



Draft Housing (Scotland) Bill: a consultation

**A Briefing Paper from
Tenants Information Service**

June 2009

www.tis.org.uk

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The Tenants Information Service (TIS) is an independent national organisation providing information, training, advice and support to tenants and tenants' organisations across Scotland.

TIS has produced this briefing paper to assist tenants and tenants' organisations to respond to the Scottish Government's Draft Housing (Scotland) Bill. Your views on this consultation document should be sent to the Scottish Government by **August 14th 2009**.

For more information or for copies of this briefing paper in large print or in alternative formats please contact TIS at the address below:

Tenants Information Service
Suite 124-128 Baltic Chambers
50, Wellington Street
Glasgow G2 JHJ
Telephone: 0141 248 1242
info@tis.org.uk

Further copies can also be downloaded from our website www.tis.org.uk

Section 1 – Introduction

The Scottish Government published the Draft Housing (Scotland) Bill: a consultation on April 27th 2009. This draft Bill has been widely anticipated since the proposals were first highlighted in Firm Foundations: The Future of Housing in Scotland. The Scottish Government plans to introduce the Bill in the Scottish Parliament in 2010 and is seeking views on its proposals.

The Scottish Government has identified two key aims around which it has framed the Bill:

- to safeguard the future of social housing in Scotland for current and future tenants
- to improve value for tenants and taxpayers by modernising the regulation of social housing

The Scottish Government has also highlighted that the Bill to be introduced next year to parliament could be expanded to include private housing, both rented and owner occupied. These issues are to be consulted on separately over the summer.

The consultation paper is in two parts:

- Part 1 – Reform to the Right to Buy
- Part 2 – Modernising the regulation of housing

Your views on the consultation document should be sent to the Scottish Government by the **14th August 2009**. It is important that you take this opportunity to give your views.

Copies of the Housing Bill are available from:
Scottish Government Tenant Priorities team – 0131 244 5568
Email housingbill2009@scotland.gsi.gov.uk

Or can be downloaded from TIS website at www.tis.org.uk

Section 2 - Reforms to the Right to Buy

The Bill proposes to end the Right to Buy (RTB) on all new supply social housing. This proposal was included in the Firm Foundations consultation and received widespread support. The Bill seeks views on the proposed changes to the Right to Buy including:

- ending the Right to Buy for new tenants
- reforming pressurised area designations
- developing guidance for Registered Social Landlords (RSLs) seeking extensions to the ten year suspension on the Right to Buy
- revising guidance on landlord's seeking continuous occupation discretionary powers

Why the reforms are being proposed

Since its introduction the Right to Buy has resulted in the sale of about half a million properties. The proportion of owner occupation in Scotland has doubled since the Right to Buy was introduced with 67 percent of homes now being owned. This has resulted in reducing the number of houses for rent by councils and Registered Social Landlords. The Scottish Government considers that under the current Right to Buy legislation approximately 46,000 social houses would be sold between 2012 and 2022. However if the proposed reforms were to be introduced then it predicts that sales would be reduced by approximately 20%. This would mean between 10,000 and 18,000 houses would remain for rent. Also the Right to Buy has in the past discouraged councils from building houses.

Ending the Right to Buy for new supply social housing

Section 109 of the Bill would end the Right to Buy on new supply housing. For section 109 to work it must include a clear definition of what is meant by "new supply social housing"

• Explanation

New Supply Housing is defined as newly build houses and also houses newly acquired by a council or housing association, rented for the first time with a Scottish Secure Tenancy. This would be effective after the legislation is passed.

The consultation paper makes some exemptions to safeguard the rights of existing tenants, and a tenant of a new supply house would be entitled to buy it if:

- the landlord required them to move to a new house, for example if their current house was to be demolished

- the landlord did not inform them within the set timescale (at least 28 days before letting the house) that they would not have the Right to Buy in their new home

In addition where a tenant with the Right to Buy moves to a new supply house and then moves to another house that is not regarded as new supply, then the tenant would generally be entitled to the Right to Buy on that house. The length of tenancy in the new supply house would also be counted when calculating the minimum Right to Buy qualifying period and discount.

These reforms would impact on council and Registered Social Landlord budgets through falling Right to Buy receipts and this has been acknowledged by the Scottish Government in its consultation.

