

# HOUSING (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. 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.

### BACKGROUND AND OVERVIEW

3. The Housing (Scotland) Act carries forward the proposals for legislative change which were set out in the Scottish Executive's consultation paper *Better Homes for Scotland's Communities – the Executive's Proposals for the Housing Bill*, which was published in July 2000. The Act contains provisions covering a number of areas relating to the Executive's overall policy objectives for housing, including provisions in relation to homelessness, tenancy rights, regulation of the socially rented sector, and the roles and responsibilities of the Scottish Ministers, local authorities, Scottish Homes and other bodies. The Act builds on the existing legislative framework, the majority of which dates back to the 1980s. The Housing Associations Act 1985, the Housing (Scotland) Act 1987 ("the 1987 Act") and the Housing (Scotland) Act 1988 ("the 1988 Act") are the main pieces of legislation amended or affected by this Act. The provisions in the Act will in the main impact most directly on the socially rented sector, but the Act also provides a framework for addressing issues across all housing tenures.
4. The Act is divided into 7 Parts, some of which are subdivided into Chapters, as follows:
  - Part 1: Homelessness and allocation of housing
  - Part 2: Tenants of social landlords
    - Chapter 1: Scottish secure tenancies
    - Chapter 2: Right to buy
    - Chapter 3: Tenant participation
  - Part 3: Regulation of social landlords
    - Chapter 1: Registered social landlords
    - Chapter 2: Local authority housing management
    - Chapter 3: Common provisions
    - Chapter 4: Interpretation of Part 3
  - Part 4: Scottish Homes

- Part 5: Strategic housing functions
- Part 6: Grants for improvement, repairs etc
- Part 7: Miscellaneous and general

## **Part 1 – Homelessness and Allocation of Housing**

### ***Section 1: Homelessness strategies***

5. This section requires every local authority, when required to do so by the Scottish Ministers, to carry out an assessment of homelessness in its area and to prepare, and submit to the Scottish Ministers, a strategy for preventing and alleviating homelessness in its area. *Subsections (2) and (3)* allow Ministers to make requirements or give guidance on various aspects of preparing assessments or strategies. Homelessness strategies must state how the local authority is to comply with its equal opportunities duties so far as relating to matters in the strategy. *Subsection (6)* provides for the revision of the strategy, which may be undertaken by the local authority itself at an appropriate time or, as the case may be, under direction from Ministers.

### ***Section 2: Advice on homelessness etc.***

6. This section requires every local authority to ensure that advice and information about homelessness, the prevention of homelessness and services which may assist a homeless person or the prevention of homelessness is available free of charge. Local authorities are not required to provide this advice themselves. *Subsection (2)* enables the Scottish Ministers to issue guidance on the fulfilment of this duty.

### ***Section 3: Homeless persons and persons threatened with homelessness***

7. This section amends various sections of the 1987 Act, which set out local authorities' duties towards homeless people and people threatened with homelessness.
8. *Subsection (1)(a)* amends the definition of homelessness in the Housing (Scotland) Act 1987 Act to ensure that people who have accommodation outwith Scotland, England and Wales are not automatically assessed as being homeless, by widening the reference so that a person is treated as being homeless if he/she has no accommodation in the United Kingdom or elsewhere. *Subsection (1)(b)* amends section 24(3) of the 1987 Act to ensure that people who are owed a duty under section 31(2) are to be treated as being homeless if they are provided with accommodation which is not permanent accommodation. A definition of permanent accommodation is inserted into section 24 of the 1987 Act by *subsection (1)(d)*. This means that a local authority's duty under section 31(2) continues until permanent accommodation is secured. Permanent accommodation is defined in broad terms in this section to acknowledge a range of situations, some of which may not be secured by a local authority, but which could reasonably be considered to be permanent accommodation and, therefore, end the local authority's duty under section 31(2). *Subsection (1)(c)* amends section 24(4) of the 1987 Act to provide that a person is threatened with homelessness if it is likely that they will become homeless within 2 months.
9. Section 29 of the 1987 Act places an interim duty on local authorities to accommodate people who they have reason to believe are homeless and have a priority need. *Subsection (2)* amends section 29 to make this an interim duty to accommodate anyone whom they have reason to believe is homeless, without taking into account whether they are likely to be in priority need.
10. *Subsection (3)* makes amendments to section 31 of the 1987 Act, which sets out local authorities' duties towards homeless people. Section 31(2) is amended to require local authorities to secure that the accommodation made available for unintentionally homeless people in priority need is permanent accommodation which includes a

Scottish secure tenancy or an assured tenancy (but not a short assured tenancy) or, where a person has a record of anti-social behaviour, a short Scottish secure tenancy. This definition of permanent accommodation is narrower than the definition contained within section 24 in order to acknowledge the types of accommodation which local authorities can secure. Section 31(3) is amended to remove the distinction between intentionally homeless people in priority need and homeless people not in priority need and to enable the Scottish Ministers to prescribe what type of advice and assistance should be provided in those cases. The amendment to section 31(3) makes section 31(4) redundant and so that subsection is repealed.

11. *Subsection (4)* makes amendments to section 32 of the 1987 Act, which sets out local authorities' duties towards people threatened with homelessness and provides a definition of accommodation. *Subsection (4)(a)* amends section 32(3) of the 1987 Act to enable the Scottish Ministers to prescribe the type of advice and assistance which should be provided to people threatened with homelessness. The wording of section 32(3) of the 1987 Act is also amended to match the amended wording of section 31(3), although this does not change the effect of this section.
12. *Subsection (4)(b)* amends section 32(5) of the 1987 Act to ensure that accommodation referred to in sections 31 or 32 does not include accommodation which does not meet any special needs of the applicant or other members of their household or is not reasonable for the applicant to occupy. *Subsection (4)(c)* sets out the arrangements which will apply to the regulations on types of advice and assistance made under sections 31 and 32 of the 1987 Act. It also requires local authorities to have regard to the best interests of any dependent children of the applicant when providing advice and assistance under section 31 or 32.
13. *Subsection (5)* inserts section 32A into the 1987 Act. Section 32A(1) enables the Scottish Ministers to define the situations in which accommodation which is not permanent can be secured for unintentionally homeless people in priority need. This power could be used, say, to specify where temporary accommodation may be provided as an interim measure. It also enables Ministers to prescribe circumstances in which accommodation which does not meet the special needs of the applicant and their household may be secured. Section 32A(2) makes clear that, when interim accommodation is secured in these circumstances, the homeless applicant cannot be subsequently reassessed as being intentionally homeless from that accommodation.
14. *Subsection (6)* makes a number of minor changes to section 34 of the 1987 Act to ensure that accommodation secured under this section must be permanent and as suitable as other accommodation secured under the 1987 Act.

#### ***Section 4: Review of decisions***

15. This section establishes a right to a review on homelessness decisions and makes provisions about the main procedural matters.

#### ***Section 5: Duty of registered social landlord to provide accommodation***

16. *Subsection (1)* enables local authorities to request a registered social landlord (RSL) which holds accommodation in the local authority's area to provide accommodation for an unintentionally homeless person in priority need. *Subsection (2)* requires local authorities, before making such a request, to consider the availability and appropriateness of any accommodation in their area. This duty will have no effect on local authorities which hold no housing stock, but will provide a safeguard against local authorities who hold stock making inappropriate requests to registered social landlords. *Subsection (3)* requires registered social landlords to comply with a local authority request, within a reasonable period, unless there is a good reason for not complying. *Subsection (4)* sets out that compliance with a request must be through the provision of accommodation secured by a Scottish secure tenancy, but where *paragraph 1 or 2 of Schedule 6* are satisfied (that is, in relation to anti-social behaviour)

a short Scottish secure tenancy is also permitted. *Subsection (5)* allows RSLs to provide other accommodation (say, temporary accommodation) in cases where that has been expressly requested by the local authority. *Subsection (6)* places a duty on RSLs to comply with reasonable requests for information relating to the local authority's functions under section 5. *Subsection (7)* enables the Scottish Ministers to give guidance on what constitutes a reasonable period for compliance; good reason for an RSL's non-compliance; and for the purposes of *subsection (6)* what is a reasonable request. *Subsection (8)* sets out the arrangements for consulting on such guidance.

