individuals and businesses**

#### *Registered Social Landlords*

214. RSLs have also highlighted the staff time involved in preparing for inspection and supplying information for the regulator. This has not been routinely costed so again the Scottish Government has only anecdotal evidence. This suggests that the cost of providing information returns is relatively modest compared to that of preparing for an inspection. One RSL for example recently estimated that it had spent in excess of £20,000 on consultancy and more than 50 days of staff time at middle and senior management level on preparing for inspection, compared to 13 days of staff time completing its Annual Performance and Statistical Return. Another RSL estimated the costs to them of a recent inspection as £12,000 of staff time away from their normal duties. Commenting on the work they do to provide information to the SHR they said "*Complying with regulatory requirements is so embedded in the policies, procedures and processes of the Association that it is quite difficult to separate out what is simply a normal part of running a business and what extra might be expected to satisfy the Regulator or to produce new information for the Regulator*<sup>7</sup>".

215. Over the last two years the SHR has already been moving away from cyclical inspections of RSLs to a more risk-based approach underpinned by an annual assessment of financial and performance information provided by each RSL. Risk-based regulation does bring intensive requirements from the Regulator for the relatively small number of RSLs that exhibit higher risks, which can lead to those RSLs incurring costs. But these are the result of poor performance or weaknesses in financial or governance systems, rather than the costs of regulation. There will be lighter-touch regulation (and therefore lower costs) for RSLs exhibiting lower risks. In general, assessments will be based on information that RSLs with effective performance management systems will be collecting for their own purposes, with only minimal additional costs involved in sharing this with the regulator.

216. The SHR has already worked to streamline the information it collects and to reduce the burden on Registered Social Landlords, for example, by sharing relevant information with other scrutiny bodies such as the Office of the Scottish Charity Regulator, so avoiding duplicate

---

<sup>7</sup> Extract from letter to the SHR from an RSL dated September 2009.

requests for similar information. The Bill places a duty on the SHR to co-operate with other regulators that will put this on a statutory footing and give landlords further assurance that regulatory requirements will be co-ordinated and reduced wherever possible.

217. The Bill will bring new requirements for RSLs to demonstrate that they are complying with the Social Housing Charter and, like local authorities, they may be concerned about the potential costs or burden of this. The Government's commitment to streamline scrutiny and the collection of information applies to RSLs as it does to local authorities, and the Scottish Government expects the public consultation about the Charter and its costs to go some way to reassure them.

218. In general, RSLs value the comfort that regulation provides to private lenders, which means they benefit from favourable lending rates as well as access to Housing Association Grant.

#### *Costs on other bodies, individuals or businesses*

219. The Bill has no direct cost implications for other bodies, individuals or businesses. However, as highlighted in the introduction, effective regulation has the potential to bring benefits to tenants in terms of the value they receive, defined as the quality of service they experience weighed against the rent they pay to their landlord. And if, for example, through regulation, the SHR can assist and encourage landlords to improve their efficiency, a reduction in management and maintenance costs for RSLs of one per cent will yield a benefit equivalent to £2.7 million a year. A reduction of one per cent in overall operating costs would be equivalent to £9 million a year – or £33 for every RSL tenant. In contrast, the SHR has calculated that the cost of regulation per home in the social rented sector in 2008/09 was the equivalent of 13p per week, or £6.76 a year, for each social rented home. (SHR 2009, *Social Landlords in Scotland: Shaping up for Improvement*<sup>8</sup>)

#### **Modernising Regulation – Summary of financial implications**

220. Table 3 below provides a summary of additional costs of £435,000 arising from the provisions to modernise the regulation of social housing. This shows how these costs relate to provisions in the Bill. They are largely associated with the establishment of the SHR as a non-Ministerial Department. In terms of the overall size and turnover of the sector these additional costs are relatively low.

---

<sup>8</sup>

[http://www.scottishhousingregulator.gov.uk/stellent/groups/public/documents/webpages/shr\\_shapingupforimprovement.pdf](http://www.scottishhousingregulator.gov.uk/stellent/groups/public/documents/webpages/shr_shapingupforimprovement.pdf)

**Table 3**  
**Summary table of additional costs – Modernising Regulation**

	<b>Paragraph reference</b>	<b>Additional Costs (£m)</b>
<b>Scottish Government</b>		
Establishing the SHR as a non-Ministerial Department (appointment of the Board and Chief Executive)	193-199; Table 1 and Table 2	0.055
Transition costs - staffing and change management	191 – 193 Table 2	0.080
Transition costs – development of IT system	202 and Table 2	0.300
<b>Local authorities</b>		
Inquiries and information - self-assessment and reporting provisions.	184 208 - 211	nil
Scottish Social Housing Charter	212 - 213	These costs will be calculated as part of the Ministerial consultation process and subject to Parliamentary approval.
<b>Registered social landlords</b>		
Registration provisions	182	nil
Inquiries and information - self-assessment and reporting provisions	184	nil
Financial management and governance	186	nil
Scottish Social Housing Charter	183 and 217	These costs will be calculated as part of the Ministerial consultation process and subject to Parliamentary approval.
<b>Other bodies, individuals or businesses</b>		
No provisions in the Bill.	219	nil

## **REFORMS TO THE RIGHT TO BUY (RTB)**

### **Introduction**

221. The following legislative reforms to the Right to Buy (RTB) were included in the consultation on the draft Housing (Scotland) Bill:

- i. Ending RTB for new supply social housing;
- ii. Ending RTB for new tenants;
- iii. Reforming pressured-area designations.