Ending the Right to Buy for new tenants

The Scottish Government does not intend to make any changes to the Right to Buy entitlement to existing tenants. It proposes to end the Right to Buy entitlement of new tenants coming into the social rented sector or who return after a break after the date on which they section comes into force.

Tenants who remain in their current tenancies would continue to have their existing Right to Buy entitlement over that property; either on preserved or modernised terms. Tenants who move voluntarily to a new tenancy would get modernised Right to Buy entitlements over that property. Tenants who are required to move by their landlord (for example, if their house is to be demolished) would keep their existing Right to Buy entitlement over the house they transfer to.

Reforming pressurised area designations

Currently councils can ask Ministers to designate an area or part of an area as a “pressurised area” for a period of up to five years

☛ Explanation

Pressured Area Status This is usually applied for where it is considered by a council that the demand for social housing in that area is or is likely to be significantly higher than the amount of social housing available.

When approval is given for pressurised area status the Right to Buy is suspended for a period of up to five years for tenants with the modernised Right to Buy. Tenants with the preserved Right to Buy are not affected and therefore retain the Right to Buy entitlements.

The Scottish Government’s proposals to amend the rules relating to pressurised area status include:

- to increase the designation period from 5 to 10 years
- to include house types as well as areas to be designated as pressured

- to allow councils to make the decisions on pressurised area status to respond to issues of demand and availability

Guidance for Registered Social Landlords seeking extensions to the ten year suspension on Right to Buy

The Scottish Government proposes to develop guidance to support Registered Social Landlords that apply to extend the ten-year suspension of Right to Buy entitlements for some tenants beyond 2012. Under current arrangements Registered Social Landlords may apply to Scottish Ministers to extend the current ten-year suspension of Right to Buy which is due to end in September 2012, up to September 2022. This arrangement applies to tenants of non-charitable Registered Social Landlords who have modernised Right to Buy entitlements. There is no limit to the number of exemption periods that may be sought by Registered Social Landlords.

The Scottish Government is proposing this to safeguard the number of houses for rent in the social rented sector. The forecast is that if the suspension came to an end in 2012 about 2,800 Registered Social Landlord properties would probably be sold under the Right to Buy over 2012-2022.

Registered Social Landlords would be required to meet certain criteria before an extension would be granted such as:

- to meet housing need
- to safeguard housing stock
- how it will impact on other financial responsibilities such as meeting the Scottish Housing Quality Standard (SHQS) by 2015

☛ Explanation

Registered Social Landlord is the term used to describe a landlord registered with the Scottish Housing Regulator, which owns and manages houses on a not-for-profit basis. Usually this is a housing association or ownership co-operative.

Revising guidance on landlords seeking continuous occupation discretionary powers

At the moment a tenant's Right to Buy entitlement and qualifying discount is based on the "continuous occupation rule".

☛ Explanation

Continuous Occupation Rule means the length of time a tenant has held a tenancy with the landlord without any breaks. If there is a break of more than one day between ending one tenancy and taking up another. The calculation is taken from the most recent tenancy.

The Scottish Government considers that although this rule is generally how the Right to Buy entitlements should be calculated, that some groups of

people are disadvantaged because of it. In particular it is considered that this affects ex-service personnel who may find they have a break in their tenancies, as they cannot find social rented accommodation when they leave the armed forces. In this case this would affect their Right to Buy, as there is a break between leaving the armed forces housing and becoming a tenant with a Scottish Secure Tenancy.

It is proposed to amend the Right to Buy guidance to encourage landlords to use their discretion and disregard these types of breaks in occupancy. The Scottish Government sees the main benefit of this would be that ex-service personnel would be able to exercise their Right to Buy immediately as long as they had already served the minimum 5 year qualifying period.

Although the case of ex - service personnel is highlighted specifically, other groups of tenants housed by their employers may also be affected by the continuous occupation rule such as janitors, sheltered housing wardens, some police and fire service personnel.

NOTE: Landlords can use discretion when Right to Buy entitlements are being calculated if the break in tenancy is not the tenant's fault. For example, if the break in tenancy is caused by fire, flood or if the tenant needs to escape domestic violence.