### ***Section 6: Duty of registered social landlord: further provision***

17. This section sets out the arrangements which are to apply in the event of any dispute between a registered social landlord and a local authority about whether the registered social landlord has good reason for not complying with a local authority request. *Subsection (1)* requires that, if both parties cannot reach agreement within a set period (to be defined by the Scottish Ministers in subordinate legislation), they must appoint an arbiter. If there is no agreement on the appointment of an arbiter, Ministers must appoint an arbiter when requested to do so by the local authority. *Subsections (4) and (5)* deal with the sharing of costs of arbitration and the issuing of guidance by Ministers on the details of the arbitration process. *Subsection (6)* makes it clear that both registered social landlords and local authorities must comply with the arbiter's decision.

### ***Section 7: Persons living in hostel and other short-term accommodation***

18. This section enables the Scottish Ministers to make regulations to establish minimum rights for homeless people living in hostels and other types of short-term accommodation. *Subsection (1)* enables Ministers to specify the types of occupancy of accommodation to which these minimum rights will apply. *Subsection (2)* sets out a number of types of occupancy of accommodation which cannot be included in any regulations. *Subsections (3), (5) and (6)* enable Ministers to specify the terms of occupancy of the accommodation, including arrangements for appeals, but do not prevent additional agreements being made between the provider of accommodation and the occupier. *Subsection (4)* requires regulations under *subsection (3)* to include provision for a minimum period of notice, which may be waived when there is a serious danger to other occupiers or staff of the accommodation. *Subsection (7)* makes it a criminal offence for a provider of accommodation to fail to comply with the terms of the regulations. *Subsection (8)* sets out the consultation arrangements which would apply to the regulations.

### ***Section 8: Common housing registers***

19. There is currently a voluntary framework for the establishment of common housing registers. This section provides Ministers with powers (to be exercised where appropriate) to instead require the establishment of common housing registers.

### ***Section 9: Housing lists***

20. This section substitutes a new version of section 19 of the 1987 Act. Section 19(1) will now extend a right to register on a housing list for accommodation held by local authorities or registered social landlords to anyone aged 16 or over. Section 19(2) defines a housing list.

### ***Section 10: Allocation of housing***

21. This section amends section 20 of the 1987 Act to provide additional criteria governing the operation of the housing list by a local authority or registered social landlord. *Subsection (2)* states that reasonable preference in allocations must be given to persons – among others – both homeless and threatened with homelessness. *Subsection (3)* sets out those factors which cannot be taken into account by a local authority or registered

social landlord in making allocation decisions. *Subsection (4)* includes a list of the circumstances under which landlords can take account of age when allocating houses.

## **Part 2 – Tenants of Social Landlords**

### **Chapter 1 – Scottish Secure Tenancies**

#### **Section 11: Scottish secure tenancy**

22. This section specifies which tenancies are to be Scottish secure tenancies and makes provision for joint tenancies and for transition from existing tenancies to the Scottish secure tenancy.
23. The Scottish Ministers may make orders specifying the dates on or after which the tenancies of any prescribed landlord or description of landlord will be Scottish secure tenancies. This would enable all tenancies to convert at the same time, but allows for phased implementation where necessary. Such orders may (*subsection (2)*) include provisions to protect the rights of the landlord, the tenant or a third party (eg a person with a heritable security over the property) in relation to a tenancy which is converted to a Scottish secure tenancy. An order under that subsection could be used to protect the terms and conditions of the right to buy for existing tenants.
24. In general, a tenancy will only be a Scottish secure tenancy if:
  - the house is let as a separate dwelling;
  - the tenant is an individual and the house is the tenant's only or principal home; and
  - the landlord is a local authority landlord (as defined in *subsection (3)*), a registered social landlord, or a water or sewerage authority.
  - where the landlord is a registered social landlord which is a co-operative housing association, the tenant is a member of the association; and
  - the tenancy was created on or after such date as specified by order or before that date if of a description specified by order
25. This section introduces *Schedule 1* which defines tenancies which could meet these general criteria but will nonetheless not be Scottish secure tenancies.
26. *Subsection (8)* provides that a tenancy which is a Scottish secure tenancy will continue to be one even where the landlord is no longer a local authority, a registered social landlord or a water or sewerage authority or where the house is no longer the only or principal home of the tenant, or where the landlord is a registered social landlord which is a co-operative housing association and the tenant is no longer a member of the association.
27. *Subsections (5) and (6)* make provisions for joint tenancies, including a requirement on a landlord to grant a joint tenancy, where it is requested in writing, unless it has reasonable grounds for not doing so. *Subsection (9)* protects the tenancy rights of those tenants who have been temporarily housed elsewhere.

#### **Section 12: Restriction on termination of tenancy**

28. This section sets out the six ways in which a Scottish secure tenancy may be terminated:
  - by a court order for recovery of possession on one of the 15 grounds in *Part 1 of schedule 2* (under section 16(2));
  - where a tenancy has been abandoned (by operation of section 18(2));
  - on the death of a tenant, and subject to the provisions relating to succession (by operation of section 22);

- on conversion to a short Scottish secure tenancy (by operation of section 35);
  - by written agreement between the landlord and tenant;
  - by 4 weeks' notice given by the tenant to the landlord.
29. *Subsections (2) and (3)* provide security of tenure for a tenant who is being accommodated temporarily in another house while their own house is not available for occupation.

### ***Section 13: Termination of joint tenant's interest in tenancy***

30. [Section 13](#) provides for the termination of a joint tenant's interest in the tenancy by 4 weeks notice given to the landlord and to each of the other joint tenants.

### ***Section 14: Proceedings for possession***

31. This section entitles a landlord under a Scottish secure tenancy to seek a court order for recovery of possession of a house. *Subsections (2) to (5)* specify the procedures which the landlord must follow in such circumstances, and include a power for the Scottish Ministers to prescribe the form of notice to tenants. Such a notice must be served on the tenant and any qualifying occupier and must include the ground on which the court order will be sought, which must be one of the 15 grounds set out in *Part 1 of schedule 2*, and must be served at least 4 weeks before the court order is sought. *Subsection (6)* defines "qualifying occupier" for the purposes of this section and section 15.

### ***Section 15: Rights of qualifying occupiers in possession proceedings***

32. This section enables a qualifying occupier (defined in section 14(6)) to play a part in possession proceedings, so that their rights as well as the tenant's rights may be considered by the court.

### ***Section 16: Powers of court in possession proceedings***

33. This section sets out the circumstances in which the court will make an order for terminating a Scottish secure tenancy and giving the landlord the right to recover possession of the house on a ground set out in *Part 1 of schedule 2*. In relation to grounds 1 to 7 ("conduct grounds") the court must make the order where it considers it reasonable to do so. In relation to grounds 8 to 14 ("management grounds"), the court must make the order if it considers other suitable accommodation will be available for the tenant. In relation to ground 15, the court must make the order where it considers that it is reasonable to do so and that other suitable accommodation will be available. Suitability of alternative accommodation is determined by reference to *Part 2 of schedule 2*. In relation to ground 10, if the house is being redeveloped the court can make an order entitling the tenant to return to the house when the work has been completed.
34. This section also sets out the matters to which the court should have regard in considering whether it is reasonable to make an order for termination of the tenancy.

### ***Section 17: Abandoned tenancies***

35. This section enables a landlord under a Scottish secure tenancy to take action to secure and take possession of a house which appears to have been abandoned by the tenant. The procedures to be followed before taking possession are set out in section 18.

### **Section 18: Repossession**

36. This section sets out the procedures which must be followed by a landlord wishing to take possession of an abandoned house, in the circumstances defined in section 17. The landlord must:
- give 4 weeks notice in writing (*subsection (1)*);
  - make sufficient inquiries to satisfy itself that the house is unoccupied and that the tenant has no intention of re-occupying it (*subsection (2)*); and
  - serve a further notice on the tenant (*subsection (2)*), which brings the tenancy to an immediate end and allows the landlord to take possession of the house without further proceedings.
37. *Subsection (4)* gives an order making power to the Scottish Ministers to outline arrangements for the securing of tenants' belongings in their absence and arrangements for their return or disposal.