222. The main impacts will arise from reforms i and ii listed above. It is not possible to quantify the impacts that will arise from the reform at iii because we cannot anticipate with any degree of certainty how social landlords will respond to them. However, any impact is not expected to be significant as the numbers of tenants affected will be extremely small.

223. This section of the memorandum sets out the financial impacts which will arise as a consequence of the RTB reforms and the timescales over which these impacts are expected to arise.

### **RTB sales trends and assumptions**

224. This section presents a summary of historic RTB sales trends and an explanation about how these trends have been used to inform future estimates of RTB sales and financial impacts. RTB sales numbers are driven by individual decisions by tenants with RTB entitlements to purchase their properties. Purchase decisions are affected by factors such as the value of the property, the personal financial circumstances of the tenant and wider housing market and credit availability conditions.

225. RTB sales have varied greatly over the last 30 years, with sales peaking in the late 1980s and early 1990s. Since then there has been a considerable decline in RTB sales, apart from a slight rise in the early 2000s resulting from a surge in sales associated with the introduction of the modernised RTB in the Housing (Scotland) Act 2001. RTB sales have fallen mainly because most tenants who are able to purchase have already done so, resulting in the sale of most of the more desirable properties. In addition, it is likely that the less generous discount conditions under modernised RTB compared to preserved RTB will further depress sales.

226. Since 2007, RTB sales have been declining further as a result of the housing market downturn associated with the credit crunch. This has created additional uncertainty when trying to estimate future RTB sales numbers. Lower house prices may encourage some tenants to buy their property, whereas others may either be unwilling to take on the risk of a mortgage or simply unable to access the necessary credit. In order to make the analysis as straightforward and as informative as possible under these uncertain conditions, we have assumed that the rate of sales of social housing will stay constant each year and have looked at three variations in this sales rate reflecting different housing market scenarios. The sales rate is defined as the number of sales as a percentage of all stock. The rates presented below provide a reasonably realistic range of potential RTB sales numbers under different economic conditions:

*These documents relate to the Housing (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 13 January 2010*

- **High Sales Rate** – This approximately reflects the latest 5 year average of sales (2% of all properties sold each year).
- **Medium Sales Rate** – This approximately reflects the rate of sales over the latest available year (1.5% of all properties sold each year).
- **Low Sales Rate** - This approximately reflects what we believe to be the latest sales rate (1% of all properties sold each year).

227. The impact of the RTB reforms was compared to the base case, which reflects the number of RTB sales that we would expect to occur under current RTB legislation. Under the base case it is estimated that there will be between 46,000 and 84,000 sales between 2012 and 2022. Table 4 below shows the change in RTB sales, compared to this base case, that could result from the proposed reforms.

**Table 4 – Reduction in RTB Sales between 2012-22 compared to the Base Case**

<b>Housing Market Scenario</b>	<b>Reduction in number of RTB sales under RTB Reforms</b>
High Sales Rate	-17,900
Medium Sales Rate	-14,000
Low Sales Rate	-9,700

228. The reduction in sales, arising from RTB reforms, equates to a 21% reduction on the base case, but the absolute reduction in sales numbers varies considerably between the different market scenarios.

229. The removal of RTB entitlement for new tenants is the main contributor to the collective impact of all proposed RTB reforms and accounts for an estimated reduction between 2012 and 2022 in RTB sales of between 6,500 and 11,600, depending on housing market conditions. This reform will only have an impact after 2015 because new tenants with modernised RTB entitlements must wait five years before they can exercise their RTB. Therefore social landlords' capacity to invest in existing stock in order to meet the 2015 deadline for attaining the Scottish Housing Quality Standard (SHQS) should not be significantly affected.

### **Costs on the Scottish Administration**

230. The RTB reforms will have a minimal impact on central government expenditure. The Scottish Government receives income from RSL RTB sales, which is channelled into the Affordable Housing Investment Programme. This contribution is currently forecast to be around £12 million for 2009/10 and has diminished annually as RTB sales numbers have decreased. The chief impact will be upon social landlords' capital receipts and rental income, as described in the following sections.

231. Costs on local authorities

232. This section presents a summary of local authorities' views on the long term financial impact of RTB reforms (which were sought as part of the consultation process) and also our estimates of the financial impacts of RTB reforms upon local authority landlords.

233. Local authorities are one of two types of social landlord that provide housing for rent at less than market rates, mainly, but not exclusively, for those on low incomes. Twenty-six local authorities provide social housing in their respective areas (six others having divested themselves of their housing stock to RSLs that were created to acquire and manage it). The impacts of RTB reforms upon RSLs are presented in the next section.

#### *Local authority housing finance*

234. Local authorities generate financial resources from rent, which can be used to support borrowing, and capital receipts. Local authorities can use these financial resources: to invest in existing housing stock (generally for SHQS purposes); to build new housing; for housing - related environmental enhancements; and to repay debt.

235. RTB sales have traditionally provided the main source of capital receipts for local authorities. Selling a house also means that the landlord is no longer liable for future investment in it, although future rental income from the house will be lost. In addition, selling a house should result in a reduction in the landlord's management costs, but this depends on the landlord's ability to make changes to its business to realise the potential saving.

#### *Local authorities' views on financial impacts*

236. Local authority respondents to the consultation exercise were supportive of the proposed reforms. Many landlords and local authorities stated that the income lost as a result of reducing RTB receipts would be "*minimal*" or "*not significant*", and would be offset by rental income over the longer term, and outweighed by the positive benefits of reforming the RTB more generally. This assessment was underlined by many who had seen "*a significant reduction in the RTB sales over recent years and project further reductions in future*"<sup>9</sup>.