Reform of Right to Buy- Issues for tenants

- ❖ What financial impact would the reforms to Right to Buy have on councils and Registered Social Landlords?
- ❖ Do you understand and agree with the definition of new supply housing?
- ❖ Should all new supply social housing be exempt from the Right to Buy?
- ❖ Should pressured area status be increased from 5 to ten years?
- ❖ Should pressurised area designations also include house types as well as locations?
- ❖ How will tenants and tenants' organisations get involved in local decision making on suspending the Right to Buy in specific areas and / or within certain house types?
- ❖ Should Registered Social Landlords be able to apply to extend the 10 year suspension on Right to Buy after 2012?
- ❖ How will tenants and tenants' organisations be able to influence these decisions?
- ❖ Should councils have the role of deciding which areas get pressured area status?
- ❖ Should landlords be able to use discretion when calculating length of tenancy in relation to Right to Buy applications and disregard short breaks between tenancies in specific circumstances? If so, whom should this apply to?
- ❖ Will less Right to Buy sales affect the delivery of landlord Business Plans and investment programmes? If so, how will this be addressed?
- ❖ Are there any other reforms to the Right to Buy would you like to suggest?

Section 3 - Modernising Regulation

Part two of the consultation document outlines the Scottish Government's plans for modernising and streamlining the regulation of social rented housing. A new legislative framework would include a modernised Scottish Housing Regulator, independent from Ministers with the purpose of focussing social rented landlords' efforts on:

- meeting tenants priorities
- continually improving performance and value
- commanding the confidence of public and private investors in social housing

Why the changes are being proposed

The Housing (Scotland) Act 2001 introduced a Single Regulatory Framework for all Registered Social Landlords' and councils' housing services and councils' homelessness services. This gave Scottish Ministers powers to regulate all social landlords in Scotland. These powers include:

- being able to register and de-register Registered Social Landlords
- inspect the housing service of Registered Social Landlords and councils and the homelessness services of councils
- regulating the governance arrangements and financial viability of Registered Social Landlords
- intervening to improve services following the inspections of landlords.

Explanation

• **The Scottish Housing Regulator** is the executive agency responsible for regulation and although it operates independently, it reports directly to the Scottish Ministers. At the heart of this regulatory framework are the Performance Standards set for all social landlords and homelessness services. The Scottish Housing Regulator, Scottish Federation of Housing Associations (SFHA) and Confederation of Scottish Local Authorities (COSLA) have agreed these national standards. They provide a framework for the regulator to assess performance and for landlords to self-assess their own performance.

The Scottish Government believes these performance standards have helped improve landlord service delivery across Scotland. Tenants have also welcomed the fact that their landlords are now inspected by an independent external regulator. However the Government also considers that this planned approach to delivering inspection can put a disproportionate burden on landlords who perform well and can divert staff time from frontline services. It may also divert the regulator's attention from landlords at most risk of failing their tenants and can be an expensive use of regulator's time and efforts. In 2007 an independent review of regulation, audit, inspection and complaints handling of public services in Scotland was carried out. The Crerar Review recommended that the regulation of social landlords should be more

streamlined, more risk-based to target poor performance in landlords and that a system of self-evaluation by landlords should be developed. Copies of Crerar Review are available at www.scotland.gov.uk

The Scottish Housing Regulator has already started to move away from inspecting landlords every five years to a regulation process that is considered to be more targeted. This includes requiring landlords to provide performance information, self-assessment submissions, business plan reviews and independent investigations. The process would become more risk based. However on-site inspections by the Scottish Housing Regulator would also remain one of the tools used to ensure landlords provide quality services.

In addition, the Scottish Housing Regulator has been working with the Accounts Commission and other bodies to develop a co-ordinated approach to the overall scrutiny of local authorities, including their housing services. It is proposed that the changes would include the Scottish Housing Regulator's participation in a shared scrutiny risk assessment process led by Audit Scotland on behalf of the Accounts Commission.

The Scottish Government believes that these changes in operational practice should be developed further but this requires legislative changes to replace the one for regulating local authorities and Registered Social landlords in the Housing (Scotland) Act 2001.