### **Section 19: Tenant's recourse to court**

38. This section gives a Scottish secure tenant whose house has been repossessed in accordance with the abandonment procedures in sections 17 and 18 a right of appeal to the court. Where the court finds that the landlord acted wrongly or unreasonably it must order the tenancy to continue or direct the landlord to provide other suitable accommodation (as defined in *Part 2 of schedule 2*). *Subsection (4)* enables the court to make further orders in relation to cases where a tenant has successfully challenged an abandonment order, for example to instruct a landlord to forego rent due for the period of apparent abandonment.

### **Section 20: Abandonment by joint tenant**

39. This section enables a landlord under a Scottish secure tenancy to take action to bring to an end the interest of a joint tenant where that joint tenant appears to have abandoned the joint tenancy. The procedures to be followed before taking possession are set out in *subsections (2) and (3)*. The landlord must:
- give 4 weeks notice in writing (*subsection (2)*);
  - make sufficient inquiries to satisfy itself that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant's home (*subsection (3)*); and
  - serve a further notice on the abandoning tenant (*subsection (3)*), bringing the abandoning tenant's interest in the tenancy to an end with effect from a date specified in the notice which must be not earlier than 8 weeks after the date of service of the notice.

### **Section 21: Joint tenancies: abandoning tenant's recourse to court**

40. This section gives a joint tenant a right of recourse to the court where the tenant is aggrieved by a landlord bringing to an end his interest in the property under the abandonment procedures in section 20. Where the court finds in favour of the tenant it can effectively reinstate the joint tenant or direct the landlord to make other suitable accommodation available. The court can also make a further order providing, for example, for compensation to be paid.

### **Section 22: Succession to Scottish secure tenancy**

41. This section and *schedule 3* make provision for succession to a Scottish secure tenancy on the death of the tenant. The section includes a right to a second round of succession (*subsection (2)*). *Schedule 3* defines who is a person qualified to succeed to a tenancy and the circumstances in which they can do so. A qualified person is, first, the tenant's

spouse or cohabitee, or a surviving joint tenant; second, a member of the tenant's family aged 16 or over; or, third, a carer who is providing, or who has provided, care for the tenant or a member of the tenant's family. The carer must be aged 16 or over, and have given up his or her previous only or principal home, to be qualified to succeed. In all three cases the house of the deceased tenant must have been the only or principal home for the qualifying person.

42. Where a house has been designed or substantially adapted for the use of persons with special needs, then *paragraph 5 of schedule 3* specifies that only spouses, cohabitees, joint tenants or persons with special needs can succeed to that tenancy. Other persons who would otherwise be qualified to succeed have a right to alternative suitable accommodation by virtue of *subsections (6) and (7)*.
43. *Subsection (8)* clarifies that tenancies are not terminated on the death of a joint tenant if the remaining tenant or tenants continue to live in the house. *Subsection (9)* makes provision for a person who would have succeeded to the tenancy, but who cannot because the second round of succession has passed, to remain in the house for 6 months but not under a Scottish secure tenancy. *Subsection (10)* makes provision for a Scottish secure tenancy to continue (for the purposes of succession) where a tenant has to move to alternative accommodation.

### ***Section 23: Tenant's right to written tenancy agreement and to information***

44. This section gives tenants a right to a written tenancy agreement and to information about the landlord's policies and procedures. It permits the Scottish Ministers to issue guidance as to the form of the tenancy in a model agreement. *Subsection (4)* requires landlords to provide a prospective tenant with information, prior to the taking up of the tenancy, about the right to buy (this could include, for example, whether or not there are any relevant exemptions), and the obligations which the tenant is likely to incur if the right to buy is exercised (including responsibility for maintenance of parts of the building and areas owned in common). *Subsection (5)* requires the landlord to notify the tenant of any changes to the legislation, including subordinate legislation, governing the right to buy which might affect the tenant's right to purchase. *Subsection (6)* outlines information that the landlord must supply in relation to its complaints procedure. It also lists other information that it must supply on request.

### ***Section 24: Restriction on variation of tenancy***

45. This section limits the way in which changes to a Scottish secure tenancy can be made. Rents and other charges can be varied in accordance with section 25 and terms and conditions can be varied by court order under section 26, but otherwise the terms of the tenancy can only be changed by written agreement between the landlord and tenant, in line with the Requirements of Writing (Scotland) Act 1995 (which sets out provisions relating to the signing of contracts).

### ***Section 25: Increase in rent or charges***

46. This section requires landlords to give each tenant not less than four weeks notice, in writing, before increasing rents or other charges. Where a landlord proposes to increase rents generally, it must first consult those tenants who would be affected.

### ***Section 26: Variation of tenancy by court order***

47. This section allows either a landlord or a tenant to apply for a court order to change a term of Scottish secure tenancy where there is a dispute on a variation in terms. The grounds on which a tenant can seek a change are set out in *subsection (2)*.
48. The court has power to make any change in a term of a tenancy, apart from the level of rent or charge, that it considers reasonable having particular regard to safety considerations or likelihood of damage to the house. The court can require the tenant to

pay compensation to the landlord for any financial loss arising from the variation, and to consult anyone who might be affected by the proposed change.

### ***Sections 27 to 31 and schedules 4 and 5: Repairs and improvements***

49. Taken together, these provisions set out the rights and responsibilities of the landlord and tenant under a Scottish secure tenancy with respect to repairs and improvements to the house.

#### ***Section 27: Repairs***

50. This section, with *schedule 4*, puts the landlord under an obligation to ensure that the house is kept wind and watertight and reasonably fit for human habitation. It enables the tenant to have essential repairs done within a maximum time-scale, in line with regulations made by the Scottish Ministers. Secure tenants currently have this right under the [Secure Tenants \(Right to Repair\) \(Scotland\) Regulations 1994 \(SI 1994/1046\)](#). It also requires the landlord, before the tenancy begins, to inspect the house and identify any work necessary to ensure that the house is wind and watertight and in all other respects reasonable fit for human habitation and to notify the tenant of any such work. The landlord must also carry out any necessary work within a reasonable timescale and make good any damage caused in carrying out the work. The landlord or someone authorised by the landlord can also enter the tenant's home on 24 hours notice to inspect the house and carry out any necessary work.

#### ***Section 28: Landlord's consent to work***

51. This section and *Part 1 of schedule 5* require a tenant to get the written consent of the landlord to undertaking any work, other than interior decoration, on a house. The landlord must not unreasonably withhold its consent, but can set any reasonable conditions with respect to the work, including any standards that the work must meet. The Scottish Ministers may give guidance to landlords on such conditions or standards of work. *Part 1 of schedule 5* includes provision for a tenant to appeal against either a refusal by a landlord to allow a tenant to undertake work, or against a particular condition imposed by the landlord.

#### ***Section 29: Reimbursement of cost of work***

52. This section applies when a Scottish secure tenancy comes to an end. Where a tenant has carried out improvement work to the house, with the consent of the landlord, the landlord can make a payment to the tenant, or his representative, up to the cost of the improvement work, after deducting the amount of any grant paid by a local authority through a repairs or improvements grant (a "grant paid or payable under Part XIII of the 1987 Act").

#### ***Section 30: Right to compensation for improvements***

53. This section sets out the detailed arrangements to support a tenant's entitlement under the right to compensation for improvement. Where the tenant has carried out certain improvement works with the consent of the landlord they are entitled to be compensated for the cost of those works when the tenancy comes to an end. The Scottish Ministers can make regulations prescribing:
- those works which qualify for compensation;
  - certain circumstances in which compensation is not payable;
  - minimum and maximum levels of compensation;
  - the procedures to be followed, and the factors to be taken into account, when claiming for or determining compensation.

54. Regulations in respect of these matters already exist for secure tenancies in the [Secure Tenants \(Compensation for Improvements\) \(Scotland\) Regulations 1994 \(SI 1994/632\)](#).

***Section 31: Effect of work on rent***

55. This section prevents a landlord increasing the rent of a tenant, the successor to the tenancy or the successor's spouse or cohabitee to reflect any increase in the value or amenities of the house arising from improvement works undertaken and agreed with the landlord by that tenant.