237. There was concern that councils, and also some RSLs that had acquired stock through Large Scale Voluntary Transfer (LSVT), may be more dependent on RTB sales. Whilst it was noted that borrowing and rent setting were the main options available to landlords, it was also felt that strong planning (including reviewing existing business plans / investment programmes) and effective procurement methods could help landlords deal with any capital shortfalls. "*Landlords will have to look carefully at how they structure their borrowing requirements and phase their capital programmes.*"<sup>10</sup>

238. Some respondents called for landlords to be able to sell properties when it becomes in their interest to do so and local authorities will retain the right to make voluntary sales where appropriate under section 14 of the Housing (Scotland) Act 1987.

239. There was also concern that "*Pressure to meet the SHQS by 2015 remains (our) most critical challenge*"<sup>11</sup>. The main impact of the reforms will not however be felt for five years from commencement of the Act, as the vast majority of new tenants would take this time to meet

---

<sup>9</sup> [Draft Housing \(Scotland\) Bill: a Consultation - an Analysis of Responses:](http://www.scotland.gov.uk/Publications/2009/11/09092950/4)  
<http://www.scotland.gov.uk/Publications/2009/11/09092950/4>

<sup>10</sup> [Draft Housing \(Scotland\) Bill: a Consultation - an Analysis of Responses:](http://www.scotland.gov.uk/Publications/2009/11/09092950/4)  
<http://www.scotland.gov.uk/Publications/2009/11/09092950/4>

<sup>11</sup> [Draft Housing \(Scotland\) Bill: a Consultation - an Analysis of Responses:](http://www.scotland.gov.uk/Publications/2009/11/09092950/4)  
<http://www.scotland.gov.uk/Publications/2009/11/09092950/4>

the minimum qualifying period under the modernised RTB. The proposed reforms should therefore have no significant impact on availability of resources to meet the 2015 SHQS target.

240. Landlords themselves are best placed to take a view on the financial impacts of the proposed reforms based on their individual circumstances. The Scottish Government's estimates support the views of landlords that the RTB reforms will not greatly affect social landlords' capacity to invest in their stock and that uncertainty associated with current economic conditions is likely to have much more effect.

*Flexibility available to local authorities*

241. Some stakeholders called for greater flexibility to RTB in order to limit any negative financial impacts. However existing provisions and the proposed reforms provide social landlords with considerable flexibility already, as described below.

242. The Scottish Government will reform pressured-area designations in order to let councils match RTB to local housing need more easily. The reform to allow particular housing types to be designated as pressured (as compared to current provisions which only allow areas to be designated as pressured) should allow RTB sales to proceed on other properties in the same areas for which there is less demand, which in turn should help social landlords limit the financial impacts of RTB reforms. In addition the Scottish Government intends to devolve decision-making to local authorities and to increase the maximum period of pressured-area designations.

243. In terms of existing RTB provisions which promote flexibility, Scottish Ministers may vary the maximum discount figure or the percentage discount of modernised RTB entitlements (tenants who have preserved RTB entitlements are not affected). These powers could be used to set a different maximum discount figure or percentage discount for different cases or descriptions of cases, or for different areas. Such action would require a statutory instrument, but no such order has been made to date.

244. Finally, in addition to the statutory RTB, local authority landlords may dispose of certain houses on a voluntary basis. These general consent powers are set out in section 14 of the Housing (Scotland) Act 1987. These powers are intended to be used for sales to sitting tenants or for disposing of stock that is difficult to let. This process does require certain conditions to be met and for a robust strategic case to be made. In cases where an authority wishes to sell a house at less than open market value, Scottish Ministers' permission must also be sought.

*Estimating the financial impacts of RTB reforms on local authorities*

245. Although there will be a reduction in local authorities' RTB receipts as a result of the RTB reforms, this should be offset by the benefit of continued rental income (net of associated operating costs) from the stock not sold as a result of the reforms. The Scottish Government estimates that up to 18,000 units could be retained over a 10 year period and that crucially the benefit resulting from the retained net rental surplus would continue to be received over the remaining lifetime of the properties.

246. This retained rental surplus could be used in a number of ways to finance capital expenditure that would otherwise have been financed by RTB receipts. Firstly, in any given year the surplus could be applied to funding capital works in that same year. Many local authorities

do fund significant amounts of capital expenditure from current revenue (CFCR). Secondly, the surplus could contribute to reserves available for use in subsequent years to fund capital expenditure. Finally, if there was a need to fund capital expenditure up front, local authorities, through their prudential borrowing capacity, could use the future net rental surplus over the lifetime of the property to pay for any borrowing needed to fund such investment. In these ways it is possible for local authorities to convert revenue streams into capital investment, and thus the retained net rental surplus can be used to compensate for any shortfall in capital funding due to lower RTB receipts.

247. Income derived from RTB sales receipts represents a decreasing relative share of local authorities' funding for capital expenditure. In 2006/07 the capital returns submitted by local authorities to the Scottish Government indicated that 50% of local authorities' funding for capital expenditure was derived from asset sales (mostly comprising RTB house sales). However, recent estimates from a joint COSLA-Scottish Government study indicate that less than 20% of local authorities' funding for capital expenditure will be derived from asset sales between 2009/10 and 2013/14.

248. Year on year the RTB reforms should gradually promote greater long term financial sustainability within the sector by rebalancing social landlords' business models away from volatile capital income derived from the sale of assets under RTB and increasing their reliance on more stable revenue income from rents.