Modernising regulation – an overview

The new legislative framework proposes that the regulation of councils and Registered Social Landlords would be on a risk-based and proportionate approach. The reforms would continue the move away from inspection-based regulation towards greater use of other regulatory tools such as Best Value and self evaluation. The Scottish Government proposes that the Housing Bill should be as comprehensive as possible and would include the existing provisions from the 2001 Act along with several new provisions. These provisions have two main purposes:

- to create greater co-operation between the Government, Parliament and stakeholders to clearly define the outcomes that social landlords should be aiming to achieve for their tenants and for taxpayers. This would include the introduction of a Social Housing Charter to be approved by the Scottish Parliament
- to ensure the right mix of powers to achieve proportionate and risk based regulation in interest of tenants. This would involve giving the Scottish Housing Regulator statutory independence. The government believes that by giving the regulator independence in law and new modernised functions that it would be able to raise standards and good practice across all social landlords.

The Scottish Housing Regulator would move away from its cycle of inspections to becoming more focussed on those landlords which are

performing poorly. Landlords which perform well would still be inspected but in a less rigorous way.

The proposals recognise the place of the Accounts Commission as the lead scrutiny body for councils and the partnership that exists between the Commission and the Scottish Housing Regulator. It is proposed that councils housing services should be inspected in a different way in the future. The role of the regulator would sit within the Accounts Commission's joint scrutiny planning framework. The Accounts Commission would use the Scottish Housing Regulator's knowledge of housing services to feed into bigger corporate and service performance assessments. There would be a similar process carried out with schools inspectors, social work inspectors and the care commission.

It is proposed that the Scottish Housing Regulator would only regulate and scrutinise a council once the Accounts Commission has done its risk assessment and audit. The Scottish Government is seeking views on this proposal through the current consultation process.

Changing the name of "Social Housing"

Although the Bill continues to use the term "Social Housing" the Government is keen to seek views on another term which could be used to describe the housing provided by councils and Registered Social Landlords through Scottish Secure Tenancy Agreements. The government would like to continue to use one description to cover both councils and Registered Social Landlords but recognises that there is some stigma attached to the term "social housing".

Explanation

Social housing is the collective name introduced by politicians and housing professionals in the early 1990s to describe houses provided by Councils and Registered Social Landlords (housing associations). Tenants and others generally dislike this term as it is seen as having negative connotations.

Scottish Social Housing Charter

The Scottish Government proposes to set up a new Scottish Social Housing Charter to set out the key roles that councils and Registered Social Landlords should be aiming to achieve.

This charter is partially modelled on the Concordat and Single Outcome Agreement process and local authorities could be required to develop their Charter in line with their Single Outcome Agreements.

The Charter would be approved by the Scottish Parliament but the Scottish Government proposes to consult more widely on the Charter through a "national conversation". This would be a series of debates about the role and purpose of social housing, the services it delivers and how it can contribute to

wider social policy issues. The Government hopes that this “national conversation” would result in a clear set of outcomes reflecting tenants’ priorities and landlords’ responsibilities.

The Charter would have some flexibility allowing different landlords to respond in different ways according to their local circumstances. This would mean there would be national standards that all landlords should be aiming to achieve as well as local standards which are set in consultation with tenants. The Charter would not dictate how landlords should get organised to meet the standards or what financial resources they should commit to achieving the outcomes. The Scottish Government suggests that this would be decided between tenants and their landlords.

Under these proposals the performance of social landlords would be assessed against the outcomes set out in the Charter by the Scottish Housing Regulator. Once it is approved by the Scottish Parliament the Charter would have legal standing and any landlord which failed to comply with it could face action being taken by the Scottish Housing Regulator. The Scottish Government believes this signals a change in housing policy in Scotland and for the first time there would be a single statement about the services and value that all tenants should receive from their landlords.

What may be included in the Scottish Social Housing Charter?

The Scottish Social Housing Charter would set out the standards and objectives that all social landlords should aim to achieve within the delivery of housing services. These “outcomes” may include:

- The housing needs for which landlords should provide
- The prevention and alleviation of homelessness
- The provision and management of sites for gypsies and travellers
- The acquisition and disposal of housing
- Housing allocations
- Terms of tenancies and the principles upon which levels of rent should be set
- Housing quality and conditions
- Housing maintenance and repairs
- The contribution of Registered Social Landlords and local authority landlords to the amenity of the areas in which social housing is situated
- The prevention of harassment and anti-social behaviour
- The participation of tenants and tenants representative organisations in formulating proposals concerning the provision of housing services
- Procedures for dealing with tenant’s complaints about social landlords and for resolving disputes between social landlords and their tenants

It is also proposed that different outcomes may be set for different social landlords or for different areas or cases. The Consultation document does not indicate what these different outcomes may be.