***Section 32: Assignment, subletting etc.***

56. This section entitles a tenant to assign or sublet their house or to take in a lodger with the consent of the landlord. In the case of an assignment, the house must have been the assignee's only or principal home for 6 months prior to application for consent to assign. The landlord's consent may only be withheld if there are reasonable grounds to do so; *subsection (3)* sets out examples of what such grounds might be. Those grounds can be modified by the Scottish Ministers by order. *Part 2 of schedule 5* provides, among other things, a right of appeal to the court by a tenant whose landlord refuses consent. Where the landlord is a registered social landlord which is a co-operative housing association any consent is subject to the condition that assignee, subtenant, or other person is a member of the association when the assignment or sublease takes effect or when possession is given to the other person.

***Section 33: Exchange of house***

57. This section provides a tenant with a right to exchange their house with another tenant, providing that both tenants are Scottish secure tenants and that the landlords of both tenants have given their consent. Such consent may only be refused if there are reasonable grounds to do so; *subsection (3)* sets out examples of what such grounds might be. Those grounds can be modified by order of the Scottish Ministers. *Part 2 of schedule 5* provides, among other things, a right of appeal to the court by a tenant whose landlord refuses consent. Where the landlord is a registered social landlord which is a co-operative housing association any consent is subject to the condition that the tenant of the other house is a member of the association when the exchange takes effect.

***Section 34: Short Scottish secure tenancies***

58. This section and *schedule 6* set out the arrangements for a new short form of tenancy in the social rented sector to be called a short Scottish secure tenancy. *Subsection (1)* sets out the basic conditions for this type of tenancy to apply, and requires the serving of a notice by the landlord on the prospective tenant that this type of tenancy will be offered. *Schedule 6* sets out a range of circumstances in which a landlord can offer a short tenancy: these include where prospective tenants have previously been evicted for anti-social behaviour; where prospective tenants or others who will reside with the tenant have had an anti-social behaviour order taken out against them; temporary lettings; and properties leased by the landlord from another body. The Scottish Ministers under *subsection (3)* may modify this list by order. *Subsection (7)* requires landlords to provide such housing support services as it considers appropriate to enable the tenancy to convert to a Scottish secure tenancy and *subsection (8)* enables Scottish Ministers to issue guidance as to the housing support services which are appropriate.
59. A short Scottish secure tenancy will be for a term of not less than 6 months and on its expiry may continue by tacit relocation (i.e. it will automatically be renewed for the same length of time), or by express agreement between landlord and tenant. *Subsection (6)* sets out the terms of a short Scottish secure tenancy and indicates that terms of a Scottish secure tenancy will apply with the exception of section 11(2) and (4) (which apply to existing tenancies which become Scottish secure tenancies); schedule 1 (tenancies which cannot be Scottish secure tenancies); section 12 (relating

to termination of tenancy); and succession rights under section 22 and [schedule 3](#). As a short Scottish secure tenancy is not included in the definition of a Scottish secure tenancy (section 111), the right to buy provisions do not apply to it. Provisions relating to tenant participation apply by virtue of sections 53 and 54.

### ***Section 35: Conversion to short Scottish secure tenancy***

60. This section entitles a landlord to serve a notice converting a Scottish secure tenancy to a short Scottish secure tenancy where an anti-social behaviour order has been taken out against the tenant or a member of the tenant's household. The notice must specify the tenant or other person who is subject to the anti-social behaviour order.
61. *Subsection (5)* gives a tenant a right of recourse to the court where the tenant is aggrieved by a landlord converting a Scottish secure tenancy to a short Scottish secure tenancy. Where the court finds in favour of the tenant it can effectively reinstate the Scottish secure tenancy .

### ***Section 36: Recovery of possession***

62. This section sets out the arrangements under which a landlord may recover possession of a short Scottish secure tenancy. *Subsections (2) to (4)* set out the arrangements in more detail including the service of a notice and raising of proceedings. *Subsection (5)* outlines the circumstances when a court must make an order for recovery of possession: where the tenancy has reached its term, tacit relocation is not operating (i.e. it will not be automatically renewed for the same length of time) and no further contractual tenancy has been entered into, and where a notice has been served.

### ***Section 37: Conversion to Scottish secure tenancy***

63. Where a tenant has been granted a short Scottish secure tenancy because they have previously been evicted from a tenancy for anti-social behaviour or because an anti-social behaviour order has been taken out against the tenant or one of the tenant's household this section provides for the automatic conversion of the short tenancy to a full Scottish secure tenancy after a period of 12 months, unless the landlord has served a notice to quit on the tenant. *Subsections (2) and (3)* make further provisions for cases where a landlord has served such a notice to quit. There is no such automatic conversion for tenants who have been granted a short tenancy on other grounds.

### ***Section 38: Appeals***

64. This provision establishes a right of appeal to the courts against a decision of a landlord not to offer either a Scottish secure tenancy or a short Scottish secure tenancy.

### ***Section 39: Application of sections 23 to 33 to other tenancies***

65. This section applies the rights and obligations of the Scottish secure tenancy to a tenancy which would be a Scottish secure tenancy if it were not tied accommodation or part of a building which is primarily for non-housing use. The key provisions of the Scottish secure tenancy which do not apply to such tenancies relate to termination of the tenancy and repossession of the house; to joint tenancies; to succession rights; to the right to buy; and to the tenant participation provisions.

### ***Sections 40 and 41: Notices and interpretation of Chapter 1***

66. These sections clarify what is meant by certain terms used in this Chapter of the Act.

### ***Chapter 2 – Right to Buy***

67. This Chapter amends existing provisions on right to buy in 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 until their tenancy comes to an end. However the rent to mortgage scheme, lender of last resort and fixed price option provisions are repealed, although transitional provisions allow for protection for those currently benefiting from those provisions. The Chapter extends the right to buy to all tenants with a Scottish secure tenancy subject to a number of exemptions in certain specified circumstances. Tenants who did not previously have the right to buy, and all tenants entering into new tenancies, will have the right to buy on the revised terms provided for in this Chapter.

#### ***Section 42: The qualifying conditions***

68. The amendment made by *subsection (1)(a)* ensures that a tenant's right to buy is preserved if there is a change in their landlord or the status of their landlord after the tenancy is granted.
69. Before being entitled to exercise their right to buy a tenant has to have lived in accommodation rented from a relevant landlord for a certain period of time. That period is currently 2 years; *subsection 1(b)* extends that to 5 years.
70. *Subsection (2)* further amends the existing provisions to require tenants to have been in continuous occupation of the property during the qualifying period. However, *subsection (2)(c)* allows for this requirement to be disregarded for circumstances outwith the control of the tenant, subject to the discretion of the landlord.

#### ***Section 43: Exemptions from right to buy***

71. This section amends the range of circumstances under which the right to buy cannot be exercised.
72. *Subsection (2)* repeals the existing provisions relating to specialist and group housing. These are replaced by a single exemption at *subsection (6)* for groups of houses designed for persons with special needs with or situated near special facilities, or where tenants are in receipt of housing support. *Subsection (2)* also ends the current exemption under section 61(4)(b) of the 1987 Act for registered housing associations which have not received public subsidy.
73. *Subsection (4)* confirms the exemption from right to buy of properties which are part of a co-operative housing association and *subsection (5)* amends the exemption for some charitable housing associations. Any registered social landlord which is a Scottish charity on the date when the Housing (Scotland) Act 2001 received Royal Assent will be exempt from the right to buy.