#### *Scottish Government modelling*

249. The modelling undertaken to establish the financial impact upon local authority landlords used Housing Revenue Account (HRA) data and produced estimates for 24 of the 26 local authorities with social housing stock. The estimates do not include data for the six local authorities that carried out wholesale stock transfers, or any RSLs. The estimates have been made taking account of information on the income and expenditure of local authorities with regards to housing, including the number of RTB sales. They were calculated by applying three different sales rates that had recently been experienced within the social rented sector to represent possible future variations in RTB sales rates. The estimated figures presented in this section are in 2008 constant prices (so do not include inflation).

250. Our modelling was undertaken for the period up to 2014/15, since a significant share of local authorities' investment capacity will need to be used to meet the 2015 SHQS target. To produce an estimate of investment capacity for the RTB reforms under different market scenarios, income and expenditure growth rates and RTB sales rates were assumed to be the same for all local authority areas. This therefore provides a like-for-like comparison of the impact on investment capacity for the RTB reforms under different market scenarios. In reality, local authorities have responsibility for running their own HRAs and will use different assumptions about their income and expenditure when drawing up their budgets to reflect local circumstances and policies (depending for example on their particular rent policy or new build plans).

251. The figures presented in Table 5 represent councils' cumulative total non-SHQS investment capacity to 2014/15. Investment capacity is the sum of RTB capital receipts and the amount of borrowing that local authorities could undertake prudently against the net revenue stream generated by their housing stock. In reality local authorities themselves can decide what

they regard as prudent. Local authorities will need to use some of this investment capacity to bring their stock up to the SHQS standard by 2015. They have supplied the Scottish Government with estimates of how much this will be. Deducting this amount from their total investment capacity gives an indication of how much capacity they might have to spend on other things (for example new build and non-SHQS-related improvements to their housing stock).

**Table 5: Cumulative Total (non-SHQS) Investment Capacity (£ bn<sup>1</sup>) to 2014/15**

Housing market scenario	Investment capacity under base case	Investment capacity under RTB reforms
High sales rate	2.7	2.6
Medium sales rate	1.9	1.9
Low sales rate	1.3	1.3

**Note**

1. 2008 constant prices (i.e. excluding effects of inflation).

252. Table 5 shows how investment capacity up to 2015 (over and above that needed to meet the SHQS) varies between the base case and the proposed RTB reforms, under the three different market scenarios discussed previously. The three sales rates (high, medium and low) provide a reasonably realistic way of forecasting the impact of a range of market scenarios upon local authorities' investment capacity. The investment capacity figures should be treated as indicative and the focus should be on the relative differences rather than on the absolute levels of investment capacity. Moving across Table 5 from left to right shows that RTB reforms have only a marginal impact, with investment capacity projected to fall by a maximum of £0.1 billion. In contrast, moving down the table from high to low RTB sales rates shows that the different housing market scenarios make a more significant impact, with investment capacity projected to fall by a maximum of £1.4 billion.

**Costs on other bodies, individuals and businesses**

253. This section presents the financial impacts of RTB reforms upon RSLs, social housing tenants and other UK departments / bodies.

*Registered Social Landlords*

254. RSL respondents were also strongly supportive of the proposed reforms. Many of the landlords responding, including most of the smaller organisations, were charitable RSLs that are exempt from the RTB and therefore the proposed reforms would not have any financial impact on their organisation. For the larger RSLs it was noted that many can and already are adjusting financial plans to accommodate a rebalancing of income away from RTB receipts to greater dependency on rental income. *“Social landlords are having to adjust now to changes in the economy, resulting in reductions in RTB applications, so they will already be taking steps to mitigate against reduced income and capital receipts.”*<sup>12</sup>

255. Some respondents to the consultation had concerns that RSLs that are more dependent on RTB receipts may have difficulty bringing housing up to the Scottish Housing Quality Standard (SHQS) by 2015. However, as discussed previously, the effects of RTB reforms should be very

<sup>12</sup> [Draft Housing \(Scotland\) Bill: a Consultation - an Analysis of Responses:](http://www.scotland.gov.uk/Publications/2009/11/09092950/4)  
<http://www.scotland.gov.uk/Publications/2009/11/09092950/4>

limited up to 2015. Furthermore, other factors over which a landlord has a degree of influence (including operating costs, investment in other areas and rents) are more significant, as are factors such as overall market conditions, which have historically driven RTB sales.

256. RTB sales are a relatively less important source of capital funding for RSLs than for local authority landlords. In general, RSLs sell proportionally fewer properties under RTB than local authorities because most RSL tenants have either no RTB entitlement (for example, if the RSL is a charity) or have had their modernised RTB entitlements suspended until 2012. Local authority landlords have consistently sold a much higher proportion of their total stock (typically 2% to 3%) than RSLs (for whom the figure is usually below 1%). The impact of RTB reforms upon RSLs' investment capacity was not modelled as for local authorities because the information collected by the SHR on the sale of RSL assets is not suitable for this type of analysis.

257. RSLs' capacity to invest in new and existing stock will not be significantly affected by the RTB reforms because RSLs are not expecting to use RTB sales receipts as the main source of funding for these activities. The majority of funding for new RSL housing comes from Housing Association Grant and private borrowing. Only 0.5% of funding for new RSL housing next year is expected to be generated from the sale of assets. In terms of investing in existing stock to meet SHQS, RSLs again typically only rely on minor contributions from RTB sales receipts. The Scottish Government's 2006 analysis of social landlords' plans to meet the SHQS revealed that only 5% of RSLs' funding to meet SHQS was expected to come from RTB sales receipts. RSLs are generally much more reliant on rental income and borrowing for this purpose than local authority landlords.