Status of the Scottish Housing Regulator

The draft Bill proposes to establish the Scottish Housing Regulator as a non-ministerial department. It would have its own board with at least three non-executive members appointed by Ministers. This would mean that the regulator is independent and free from Ministerial control.

It is proposed that the new Scottish Housing Regulator is given powers to carry out various types of inquiries into the social rented sector. These inquiries could include:

- planned inquiries
- unannounced inquiries to check the performance and management of an individual landlord
- inquiries into the governance and financial management of Registered Social Landlords and
- studies and inquiries into performance by several landlords against a particular standard in the Charter or across a specific geographical area.

In order to carry out these inquiries the Scottish Housing Regulator would be given the power to request information from a landlord to:

- enable it to assess the landlord's performance
- meet Scottish Housing Regulator's objective of safeguarding and promoting tenants' interests or
- ensure the good governance and financial stability of the RSL sector

The consultation document proposes that the existing intervention powers contained in the 2001 Act are included in the Bill along with new supplementary powers which would enable the Scottish Housing Regulator to take enforcement action requiring a landlord to:

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

In order for the Scottish Housing Regulator to operate efficiently it would not have to follow a set sequence of enforcement powers. It would be able to use discretion to decide how to intervene in each different case. The Scottish Government would therefore require it to consult and publish guidance on its criteria for using its intervention powers. In connection with the proposed changes to how councils are inspected this would mean that the Scottish Housing Regulator would no longer have to carry out an inspection of the service before it took enforcement action.

Safeguarding and promoting Tenants' Interests

The government is quite clear in its view that the new Scottish Housing Regulator should have a clear remit and role to act in the best interests of existing and future tenants. It therefore plans to set out in statute that the

Scottish Housing Regulator's objective is to safeguard and promote the interests of tenants and future tenants and of other service users of social landlords. The Scottish Government believes that this would ensure that tenants' interests are always served by the Scottish Housing Regulator.

Scottish Housing Regulator and other housing services

The Scottish Government is proposing that the new Scottish Housing Regulator takes over responsibility for regulating homelessness services, services for gypsies and travellers and services to factored owners. This has also been a duty of the current Scottish Housing Regulator. The Scottish Government is seeking feedback on this issue.

Setting local standards

In order to measure performance the Scottish Government proposes that tenants and landlords work together to identify the value and quality they should be delivering to meet tenants' priorities. The Scottish Housing Regulator would have responsibility to assess landlord's performance in meeting the Scottish Social Housing Charter. This performance monitoring would also include an examination of the quality of services a landlord is providing against the level of rents that they charge.

The Scottish Housing Regulator would report annually on its assessment of the performance of landlords. It would also communicate with stakeholders including tenants so that they can identify the improvements they would like to see to services.

If a landlord is considered to be performing poorly then the Scottish Housing Regulator would request that it produces an improvement plan setting out how it will comply with the Charter. If there were some aspects of the poor performance which were not covered by the Charter then the Scottish Housing Regulator could request an additional improvement plan to cover these aspects of the service.

Securing the financial viability and good governance of Registered Social landlords

The Scottish Housing Regulator would be able to monitor, assess and report on the financial viability and governance arrangements of Registered Social Landlords. The Scottish Government proposes to set up a working group to discuss how this would be done in more detail before the Bill is introduced in Parliament. If the Scottish Housing Regulator had to intervene in a Registered Social Landlord because of concerns about the financial situation or running of the Registered Social Landlord it could appoint a new manager, suspend committee members, remove an officer and appoint a new officer. The ultimate power would be to transfer the Registered Social Landlord's land and assets to another Registered Social Landlord.

The Scottish Government wants to ensure that any failing Registered Social Landlords can be dealt with quickly in order to protect tenants' interests and

their homes. This would mean new powers for the Scottish Housing Regulator to get involved earlier in the winding up process of a Registered Social Landlords. The Scottish Housing Regulator will also be able to direct that the transfer of assets from one Registered Social Landlords to another takes place to safeguard tenants.