#### ***Section 44: Limitation on right to buy: registered social landlords***

74. This section inserts a new section 61A into the 1987 Act suspending the right to buy for tenants of a registered social landlord. This is intended to ensure that registered social landlords have time to adjust to the new arrangements. *Subsection (3)* of the new section sets a time period for this suspension of 10 years from the date on which the tenancies of the landlord must be Scottish secure tenancies by virtue of an order under section 11(1).
75. *Subsection (4)* of the new section gives powers to the Scottish Ministers to extend this suspension for a further period or periods as they see fit, subject to a maximum of 10 years for each further period. *Subsections (7) to (9)* set out the arrangements whereby registered social landlords can end this suspension on a voluntary basis.
76. *Subsection (2)* of the new section sets out the tenancies which are not included in this suspension. These are tenancies:
  - of properties acquired by the landlord after the date when the landlord becomes subject to the Act's provisions on Scottish secure tenancies by virtue of an order under section 11(1);

- of properties built after that date where a grant was offered to the landlord;

77. There is a power for the Scottish Ministers to specify further exemptions by order.

***Section 45: Limitation on right to buy: pressured areas***

78. This section inserts two new sections into the 1987 Act. The new section 61B allows the Scottish Ministers to designate particular areas as pressured areas for a period of up to 5 years. Any tenancy granted in a pressured area since the introduction of the Scottish secure tenancy or which did not previously have the right to buy, is exempt from the right to buy for the period of the designation.

79. *Subsection (1)* of the new section specifies that before being designated as pressured an area must meet two criteria: first, the availability of housing provided by the local authority or registered social landlords must be, or be likely to be, substantially less than the need in that area, and second, the exercise of the right to buy in that area must be likely to make that shortage worse. *Subsections (8) and (9)* provide for a designation to be amended or revoked by the Scottish Ministers; and to be extended for a further period or periods of up to 5 years each.

80. The new section 61C sets out the procedure for designating a pressured area: the proposal must be put forward by a local authority (see section 61B(1)) after local consultation, and the Scottish Ministers can set out in guidance the form of the proposal and the information it should include.

***Section 46: Limitation on right to buy: arrears of rent, council tax, etc.***

81. This section inserts two new provisions into the 1987 Act. *Subsection (1)* inserts section 61D which entitles the landlord to refuse an application under the right to buy from a tenant or joint purchaser who has arrears of rent or other charges, of council tax, or of water and sewerage charges. Slightly different provisions apply in each of these three cases to reflect the differences in the bodies to which the arrears may be due.

82. *Subsection (2)* amends section 63 of the 1987 Act to require a tenant of a registered social landlord who has applied to exercise their right to buy to provide a certificate from the local authority stating whether or not they have any arrears of council tax or water or sewerage charge, and if so the amount of these arrears. The local authority is required to issue such a certificate free of charge and within a specified time.

***Section 47: Limitation on right to buy: conduct***

83. This section inserts a new section 61E into the 1987 Act which suspends the right to buy from any person whose house is being repossessed on one of the conduct grounds in paragraphs 1 to 7 of *schedule 2* to the Act.

***Section 48: Houses liable to demolition***

84. This section inserts a new section into the 1987 Act. It provides the conditions and procedures required for a landlord to apply to Ministers for their consent for the landlord to refuse an application to buy on the grounds that the property is liable to demolition. Before granting such consent, Ministers will have regard in particular to how long before the landlord intends to demolish the house, and to what extent before deciding to demolish the landlord consulted the tenant about the proposal to demolish, and the effect of the proposal on the tenant's ability to exercise the right to buy.

***Section 49: Discounts***

85. Section 62 of the Housing (Scotland) Act 1987 sets out provisions for calculating the price at which a property should be sold under the right to buy. This section amends those provisions in the following ways for new Scottish secure tenants. (The existing

provisions will continue to apply to tenants who currently have the right to buy by virtue of an order made under section 11(1)).

86. *Subsection (2)* changes the level of discount to be applied to the market value of the house. It removes the distinction between houses and flats. It sets a new minimum discount of 20% for all those with a 5 year eligibility period. It sets a single rate at which the level of discount increases from the minimum, of 1% of the market value for every year beyond 5 years that the tenant has occupied a house let by a relevant landlord. It reduces the maximum level of discount from 60% of the market value of the house to 35% or £15,000, whichever is the less.
87. In calculating a discount, section 62 of the 1987 Act requires account to be taken of any previous discounts received by the applicant(s). *Subsection (4)* inserts a new provision in section 62 making clear that a previous discount received by two or more persons jointly should be deemed to have been received in equal proportions.
88. *Subsection (3)* broadens the definition of appropriate persons for calculation purposes of any previous discount to be deducted from discount entitlement. The definition in section 62(4)(a)(i) to (iv) of the 1987 Act refers to the tenant, the tenant's spouse, or joint tenant. These will now reflect cohabitants of either sex, by virtue of section 108. *Subsection (5)* makes technical changes consequential to the changes made by *subsections (2)* and *(3)*.
89. *Subsections (6), (7) and (8)* allow the Scottish Ministers to vary the discount rates and set different discount regimes, including different caps, in different areas of the country by order.

#### ***Section 50: Assistance to tenants to obtain other accommodation***

90. This section amends section 66 of the Housing (Scotland) Act 1988 to allow a local authority (with the approval of the Scottish Ministers) to establish a grant scheme to enable Scottish secure tenants of councils and registered social landlords to buy or extend a house, or to buy land and build a house. That section already allows such a scheme to include provisions for determining which tenants could qualify for grant assistance; *subsection (3)* inserts a new subsection to make clear that such provisions may in particular specify tenants in pressured areas as qualifying tenants. *Subsection (2)* extends the scope of these schemes so that grants can be paid to tenants of registered social landlords.

#### ***Section 51: Right to buy: miscellaneous repeals***

91. This section abolishes the rent to loan scheme and removes the duty of the local authority to act as lender of last resort to tenants who wish to exercise the right to buy but are unable to raise the necessary finance elsewhere. The repeal of section 69(1A) removes the cut-off date which currently limits the scope for refusing the right to buy for certain houses provided for elderly persons and first let before 1 January 1990. A landlord subject to the right to buy can apply to the Scottish Ministers to refuse an application under the right to buy for any house which has been designed or adapted for special needs purposes.

#### ***Section 52: Reports on right to buy***

92. This section places a duty on Scottish Ministers to provide reports on the effects and take-up of the right to buy.

### ***Chapter 3 – Tenant Participation***

#### ***Section 53: Tenant participation***

93. This section requires local authorities and registered social landlords to have tenant participation strategies in place as directed by the Scottish Ministers. It also places a duty on them to maintain a register of tenants groups meeting certain criteria. *Subsection (4)* entitles Scottish Ministers to make an order setting out the criteria for registration or removal from the register and the procedures to be followed in relation to such registration and removal and *subsection (5)* provides a right of appeal for such groups in relation to registration and deregistration.

#### ***Section 54: Consultation with tenants and registered tenant organisations***

94. This section enables both individual tenants and registered tenants groups to be consulted by the landlord on issues affecting them. *Subsection (1)* requires the landlord to have regard to representations by tenants or tenants groups, made within a reasonable timescale. *Subsection (2)* sets out the relevant proposals to which this applies.

#### ***Section 55: Tenant management agreements***

95. This section replaces the existing provisions of sections 22 and 22A of the 1987 Act and sets out arrangements for a tenant management co-operative to enter into an agreement with a local authority landlord, a registered social landlord or a water or sewerage authority to manage the landlord's houses. The Scottish Ministers must approve such management bodies and the terms of the agreement between the landlord and the co-operative. There is a right of appeal to Ministers in the case of an inability to agree terms or a refusal by the landlord to enter into an agreement.

#### ***Section 56: Tenant management agreements: further provision***

96. This section defines the range of functions which a landlord may make subject to a tenant management agreement. *Subsections (4) and (5)* make clear that a local authority's houses which are the subject of a tenant management agreement are still to be treated as the authority's houses for the purposes of the authority's Housing Revenue Account and related financial support from the Executive.

### **Part 3 – Regulation of Social Landlords**

#### ***Chapter 1 – Registered Social Landlords***

#### ***Section 57: The register of social landlords***

97. This section places a duty on the Scottish Ministers to maintain an accessible register of social landlords. It also arranges for the transition from the current register of housing associations maintained by Scottish Homes to the new register. The new register will include all those bodies who are currently on the Scottish Homes register, whether they are registered by statute or under contract. The section also provides that Ministers must notify the bodies concerned at least one month before the change in registration arrangements occurs.

#### ***Section 58: Eligibility for registration***

98. This section sets out the basic criteria for registration as a social landlord. A body is eligible if it is either an industrial and provident society or a registered company. In either case the body must have its registered office in Scotland. The body must not trade for profit, and must have housing as one of its objects, although it may be engaged in other activities as provided for in this section. The Scottish Ministers have the power to amend the permissible additional purposes, objects and powers by order, but any such changes will only affect bodies registered subsequently.