258. Six RSLs were created specifically to acquire and manage housing stock transferred from the following councils: Glasgow City, Inverclyde, Argyll and Bute, Dumfries and Galloway, Scottish Borders and Eilean Siar. The picture for these six stock transfer RSLs is somewhat different because a proportion of their tenants will have kept their preserved RTB entitlements when they transferred from their local authority landlord and may exercise their RTB at any time (subject to any conditions agreed as part of the stock transfer process or limits to their discount imposed by the cost floor rules). The calculation of the transfer purchase price did not factor in future RTB sales. These were subject to a separate agreement which means that RTB sales have a cost neutral impact on the RSL's business plan.

259. These six stock-transfer RSLs are subject to additional monitoring by the SHR and Scottish Government. In addition to routine submissions of information that are required of all RSLs, the six stock-transfer RSLs also submit business plans to SHR on an annual basis. The SHR monitors progress made by stock transfer RSLs in relation to registration conditions and also assesses how governance and management arrangements are working. The SHR looks for assurances that these organisations: are investing in their stock (as promised to their tenants); are developing structures for devolved decision making (through consultation with tenants); and have strategies in place for managing risks to their businesses. In addition, their progress towards attaining SHQS is monitored by Scottish Government's Housing Investment Division.

260. In addition to the statutory RTB, RSLs may, if they so wish, consider disposing of houses to sitting tenants on a voluntary basis. The relevant provisions relating to RSLs are in sections 65 to 68 of the Housing (Scotland) Act 2001 and require the consent of the Scottish Ministers.

Scottish Ministers have delegated authority for this to the Scottish Housing Regulator (SHR), which has issued guidance relating to voluntary sales and disposals.

261. In addition to legislative provisions, the Scottish Government is working closely with social landlords and lenders to help identify sources of funding to support new and existing social housing. For example, the Minister for Housing and Communities was successful in securing a £50 million lending facility for Housing Associations in Scotland from the European Investment Bank.

#### *Social housing tenants*

262. There was strong support for the proposed reforms from tenants' organisations. The reforms could retain up to 18,000 additional units in the social rented sector. This would allow more households to benefit from the greater security of tenure and on average lower rents in the sector compared to private renting options. Responses received from the consultation indicate that some tenants do have concerns that decreasing RTB sales receipts could result in rent increases. However, although this is a decision for individual landlords, the Scottish Government considers that there should not be significant upward pressure on rents. If a landlord needs an amount of capital equivalent to that which would have come from RTB sales, the rental surplus on the units not sold as a result of the reforms should be adequate to cover the costs of borrowing the necessary additional principal. Even if the costs of borrowing this additional principal did have to be partially met from rent increases across a landlord's total stock, the Scottish Government does not think that this should be significant because the number of RTB sales foregone should be small relative to the number of units still generating rental income.

263. If a social landlord did consider increasing rents, there are provisions within the Housing (Scotland) Act 2001 which place duties on social landlords to consult tenants specifically on rent setting and a range of other housing and related matters.

#### **Other bodies**

264. If social landlords decide to increase rents or borrowing in order to compensate for reduced capital receipts that may result from the RTB reforms this may increase housing benefit claims to the Department for Work and Pensions (DWP) and, in the short term, applications from local authorities for loans to the Public Works Loan Board (PWLB). The effects of the reforms in retaining up to 18,000 additional homes within the social rented sector should mean that this number of households will be subject to lower rents than they might have paid in alternative private rent accommodation and may therefore have a reduced requirement for Housing Benefit support. Moreover as discussed previously, the financial impacts of RTB reforms should not be significant and thus any rent increases or additional loans that arise as a result of the reforms should not be significant.

#### **Summary of financial implications of RTB reforms**

265. The chief impact of the RTB reforms will be upon social landlords. They are broadly supportive of the reforms and are in the best position to assess any financial impact that may arise from them. Social landlords are of the view that no significant negative impact should arise as a result of the reforms. Social landlords are already adjusting their businesses to

accommodate the impact of falling RTB receipts as a result of current housing market conditions.

266. Estimates and modelling undertaken by Scottish Government support social landlords' views. Reforming the RTB will reduce social landlords' (particularly councils') capital receipts from sales of houses subject to RTB. But it will result in the continuation of rental income streams from properties that might otherwise have been sold. These rental income streams can be used in various ways in order to mitigate the impact of reduced RTB capital receipts and thus maintain social landlords' investment capacity.

267. These reforms will improve the financial sustainability of the sector by gradually promoting reliance on income derived from rents and reducing reliance on income derived from the sale of assets at a discount. In addition, the reforms will give local authorities powers to match RTB to local housing need more easily. This should in turn give all social landlords greater control over management of their assets and thus promote their strategic planning capacity to meet demand for social housing.

## **REFORMS TO PRIVATE SECTOR HOUSING**

### **Introduction**

268. The Bill includes some provisions to improve the effectiveness of measures to regulate and improve the condition of private sector housing, specifically in the areas of landlord registration, the licensing of houses in multiple occupation (HMOs) and matters arising from the implementation of local authority powers in the Housing (Scotland) Act 2006 to deal with house disrepair. This section only comments on those provisions that involve financial costs or savings.

### **Landlord registration**

269. Changes to the system of landlord registration include giving the power to a local authority to require a person connected with a property to provide information to enable or assist the local authority to exercise its landlord registration functions under the Antisocial Behaviour etc. (Scotland) Act 2004. This could, for example, be information required to establish that a tenancy is in place.