A new code of conduct would be introduced by the Scottish Housing Regulator for Registered Social Landlords to comply with. If they were not to comply then the Scottish Housing Regulator would be able to intervene and take enforcement action.

Registration of Registered Social landlords

The Scottish Government wants to allow a wider range of organisations to become Registered Social Landlords. This could include profit-distributing organisations as long as they meet the registration criteria.

There would be a requirement on the Scottish Housing Regulator to consult on the registration criteria and on the intervention powers it would require if a profit-distributing organisation failed to comply with regulations. These powers would need to be introduced in the Bill as they do not currently exist.

In extending the types of organisations which could become Registered Social Landlords the government needs to take account of the European Union Services Directive. Tenants should note that this means that Ministers could not specify that these organisations have a registered office in Scotland.

Constitution, rule changes, amalgamation and dissolution of Registered Social Landlords

The Scottish Government is seeking views on reducing the administrative requirements in relation to the constitution, rule changes, amalgamation and dissolution of Registered Social Landlords.

Disposal of land by Registered Social Landlords

The draft Bill proposes that instead of requiring Ministerial approval that Registered Social Landlords would seek consent from the Scottish Housing Regulator to sell or lease any land or assets. The Scottish Government will be discussing these proposals in more detail with an expert working group but seeks your views on this.

Modernising Regulation – Key Issues for tenants

- ❖ Should the Scottish Housing Regulator be an independent body separate from the Scottish Government?
- ❖ Should the Scottish Housing Regulator move away from a cycle of inspections to becoming more focussed on landlords who are performing poorly?
- ❖ What should social housing be renamed?
- ❖ Do tenants see the value of a Social Housing Charter to set standards for landlords?
- ❖ How will tenants get involved to influence the service delivery outcomes at a national level? (It is important to consider the level of involvement you wish and how tenants and tenants and residents groups would be involved. An important issue to consider is that tenants have adequate time, support, information and resources to participate fully in this process)
- ❖ How will tenants get involved to influence the setting of local standards with their landlord? (Again it is important to consider the level of involvement you wish and how tenants and tenants and residents groups would be involved. An important issue to consider is that tenants have adequate time, support, information and resources to participate fully in this process)
- ❖ How will tenants be involved in the evaluating if the locally agreed standards are being delivered?
- ❖ Do you agree that council housing services should be inspected in a different way from Registered Social Landlords?
- ❖ How can tenants ensure that the Scottish Housing Regulator is protecting their interests and securing value and quality from landlords?
- ❖ Should the Scottish Housing Regulator's role be extended to the private rented sector?
- ❖ Do you agree that profit-distributing organisations should be allowed to become registered as social landlords?
- ❖ Are there any other areas you wish to highlight?

Private Sector Housing

While the Bill does not have any specific proposals for the private sector both rented and owner occupied it will be seeking views over the summer on the possibility of strengthening and clarifying the powers councils already have to deal with bad private-landlord practice and councils powers in recent legislation to deal with sub-standard private housing.

Section four – Your response

The Scottish Government has set a closing date for your responses of **August 14th 2009.**

Working together – if tenants groups can combine their responses and have a unified view it could have a greater impact on the Scottish Government’s proposals. It is important that you highlight how tenants can be more involved and influential in developing national and local standards for the delivery of housing services.

As part of the draft Bill the Scottish Government has included a questionnaire with 56 questions to assist you in responding. You can use this questionnaire for your response. You don’t need to answer all of the questions. You should focus on areas that matter the most to you. You may also feel there are issues missing on which you want to put a view. You can download a word version of the questionnaire from the Scottish Government’s website <http://www.scotland.gov.uk/Consultations>

There are three sets of questions you are asked your views on:

1. Part 1 – Changes to the Right to Buy
2. Part 2 – Modernising regulation
3. Part 3 – The draft equalities impact assessment

Responses to the draft Bill can be made by email to:

housingbill2009@scotland.gsi.gov.uk

Or post your response to:

Tenants Priorities Team
Scottish Government
Area 1-H South
Victoria Quay
Edinburgh EH6 6QQ

There is a Respondent Information Form to complete along with your response. This tells the Scottish Government who you are and how to contact you again.

TIS would be interested in receiving a copy of your response.



Tenants Information Service
Suite 124/128 Baltic Chambers
50 Wellington Street
Glasgow G2 6HJ
info@tis.org.uk