***Section 59: Registration***

99. This section gives the Scottish Ministers the power to register as a social landlord any body which is eligible and to determine the way in which such application must be made. Ministers can charge for registration. Ministers must also inform the Financial Services Authority when an industrial and provident society is registered with them.

***Section 60: Removal from the register***

100. This section sets out the circumstances in which the Scottish Ministers may remove a body which is on the register of social landlords, and the process for so doing. The criteria for removal are that the body is no longer eligible for registration, has ceased to exist or does not operate, or otherwise meets the criteria for removal from the register established by Ministers under section 61. Ministers must give the body at least 14 days notice before removing it from the register.

***Section 61: Criteria for registration or removal from register***

101. This section places a duty on the Scottish Ministers to establish and publish criteria for registration as a social landlord or for removal from the register. Ministers must have regard to these criteria when deciding whether or not to register or de-register a body, and before establishing or varying any criteria they must consult bodies representing registered social landlords and bodies representing tenants of registered social landlords.

***Section 62: Appeal against decision on registration or removal***

102. This section provides an appeal mechanism for bodies who are aggrieved by a decision of the Scottish Ministers not to register it as a social landlord or to remove it or not remove it from the register. The appeal is to the Court of Session, and where the appeal is against the decision relating to the removal of a body from the register Ministers must not remove the body from the register until the appeals process is complete. Ministers must also give notice to the Financial Services Authority of any appeal against a decision relating to the removal of a body which is an industrial and provident society from the register.

***Section 63: Regulation of registered social landlords***

103. This section introduces *schedule 7*, which makes detailed provision about the regulation of registered social landlords. The schedule is largely a restatement and updating of the provisions of the Housing Associations Act 1985 (most of which is repealed by *paragraph 11 of*
104. *schedule 10*). *Parts 1 and 2 of schedule 7* include provisions which cover:
- the control of payments by a registered social landlord to members, officers and employees of the landlord;
  - the constitution of registered social landlords, and changes to the rules of the registered social landlord;
  - powers to remove members of the governing body or to appoint new members to the governing body;
  - the amalgamation, dissolution, rearrangement or reconstruction of the registered social landlord; and,
  - powers to deal with circumstances where a registered social landlord is being wound up or dissolved.

105. *Part 3 of schedule 7* allows the Scottish Ministers to lay down requirements as to accounts and audit arrangements for a registered social landlord. *Part 4* gives powers to Ministers to undertake an inquiry into the affairs of a registered social landlord and to take action following an inquiry or audit. Those powers include the power to direct the transfer of part or all of the land of a registered social landlord where Ministers are satisfied that there has been misconduct or mismanagement or where the management of its land would otherwise be improved.

***Section 64: Insolvency etc***

106. This section introduces *schedule 8*, which makes provision about the insolvency of registered social landlords. These provisions effectively replicate the insolvency provisions currently in place in England and Wales. The key difference is the extension of the moratorium period from 28 to 56 days.

***Sections 65 to 68: Disposal of land and related matters***

107. These sections together set out the provisions governing registered social landlords who wish to dispose of land (including houses). “Disposal” is defined in section 66(6).

***Section 65: Power of registered social landlord to dispose of land***

108. This section provides the basic power for a registered social landlord to dispose of land held by it, subject to sections 66 to 68 and 76 and schedules 7 and 9, and without prejudice to tenants’ right to buy.

***Section 66: Consent required for disposal of land by registered social landlord***

109. This section requires the consent of the Scottish Ministers for any disposal of land by a registered social landlord. Consent may be given generally or in particular circumstances. Before giving their consent, Ministers must have regard to the views expressed by those consulted – section 68 and schedule 9 set out the circumstances in which consultation is to take place.

***Section 67: Disposals not requiring consent***

110. This section specifies those disposals which do not require the consent of the Scottish Ministers – principally the granting of a tenancy or the sale of a property under the right to buy. It includes a power for Ministers to specify further disposals which do not require their consent.

***Section 68: Disposals of land: consultation with tenants***

111. This section requires a registered social landlord to consult its tenants before making a disposal. There are exemptions from this requirement for certain categories of disposals: disposals which do not require consent under section 66 (these are defined in section 67); disposals covered by the alternative consultation arrangements in *schedule 9*; and disposals of an interest by way of security for a loan.

***Section 69: Inspections***

112. This section gives the Scottish Ministers powers to carry out an inspection of the management of the affairs of a registered social landlord in relation to the provision of housing accommodation and related services. (The scope of this term is set out in section 83.) An inspector has right of access at reasonable times to the premises of the registered social landlord and to any relevant document, and the landlord must ensure that the inspector is given all information, explanation or other facility which the inspector may reasonably require for the purposes of the inspection. It is a criminal offence not to comply with the requirement of an inspector without a reasonable excuse.

This section mirrors the provisions of section 72, which applies to inspections of local authorities' housing functions.

***Section 70: Inspection reports***

113. This section requires the Scottish Ministers to issue and publish a report of any inspection carried out under section 69, and to send a copy of it to the registered social landlord and any registered tenant organisation. The report must identify any ways in which the landlord's activities were found to be unsatisfactory. This section mirrors the provisions of section 73, which apply to reports on local authorities' housing functions.

***Section 71: Appointment of manager***

114. This section allows the Scottish Ministers to appoint a special manager to a registered social landlord. They can either appoint a manager themselves or can require the landlord to appoint a manager. Ministers can make such an appointment to ensure that the management of the affairs by a registered social landlord is of an appropriate standard either generally or in relation to a particular matter, and they may specify which of the affairs of the landlord the manager is to manage. *Subsection (2)* allows Ministers to determine the period and terms and conditions for the appointment of the manager. The manager will have general powers to do what is necessary to fulfil their functions, and may also be given specific powers by Ministers.

***Chapter 2 – Local Authority Housing Management***

***Section 72: Inspections***

115. This section provides powers for the Scottish Ministers to carry out an inspection of the exercise of the functions of a local authority in relation to the management of housing accommodation and the provision of related services. The provisions of this section mirror the provisions of section 69, which applies to inspections of registered social landlords' housing activities.

***Section 73: Inspection reports***

116. This section requires the Scottish Ministers to issue and publish a report of an inspection carried out under section 72 and send a copy to the local authority and to any registered tenant organisation. The provisions mirror the provisions of section 70, which applies to reports on registered social landlords' housing activities.

***Section 74: Remedial plans***

117. This section allows the Scottish Ministers to require a local authority to prepare and submit to them a remedial plan setting out the authority's proposals for dealing with matters which have been found to be unsatisfactory in an inspection report. Before requiring a local authority to submit a remedial plan, Ministers must send a draft requirement to the authority, specifying a period within which the authority may make comments to Ministers on the proposed requirement. Ministers must have regard to those comments before imposing any requirement on the local authority to produce a remedial plan. When a local authority has submitted a remedial plan, Ministers may approve it, reject it or approve it with modifications. They may also approve it and impose conditions as to its adoption and implementation by the authority. If a plan is approved by Ministers the authority must adopt and implement it in accordance with any conditions imposed. When a plan is rejected, the authority must prepare a revised plan and submit it to Ministers.

***Section 75: Remedial plans: appointment of manager***

118. This section empowers the Scottish Ministers to carry out an inspection of the implementation of a remedial plan, imposed under the previous section, by a local

authority. Where, as a result of such an inspection, Ministers consider that the remedial plan is not being implemented satisfactorily, they may appoint a manager to exercise such functions of the authority as they specify. Such functions must be in relation to the management of housing accommodation and the provision of related services. Such a manager must not be appointed before consultation with the local authority, representative bodies of local authorities, and the Accounts Commission for Scotland, and Ministers must have regard to any comments received from those bodies before making an appointment of a manager. A manager is to be appointed on such terms and conditions and for such period as Ministers may determine. The manager has general powers necessary to carry out the functions imposed on them, and also has such specific powers as Ministers may specify.