270. The landlord register provides information about registered landlords. The Bill will provide for access to additional information about applications that have not yet been decided and cases where an application has been refused or a landlord or agent deregistered. The intention is to make the information available more useful to tenants, potential tenants, neighbours of rented properties and other members of the public. These people will be able to establish more easily whether a landlord is operating in breach of the landlord registration requirements.

271. At the moment a local authority may charge a fee when a landlord names an agent in an application for registration. However, if a registered landlord subsequently adds an agent, the local authority cannot charge a fee, despite the fact that it has to establish whether the agent is a fit and proper person (if the agent is not already registered in their own right) and will incur costs in doing so. A local authority will now be able to charge a fee in this situation, if the agent is not

already registered. Although many professional agents will have registered, landlords sometimes nominate friends or relatives who are managing properties for them.

### **HMO licensing**

272. Local authorities and others have identified problems with certain HMOs that are not dealt with by licensing; particularly substandard accommodation occupied by migrant workers, whose landlords claim that the properties are not licensable HMOs, on the grounds that the occupants have main residences elsewhere. The Bill will give Scottish Ministers a power to designate by order specified categories of accommodation as licensable HMOs. This will allow the Scottish Government to focus on dealing with the types of property that are causing problems.

### **Local authority powers to tackle poor quality housing**

273. The Bill includes some provisions to improve the effectiveness of local authority powers in relation to dealing with poor quality housing, as well as some related technical amendments.

#### *Maintenance powers*

274. Local authorities have powers under the Housing (Scotland) Act 2006 to take action to ensure owners maintain their properties. They can serve a maintenance order requiring owners to prepare and submit a maintenance plan within a certain amount of time. The amendments will ensure that the local authority can pass on the costs for devising a maintenance plan to owners where they fail to meet the requirements of the maintenance order and varying it where the variation is necessary due to a failure on the owner's behalf. Authorities will also be able to recover from owners the costs relating to registering maintenance orders and maintenance plans, which will only be issued where owners are not fulfilling their responsibilities of maintaining their properties. Authorities will also be able to pay a missing share in respect of an owner's share of maintenance works for which they are responsible but where their unwillingness to fulfil their responsibilities is obstructing work.

#### *Repayment charges*

275. Local authorities can recover expenses from owners where they have had to take enforcement action to improve the quality of housing. They can do so by issuing a repayment charge. This requires to be registered in the appropriate land register, as does the subsequent notice of the discharge of the repayment. The Bill will allow local authorities to recover the costs of doing so from owners, as this cost will only arise from the authority having to step in where owners have failed to carry out works or maintenance for which they have a responsibility.

#### *Enforcement powers*

276. Local authorities can designate a locality as a Housing Renewal Area (HRA) where a significant number of houses are substandard, or any housing is adversely affecting the amenity of the area. The Bill will remove the requirement for approval by Scottish Ministers before an

HRA can be designated, in line with the changes under the Concordat<sup>13</sup> in how local and central government now work together.

277. The Bill will extend the situations in which local authorities can assist owners to include demolition work.

### **Costs on the Scottish Administration**

#### *Changes to Landlord Register*

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

#### *Other provisions*

279. The Scottish Government may produce additional guidance during the implementation of these provisions but costs associated with this are likely to be minimal.

### **Costs on local authorities**

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

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

#### *Inclusion of additional information in the landlord register and database*

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

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

283. On the basis of this sample, the Scottish Government considers that any additional costs would be negligible. Landlord registration is financed by fees, therefore, if changes to the system involved substantial additional costs for local authorities, it would be possible, if necessary, to adjust the level of fees accordingly.

---

<sup>13</sup> <http://www.cosla.gov.uk/attachments/aboutcosla/concordatnov07.pdf>

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

284. If a category of accommodation that is not currently covered by the HMO licensing regime were deemed by order to be a licensable HMO, there would be additional costs for local authorities for processing applications and for enforcement, although local authorities would also receive additional fees from the owners of such properties. However, it is not known at the moment what types of property would be brought into HMO licensing by use of the order-making power, nor the numbers of such properties, so additional costs and income for local authorities would depend on the use that was made of the order-making power.

*Repayment charges*

285. Local authorities will be able to recover from owners the costs of registering repayment charges and discharge of repayment charges. This will represent a saving as otherwise the authority would have had to cover these costs. They may also have costs arising from the need to pursue owners, where necessary, to recover these costs

*Local authority enforcement powers*

286. There is likely to be no cost to local authorities arising from the removal of the need for ministerial approval for HRA designation orders. This will potentially shorten the process required for designating HRAs and so there may in fact be administrative savings.

**Costs on other bodies, individuals and businesses**

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

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

*Charging a registered landlord a fee for nominating an unregistered agent*

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

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

adding an unregistered agent to a registration. This suggests the total additional annual cost to landlords would be nil or negligible.

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

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

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

292. It is not known at the moment what types of property would be brought into HMO licensing by use of the order-making power, nor what their numbers would be, so additional costs for owners would depend on the use that was made of the power. The Scottish Government is required to consult with stakeholders before using this power and a Regulatory Impact Assessment would, of course, be produced for any such order.

*Local authority maintenance powers*

293. The new provisions will allow local authorities to pass on costs to owners, but only where enforcement action (for example serving a maintenance order) has been required because owners are failing to look after their properties, for which they have a responsibility under their title deeds.

294. Owners who are not maintaining their properties may be liable for costs in relation to the production or variation of maintenance plans (where the local authority does so in default), and in relation to registration charges relating to maintenance orders and maintenance plans. This might affect individuals, landlords and businesses (where these form part of a building which contains housing, for example ground floor shops in tenements).