### **Chapter 3 – Common Provisions**

#### **Section 76: Disposals of tenanted houses: consultation and consent**

119. This section, together with *schedule 9*, sets out the duties of local authorities, registered social landlords and the Scottish Ministers in relation to consultation of tenants before a disposal which would result in a change of landlord. It includes a requirement to carry out a ballot of affected tenants before their houses are transferred into new ownership, and a duty on Ministers not to give their consent to such a transfer unless they are satisfied that a majority of those expressing a view in the ballot wish the disposal to proceed.
120. *Subsection (2)* provides that no tenanted property of a local authority or registered social landlord should be transferred to any landlord other than a registered social landlord, unless Ministers are satisfied that transfer to a registered social landlord is not appropriate.

#### **Section 77: Power to obtain information**

121. This section and section 78 make provision for the Scottish Ministers to have access to the information held by a registered social landlord or a local authority in connection with the management of housing accommodation and the provision of related services. Ministers can serve a notice on a person requiring the person to provide them or a person authorised by them with such information or documents as they may specify. *Subsections (3) to (6)* specify the persons on which a notice may be served: in general, no notice is to be served on an officer, member, employee or agent of the local authority or landlord unless a notice has previously been served on the local authority or landlord and has not been complied with or the information or documents are not believed to be in the possession of the local authority or landlord.

#### **Section 78: Power to obtain information: further provision**

122. This section contains supplementary provisions in relation to the power of the Scottish Ministers to obtain information under section 77. It includes provisions relating to the disclosure of confidential information. It provides technical clarification of what is meant by a document and producing it, and entitles a person receiving documents under section 77 to copy or make extracts of them. This section also makes it a criminal offence to fail to do anything necessary to provide information under section 77, or to alter, suppress or destroy a document which a person may have been required to produce.

#### **Section 79: Issue of guidance by the Scottish Ministers**

123. This section gives the Scottish Ministers the power to issue guidance with respect to the management of housing accommodation and related services by local authorities and registered social landlords. *Subsection (2)* lists particular matters which guidance may cover. Before issuing any guidance, or revised guidance, Ministers must consult

such persons as they think fit. *Subsection (7)* provides that any guidance issued under this section, under Part 1 of the Act or under section 37 of the Housing (Scotland) Act 1987 (homelessness), is relevant in determining whether or not there has been mismanagement by a local authority or a registered social landlord, or whether action needs to be taken to ensure a proper level of management.

***Section 80: Code of good practice***

124. This section places a duty on the Scottish Ministers to publish a code of practice at least once every 5 years on the operation of regulation under this Part of the Act.

***Section 81: Charges for regulatory functions of the Scottish Ministers***

125. This section allows the Scottish Ministers to charge a local authority or registered social landlord an amount in respect of their expenses in exercising their regulatory functions in connection with the provision of housing accommodation and related services by the authority or landlord. Ministers are required to consult the authority or landlord before charging them.

***Chapter 4 – Interpretation of Part 3***

***Section 82: Meaning of “subsidiary” and “associate”***

126. This section defines terms which occur in this Part of the Act in relation to the provisions concerning the power to obtain information from registered social landlords.

***Section 83: Interpretation of Part 3***

127. This section clarifies the meaning of certain terms which occur in this Part of the Act.

***Part 4 – Scottish Homes***

***Section 84: Transfer of functions to the Scottish Ministers***

128. This section transfers to the Scottish Ministers the functions currently exercised by Scottish Homes. Those functions are mainly the functions set out in Part 1 of the 1988 Act, which is modified by *paragraph 14 of schedule 10* to the Act.

***Section 85: Property and liabilities***

129. Under this section the Scottish Ministers may make orders to deal with the transfer of Scottish Homes’ property and liabilities either to them or to such other person as the order specifies, regardless of any pre-existing provision which would act to inhibit the transfer. Ministers may also under this section issue a certificate in order to provide conclusive evidence that a property or liability has or has not transferred.

***Section 86: Transfer of staff***

130. This section provides that the Scottish Ministers may make an order transferring the staff of Scottish Homes to the staff of the Scottish Administration. The terms and conditions of transferring staff will be determined by Ministers but, taken as a whole, must not be less favourable than those enjoyed by an individual employed by Scottish Homes immediately before the transfer. *Subsections (3) and (4)* are designed to provide protection to the staff that a transfer of employment under this section is not construed as a break in the continuity of their employment.

***Section 87: Dissolution etc.***

131. This section provides that Scottish Homes as a separate legal entity may be dissolved on a date set by the Scottish Ministers in an order. Ministers may also make an order

to deal with any residual matters associated with the transfer of the functions, property, liabilities and staff of Scottish Homes and its dissolution. Provision made under this power may include retaining Scottish Homes in a residuary form to deal with issues arising from its winding up.

## **Part 5 – Strategic Housing Functions**

### ***Section 88: Statement on Fuel Poverty***

132. This section places a requirement on Scottish Ministers to publish a statement about the measures they and local authorities have taken and will be taking to ensure as far as is practicable that people do not live in fuel poverty. *Subsection (2)* specifies that the statement must include energy efficient measures. *Subsections (3) and (4)* specify that the statement must set a target date (a maximum of 15 years) and interim targets and provides for the statement to be reviewed, modified and republished. *Subsection (5)* makes provision for Scottish Ministers to consult interested persons before preparing or modifying the statement. *Subsection (6)* specifies that Scottish Ministers must at least once every 4 years publish a report on the measures detailed in the statement which have been completed.

### ***Section 89: Local housing strategies***

133. This section entitles the Scottish Ministers to require a local authority to carry out an assessment of housing needs and provision, and the provision of related services, within the local authority's area for a given period. *Subsection (2)* specifies core factors that a local authority must include within its assessment; there is provision at *subsection (2) (e)* for this to include such other matters as Ministers may specify at the time of requiring an assessment.
134. In addition, a local authority is required to prepare, and submit to Ministers, a local housing strategy. The strategy must cover the exercise of the local authority's functions both on its own and in co-operation with registered social landlords and other bodies in its area with a view to ensuring the economic, efficient and effective provision of housing and related services in a way which, so far as is reasonably practicable, ensures that people do not live in fuel poverty. *Subsection (7)* requires that the strategy must also state how the local authority will comply with its duty to exercise its functions in a way which encourages equal opportunities and observes equal opportunity requirements. Provision is made for local authorities to produce, with the agreement of Ministers, joint strategies. *Subsection (6)* makes provision for Ministers to specify such matters as: the period to be covered by the strategy; the matters to be included in the strategy; the procedures and consultation processes to be followed in preparing the strategy; the form and manner of the production of the strategy and its accompanying documentation; and the time by which it must be submitted.
135. The Scottish Ministers must make such requirements of local authorities as are necessary to ensure that every local government area is included in a local housing strategy. The section places a duty upon local authorities to keep their strategy under review and provide information concerning the implementation of their strategies to Ministers upon their request; it also allows for a local authority to modify and resubmit a strategy.

### ***Section 90: Grants for housing purposes***

136. This section gives the Scottish Ministers powers to make grants to local authorities for housing purposes of such amount, and subject to such terms and conditions, as they see fit. This grant is intended to allow local authorities to fund registered social landlords and other bodies and existing arrangements will continue for funding expenditure on local authorities own stock. It will be possible, however, for grants to be paid in connection with relevant housing-related debt.

137. *Subsection (3)* establishes that grant payments in respect of housing related debt will be confined to the debt which would otherwise have been charged to the Housing Revenue Account (HRA) under the terms of *paragraph 3(a) of Schedule 15* to the 1987 Act. The grant may be towards some or all of the following: the servicing of debt remaining on the HRA following a partial stock transfer; repayments in relation to servicing of debt following a whole stock transfer; debt repayments in respect of breakage costs resulting from the early repayment of debt; and the repayment of principal. Following a whole stock transfer an order, under section 94(2), will remove the duty to keep a HRA.
138. *Subsection (5)* allows a local authority to enter into a management or agency agreement with the Scottish Ministers to enable Ministers to exercise the authority's functions in relation to some or all of the sums received by the authority under this section.

### ***Section 91: Grants for housing support services***

139. This section enables the Scottish Ministers to pay grants for housing support services to local authorities. Grants can be of such amount and subject to such terms and conditions as Ministers see fit. Provision is also made for Ministers to make regulations prescribing the types of service, and categories of accommodation, eligible for grant.

### ***Section 92: Assistance for housing purposes***

140. This section provides local authorities with the powers necessary to provide assistance, financial or otherwise, to registered social landlords and other persons for housing purposes and for preventing or alleviating homelessness, and to individuals for constructing and maintaining housing. Where assistance is provided by means of guarantees or indemnities, or from Housing Revenue Account resources, the authority needs to secure the consent of the Scottish Ministers. Assistance is also subject to regulations and guidance made by Ministers under section 93.

### ***Section 93: Assistance for housing purposes: further provision***

141. This section allows the Scottish Ministers to set out in regulations and in guidance provisions governing assistance from local authorities to registered social landlords and other persons (including individuals), and provides powers for local authorities to set terms and conditions on the grants that they themselves make. *Subsection (5)* allows Ministers to amend earlier legislation so as to ensure that assistance which could be given under this section does not conflict with or duplicate existing powers.

### ***Section 94: Alteration of housing finance arrangements***

142. This section enables the Scottish Ministers to change the housing finance arrangements of a local authority.
143. Where local authorities transfer ownership of their housing to another body, it will no longer be appropriate to retain the requirement on Ministers to estimate Housing Support Grant in respect of that authority. Similarly, if an authority's housing stock is transferred there is no need for them to continue to operate a Housing Revenue Account (HRA) under the terms of section 203 of the 1987 Act. *Subsections (1) and (2)* therefore enable Ministers to disapply, by order, the relevant sections of the 1987 Act.
144. *Subsection (3)* establishes that, where a local authority holds land formerly held on the HRA, an order repealing the duty to keep a HRA under *subsection (2)* may also make provision about the holding of, and accounting for, such land. *Subsection (4)* directs that a local authority disposing of such land cannot do so for other than the best price reasonably obtainable, unless Ministers consent to alternative arrangements. Where such former HRA land is disposed of, *subsections (5) and (6)* allow for Ministers to direct that any receipt from the sale of the land be used to reduce any outstanding former HRA debt, or for some other housing related function.

***Section 95: Meaning of “fuel poverty”***

145. This section sets a definition of a person living in fuel poverty and allows Scottish Ministers to make regulations to set out what the terms used in that definition mean (for example, what is meant by “ a low income”). This section makes provision for consultation with appropriate bodies before making the regulations.

**Part 6 – Grants for Improvement, Repairs Etc.**

***Section 96: Extension of power to make improvement grants***

146. This section amends section 236 (power of local authorities to make improvement grants) of the Housing (Scotland) Act 1987.
147. *Subsection (1)* extends the works eligible for grant to include the provision of heating systems and insulation, replacement of unsafe electrical wiring and installation of mains-powered smoke detectors. *Subsection (2)* details more works in buildings in common ownership that may be eligible for grant. *Subsection (3)* amends the definition of a disabled person to bring it into line with the Disability Discrimination Act 1995.
148. *Subsection (4)* inserts a new section in the 1987 Act to the effect that, where improvement grant is applied for by a tenant, that tenant must have had responsibility for the works in respect of which grant is sought for 2 years previous to application. The new subsection also sets out the terms under which the Scottish Ministers are entitled to vary, by order, the works and cases eligible for grant.

***Section 97: Application for grant***

149. This section amends section 237 of the 1987 Act to extend the information required upon application for a grant to include details of the income and financial circumstances of the applicant. This section also makes it a criminal offence for an applicant to make a fraudulent or misrepresentative application.

***Section 98: Age of buildings eligible for grant***

150. This section amends section 240 of the 1987 Act with the effect that grant will normally only be paid in respect of houses provided 10 years or more prior to the date of an application for grant. There continues to be provision for grant to be paid in respect of newer housing, where the Scottish Ministers agree to a local authority’s request for permission to do so.

***Section 99: Applicant’s contribution to expense of works***

151. This section inserts a new section 240A in the 1987 Act with the effect that local authorities will be able to assess the appropriate level of contribution to works made by an applicant. Provision is made for the Scottish Ministers to make regulations concerning the assessment of the financial circumstances of an applicant or by reference to other criteria as Ministers think fit.
152. The section also enables an applicant to request a review of a decision of a local authority where, for example, the applicant believes the local authority has wrongly assessed the level of the applicant’s contribution. The review is to be carried out by someone senior to the person who made the applicant’s original assessment.

***Section 100: Approval of application***

153. This section amends section 241 of the 1987 Act requiring local authorities to take account of the approved expense and the applicant’s contribution in advising an applicant of the amount of grant approved.

***Section 101: Amount of grant***

154. This section amends section 242 of the 1987 Act with the effect that the maximum limit of the approved expense of an improvement grant shall not exceed £20,000. This section provides that the amount of grant awarded shall be the approved expense minus the applicant's contribution.
155. Provision is also made for the Scottish Ministers to determine cases in which grants shall be paid as a percentage of the approved expense. These "minimum percentage grants" will be determined by order. In such cases a local authority will pay the minimum percentage grant or the amount referred to in paragraph 153 above, whichever is the greater.
156. This section also makes provision about successive awards of grant where an application for grant is made less than 10 years after an earlier award. Such earlier award or awards are subtracted from the amount of grant awarded. Certain categories of work are exempt from this calculation. Those works include grants made in respect of works to provide standard amenities (under section 244 of the 1987 Act), minimum percentage grants and works to adapt a house for a disabled person (as under section 236 of the 1987 Act).

***Section 102: Improvement grants: the tolerable standard and standard amenities***

157. This section amends section 86(1) of the 1987 Act to extend the tolerable standard to include a suitably located shower or bath and a wash-hand basin. Section 244 of the 1987 Act is amended so that the standard amenities for the purposes of that section are defined by reference to particular amenities listed in the definition of the tolerable standard.

***Section 103: Amount of repairs grant***

158. This section amends section 248 of the 1987 Act in relation to maximum amount of repairs grant payable. Provision is made for the new limit, for arrangements concerning tests of resources and for minimum percentage grants etc. to apply to repairs grants as they do to improvement grants.

***Section 104: Grants for means of escape from fire***

159. This section amends section 249 of the 1987 Act in relation to grants for the provision of means of escape from fire in houses in multiple occupation, where local authorities have served a notice requiring such provision.

***Section 105: Improvement of energy efficiency and safety***

160. This section adds a new section 250A to the 1987 Act to encourage works to improve energy efficiency and safety. This section will allow local authorities to offer grant applicants the opportunity of having additional work carried out so as to replace unsafe electrical wiring, install a mains-powered smoke detector and to provide thermal insulation and, in the case of buildings in common ownership, a main door entry-phone system and a fire-retardant door at the entry to each house.

**Part 7 – Miscellaneous and General**

***Section 106: Equal Opportunities***

161. This section places a duty upon the Scottish Ministers, local authorities and registered social landlords to encourage equal opportunities.

***Section 107: Local authority maintenance of houses etc. of registered social landlord***

162. This section amends the provisions relating to the supply of goods and services by a local authority to certain public bodies to enable a local authority to provide such goods and services to a registered social landlord. Furthermore, a local authority's ability to carry out works of maintenance for a registered social landlord will not be restricted to "minor" works.

***Section 108: Meaning of "family" and "spouse": cohabitation***

163. This section provides definitions of "family" and "spouse" for the purposes of this Act. The terms of this definition recognise same sex relationships and children who are treated in practice as family members.
164. This section also amends section 83 of the 1987 Act to provide for similar recognitions in respect of that Act.

***Section 109: Orders and regulations***

165. This section sets out the general provisions applying to subordinate legislation to be made under the Act.

***Section 110: Ancillary provision***

166. This section 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 Act.

***Section 111: Interpretation***

167. This section clarifies the meaning of various expressions used in the Act.

***Section 112: Modification of enactments***

168. This section introduces [schedule 10](#) which makes changes to other legislation needed as a consequence of the Act.

***Section 113: Commencement and short title***

169. This section allows the Scottish Ministers to set different dates to commence different provisions of the Act (except for sections 109, 110 and 113 which came into force on Royal Assent).