295. The cost charged by a local authority for devising a maintenance plan where an owner has failed to meet the requirement to do so will be determined by each individual local authority in the light of the work involved in each case, and so cannot be quantified. As at April 2009, the cost of registering documents with the appropriate land register was £30 per registration. The level of additional related expenses which local authorities may be able to recover will again vary by each authority.

296. Owners would also be liable for costs arising from the local authority paying missing shares on their behalf. This will depend on the circumstances of each case, in terms of the cost of the work and the associated administrative expenses which can be recovered, and will only arise where owners are not meeting their obligations under the title deeds.

*Repayment charges*

297. Owners (which as above could include individuals, landlords, businesses etc) may be liable for the cost of registering repayment charges and the discharge of repayment charges, where the local authority passes these on. Cost of registration is currently £30 per registration, and associated administration costs will vary by local authority. Repayment charges can be used to recover expenses from owners for enforcing work notices or maintenance plans, or for paying missing shares into maintenance accounts. The use of these powers will vary by local authority.

*Local authority enforcement powers*

298. There will be no costs arising from the extension of local authorities' powers to give assistance to include assistance with demolition. Owners may benefit from the ability to potentially access assistance from the local authority.

**Table 6: Summary table of additional costs – Reforms to Private Sector Housing**

	<b>Paragraph reference</b>	<b>Additional costs</b>
<b>Scottish Government</b>		
Changes to Landlord Register	Paragraph 277	Changes could require minor alterations to the landlord registration IT system. Until it is seen how this would work in practice, it is not possible to quantify any such costs exactly, but they would be expected to be in the region of £3,000 to £5,000.
Other provisions	Paragraph 278	Costs of any additional guidance are likely to be minimal.
<b>Stakeholder</b>		
<b>Local authorities</b>		
Requiring provision of information to a local authority to enable it to carry out its landlord registration functions	Paragraph 279	Possible savings from exercising functions more efficiently, but it is not possible to quantify these because they will depend on the use that is made of the power.
Inclusion of additional information in the landlord register and database – additional resources	Paragraphs 280 - 282	Any additional costs would be negligible.
Power to designate a specific category of accommodation as a licensable HMO – additional resources	Paragraph 283	Costs depend on use made of order-making power. Fees charged would be set against costs.
Repayment charges	Paragraph 284	Costs arising from pursuing non-paying owners to recover registration costs. Will vary by use of powers and behaviour of owners.
Enforcement powers	Paragraph 285	Possible savings from removal of Ministerial approval for HRA designation orders.

*These documents relate to the Housing (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 13 January 2010*

<b>Private landlords</b>		
Requiring provision of information to a local authority to enable it to carry out its landlord registration functions	Paragraph 286	Costs of complying, if any, would be negligible.
Charging a registered landlord a fee for subsequently nominating an unregistered agent - fees	Paragraphs 287 - 288	Nil or negligible.
Power to designate a specific category of accommodation as a licensable HMO – additional costs	Paragraphs 289 - 291	Costs of obtaining licences and possibly of carrying out work depend on use made of order-making power.
<b>Agents</b>		
Requiring provision of information to a local authority to enable it to carry out its landlord registration functions	Paragraph 286	Costs of complying, if any, would be negligible.

<b>Owners – houses (including private landlords) and businesses within buildings containing housing</b>		
Maintenance powers	Paragraphs 292 - 295	Cost of local authority devising plan in default – will vary by local authority. Registration costs for maintenance order and maintenance plan – at £30 plus administration costs each registration. Additional expenses recovered by local authority when recouping costs of missing shares. Will vary by local authority.
Repayment charges	Paragraph 296	Registration costs for repayment charges and discharge of repayment charge – at £30 plus administration costs each registration.
Enforcement powers	Paragraph 297	Owners may benefit from the extension of situations in which local authorities can provide assistance to include demolition.

## **PROTECTION OF UNAUTHORISED TENANTS**

299. The Scottish Government recognises that there might be costs in relation to any proposals to strengthen protection of unauthorised tenants. However, it is not possible at present to determine these as they will depend on the precise terms of any proposal taken forward. The Scottish Government's recent consultation exercise asked respondents to identify any cost implications that may arise. It is awaiting analysis of these responses and considering whether further measures to protect tenants are required. If it is decided to strengthen protection, an amendment at Stage 2 of this Bill will be sought to specify the provisions in more detail and evidence of any ancillary costs will be provided to the relevant Committees.

## **AMENDMENT TO THE DEFINITION OF LOCAL CONNECTION**

### **Introduction**

300. Residence or employment in the armed forces does not by itself form a local connection under Scottish homelessness legislation. Changing this position 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, as other homeless applicants are able to do. This will mean in practice that local authorities will in some cases house homeless applicants or households rather than make the referral to another local authority where the local connection would have existed before they were employed in the armed forces.

### **Costs**

301. The proposed amendments will not result in significant increased costs. The only identified cost will be a reduction in the administrative cost of a local authority making a referral to another local authority with the original authority having the duty to re-house. The household has already been assessed as having a right to permanent accommodation, local connection rules just affect which local authority takes on the duty. The current homelessness statistics show five referrals in 2007/08 and three in 2008/09. Local authorities we consulted said they dealt with these cases sympathetically. 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.

### **Costs on the Scottish Administration**

302. There will be no additional cost implications for the Scottish Administration.

### **Costs on local authorities**

303. The proposed amendment is unlikely to create increased costs for local authorities. Any costs would be contained to administrative charges related to re-housing the household rather than making a referral to another authority. The household would in any event be re-housed by a local authority (if it was assessed as homeless, in priority need and not intentionally homeless) – the question would just be which authority did this. This means in practice that some authorities will be housing cases themselves rather than making a referral onto another local authority. Given the low number of cases (five in 2007-08 and three in 2008/09) and the sympathetic view

*These documents relate to the Housing (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 13 January 2010*

of local authorities, this change is unlikely to present any major issues. This sympathetic view is shared among local authorities who host large armed forces bases and those without.

**Costs on other bodies, individuals and businesses**

304. The Scottish Government does not foresee any additional cost implications for other bodies, individuals or businesses.

**TABLE 7: SUMMARY TABLE OF ADDITIONAL COSTS – ALL PROVISIONS IN THE HOUSING (SCOTLAND) BILL**

	<b>Paragraph reference</b>	<b>Additional Costs (£m)</b>
<b>SCOTTISH GOVERNMENT</b>		
<b>Regulation provisions</b>		
Establishing the SHR as a non-Ministerial Department (appointment of the Board and Chief Executive)	Paragraphs 193 - 199; Table 1 and Table 2	£0.055m
Transition costs – staffing and change management	Paragraph 191 - 193	£0.80m
Transition costs – development of IT system	Paragraph 202 and Table 2	£0.300m
<b>Homelessness provision</b>		
Amendment to definition of local connection	Paragraph 301	nil
<b>Private Sector Housing provisions</b>		
Changes to Landlord Register	Paragraph 277	£3,000 to £5,000.
Other provisions	Paragraph 278	Negligible
<b>Total Additional Costs Scottish Government</b>		<b>£0.435m<sup>14</sup></b>
<b>Please note that the costs relating to the provisions detailed below are nil, negligible or cannot be quantified.</b>		
<b>LOCAL AUTHORITIES</b>		
<b>Regulation provisions</b>		
Scottish Social Housing Charter.	Paragraph 183	<i>(These costs will be calculated as part of the Ministerial consultation process and subject to Parliamentary approval.)</i>
<b>Homelessness provision</b>		
Amendment to definition of local connection	Paragraph 302	Nil
<b>Private Sector provisions</b>		
Requiring provision of information to a local authority to enable it to carry out its landlord registration functions.	Paragraph 279	<i>(Possible savings from exercising functions more efficiently, but it is not possible to quantify these because they will depend on the use that is made of the power).</i>
Inclusion of additional information in the landlord register and database – additional resources	Paragraphs 280 - 282	Negligible
Power to designate a specific category of accommodation as a licensable HMO – additional resources.	Paragraph 283	<i>(The costs will depend on the use made of the order-making power. Fees charged would be set against costs.)</i>

<sup>14</sup> Note these costs will be met from within the Housing and Regeneration Directorate's budget.

*These documents relate to the Housing (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 13 January 2010*

	<b>Paragraph reference</b>	<b>Additional Costs (£m)</b>
Repayment charges	Paragraph 284	<i>(Costs arising from pursuing non-paying owners to recover registration costs. Will vary by use of powers and behaviour of owners.)</i>
Enforcement powers	Paragraph 285	<i>(Possible savings from removal of Ministerial approval for HRA designation orders.)</i>
<b>Other bodies, individuals or businesses:</b>		
<b>Registered social landlords</b>		
Registration provisions	Paragraph 182	nil
Inquiries and information - self-assessment and reporting provisions	Paragraph 184	nil
Financial management and governance	Paragraph 186	nil
Scottish Social Housing Charter <i>(These costs will be calculated as part of the Ministerial consultation process and subject to Parliamentary approval.)</i>	Paragraph 183	
<b>Private landlords</b>		
Requiring provision of information to a local authority to enable it to carry out its landlord registration functions	Paragraph 286	Negligible.
Charging a registered landlord a fee for subsequently nominating an unregistered agent - fees	Paragraphs 287 - 288	Nil or negligible.
Power to designate a specific category of accommodation as a licensable HMO – additional costs.	Paragraphs 289 - 291	<i>(Costs of obtaining licences and possibly of carrying out work depend on use made of order-making power).</i>
<b>Agents</b>		
Requiring provision of information to a local authority to enable it to carry out its landlord registration functions	Paragraph 286	Negligible.

<b>Owners – houses (including private landlords) and businesses within buildings containing housing</b>		
Maintenance powers	Paragraphs 292 - 295	£30 plus administration costs for each registration. <i>(Cost of local authority devising plan in default – will vary by local authority. Registration costs for maintenance order and maintenance plan – at £30 plus administration costs each registration. Additional expenses recovered by local authority when recouping costs of missing shares. Will vary by local authority).</i>
Repayment charges	Paragraph 296	£30 plus administration costs for each registration. <i>(Registration costs for repayment charges and discharge of repayment charge)</i>
Enforcement powers	Paragraph 297	<i>(Owners may benefit from the extension of situations in which local authorities can provide assistance to include demolition).</i>

---

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

305. On 13 January 2010 the Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon MSP) made the following statement:

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

---

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

306. On 12 January 2010 the Presiding Officer (Alex Fergusson MSP) made the following statement:

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



*These documents relate to the Housing (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 13 January 2010*

# **HOUSING (SCOTLAND) BILL**

## **EXPLANATORY NOTES**

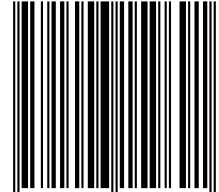
### **(AND OTHER ACCOMPANYING DOCUMENTS)**

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to: Information Policy, Office of the Queen's Printer for Scotland (OQPS), St Clements House, 2-16 Colegate, Norwich NR3 1BQ, or by e-mail to [licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk). OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley

ISBN 978-1-4061-5969-1



9 781406 159691